Volume 32 | Number 4

March | April 2022

CT LAWYER

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CBA Members, Family, and Friends Annual Outing

Holiday Hill

June 26, 2022
11:00 a.m. to 5:00 p.m.

Don't miss out on this year's event! Connecticut legal professionals and their families are invited to the summer picnic and festivities, including a lake with rowboats, kayaks, and canoes. All other sporting equipment will be supplied by Holiday Hill.

Activities include:

- Airbrush Tattoos
- Disc Jockey with Music for Dancing and Games
- Pony Rides for the Children
- "Alpine" Rock Climbing Wall
- Bingo Games with Prizes
- Swimming Pool
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Price per person

$5.00 All Kids 12 and Under

$10.00 Member and Member's Guest(s)

$25.00 Non-Members

No limitations to number of guests

Holiday Hill
43 Candee Rd
Prospect, CT 06712

Connecticut Bar Association

Celebrate with the STARS!

a night of honor and inspiration

Wednesday, April 20, 2022
5:30 p.m. - 10:00 p.m.

Aqua Turf Club
556 Mulberry St, Plantsville, CT

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Join Us as We Celebrate the Stars of Our Legal Community

This Year's Stars Are:

Henry J. Naruk Judiciary Award
Hon. Bernadette Conway
New Haven District Superior Court

Edward F. Hennessey Professionalism Award
Ernest J. Mattei
Day Pitney LLP (Ret. Partner)

Tapping Reeve Legal Educator Award
J.L. Pottenger, Jr.
Yale Law School

John Eldred Shields Distinguished Professional Service Award
Daniel A. Schwartz
Shipman and Goodwin LLP (Partner)

Charles J. Parker Legal Services Award
Mary-Christy Fisher
Connecticut Veterans Legal Center

Citizen of the Law Award
Sara C. Bronin
Cornell University

Citizen for the Law Award
Shawn M. Lang (Posthumously)
AIDS Connecticut (Ret.)

Young Lawyers Section Vanguard Award
Logan A. Carducci
Halloran Sage

The Honorable Anthony V. DeMayo Pro Bono Award

Bruce E. Bergman
Law Offices of Bruce E. Bergman

Sarah E. Dlugoszewski
Shipman and Goodwin LLP

Charles D. Ray
McCarter & English LLP

Dale C. Roberson
Marder Roberson & DeFelice Law Offices LLC

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CT LAWYER

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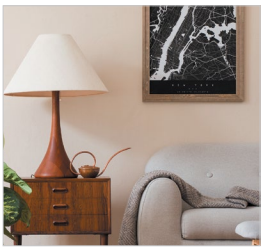
FEATURES



COLUMNS

DEPARTMENTS

Cover Image Credit: wildpixel/iStock/Getty Image Plus

The Connecticut Bar Association's Diversity, Equity, and Inclusion Journey

Cecil J. Thomas is the 98th president of the Connecticut Bar Association. He is an attorney at Greater Hartford Legal Aid, where he has represented thousands of low-income clients, predominantly in housing matters, and has obtained significant appellate and class action victories on behalf of low-income Connecticut residents.

"[T]o find the journey's end in every step of the road…is wisdom."

—Ralph Waldo Emerson

In spare moments in my time at the offices of the Connecticut Bar Association, I often find myself looking through the records of our organizational history. I find these old minutes, speeches, and records fascinating, both because of how much has changed since our founding, but also by how much remains the same. Last year, I wrote to lawyers across the state, encouraging them to join the CBA. In my letter, I emphasized the many benefits of membership, but also the broader importance of our associational ties, our giving of our time and resources in small measure towards greater collective purpose. In looking through our historical records recently, I found a letter written by CBA President Charles E. Perkins on January 2, 1889, urging attendance at the annual meeting that year. In his letter, he wrote of the CBA, "[i]t is an organization which has done, and is capable of doing, much good, if the members will only take sufficient interest in it…but each member is apt to be busy, and thinks that probably there will be plenty of others there." In observing and participating in the tremendous work of our organization, in the countless initiatives carried forward by our staff and our tireless volunteers in our sections, committees, and task forces, in seeing the hundreds of fellow members who join in virtual CBA presentations many times a month, I cannot help but feel that Charles E. Perkins would be happy to know that his call had been answered, across the expanse of history, in full and enduring measure. An organization that began with 58 members and four committees in 1875 is today a growing organization of over 9,000 members, with over 70 sections, committees, task forces, and working groups actively engaged in advancing our broad and vital organizational mission.

I believe that the key to that growth and impact has been our increasing commitment to diversity, equity, and inclusion (DEI). Over nearly 150 years of existence, we have shifted from a small, exclusive organization, to one that has opened itself, sometimes quite slowly, to broader inclusion. Each expansion, each opened door, and each new effort at greater inclusion and equity have helped us to better realize the aspirations of our organizational mission and our DEI policy. As expressed in that policy, adopted unanimously by our House of Delegates in 2015, "[w]e are a richer and more effective association because of diversity, as it increases our association's strengths, capabilities, and adaptability."

The theme that I have selected for this bar year, "Together for Justice, Together for Equity, Together in Service," expresses my own goals for my service as CBA president: to focus on our associational strength; to work to promote greater access to justice for those who are economically disadvantaged; to ensure the continued effectiveness of our diversity, equity, and inclusion efforts; and to connect all of this with our broader professional call to service. This column and my next will discuss the CBA and the legal profession's DEI journey. We are in the midst of reviewing and revising our CBA Strategic Diversity and Inclusion Plan, which was first adopted in 2015. A pause to look back at where we have been, before charting where we may go, therefore seems prudent.

On June 2, 1875, 58 attorneys joined together to form the CBA. This was an age of new bar associations. In the period between 1870 and 1878, 16 city and state bar associations were founded in 12 different states.[1] These were not styled, initially, as broadly inclusive organizations. "With few exceptions, state and city bar associations [founded during this period] were not open to everybody; they did not invite the bar as a whole, but sent out feelers to a select group, the 'decent part' of the bar."[2] The CBA was no exception. In the 1875

Constitution of the CBA, membership was limited to "[a]ny member of the bar of the State of Connecticut in good standing and who has practiced his profession for the term of three years…by vote of the Association, on recommendation of the executive committee…"[3] After recommendation for membership, a vote by ballot was to be held, and "one negative vote in every five of those present and voting, shall exclude the candidate."[4] During this period of bar association establishment, founding members across the country were increasingly concerned with a growing "crisis in decency" within the profession.[5,6] Lawyers were concerned about professionalism, corruption, and standardization of legal practice, legal education, and admission to the bar. "The motives were, as usual, mixed. Many lawyers sincerely wanted to upgrade the profession. This went along with a more selfish desire to control the supply of lawyers and keep out price cutters and undesirables."[7]

In its first decades, the CBA grew and held at approximately 200 members, admitting no more than seven attorneys in any given year during that early period.[8] Women were not represented within the CBA at the time, and an underlying anxiety about the admission of "others" in the profession would emerge periodically in the official proceedings of the CBA. At the Annual Meeting in 1910, the president's address included a call "to uphold the honor and dignity of our profession," and to "make it our duty to see to it, so far as we can, that none but worthy men enter it and that none but worthy men stay there."[9] On January 30, 1922, the organization gathered at its annual meeting to hear from a number of distinguished keynote speakers. One of those distinguished speakers called on the attendees to "safeguard our traditions and institutions" from a dangerous "assault":

> …especially in some of our larger cities, there has been a very considerable invasion of the profession of law by men wholly alien through lineage and training to our entire Anglo-Saxon tradition… The percentage of men of these stocks alleged to be present in the practice of the law…. is startling…. It is not merely that the bench and the bar are being thus recruited by men of foreign race and alien tradition, it is also said to be true that there is creeping into the law, in part at least as a by-product of this invasion of foreign stock, an undermining of the finer professional spirit and feeling which characterizes the professional training of the typical American lawyer.[10]

As I write this today, almost exactly 100 years later, those words are hard for me to read.

But change was also in the wind, moving slowly and persistently alongside this fear of the "other" within the early organized bar. In 1880, Edwin Archer Randolph became the first Black attorney to be admitted to practice law in Connecticut. He was followed soon after by two other Black lawyers who were also Yale Law School graduates: Walter J. Scott in 1881 and George W. Crawford in 1903. In 1882, Mary Hall became the first woman to be admitted to practice law in Connecticut. These attorneys opened doors for future, albeit glacial, change in the diversity of our profession and our organization.

Mary Hall's admission to the bar was ultimately determined in *In re Hall*, 50 Conn. 131 (Conn. 1882). Ms. Hall had completed the required period of study, passed the required examination, and received the recommendation of the Bar of Hartford County for admission. The question referred to the Supreme Court of Errors of Connecticut was whether the statutory term "persons" allowed the admission of women. In deciding in favor of Mary Hall's admission, Chief Justice John Duane Park noted that "[a]ll progress in social matters is gradual. We pass almost imperceptibly from a state of public opinion that utterly condemns some course of action to one that strongly approves it." *Id.* at 132-33. Chief Justice Park ultimately turned to our nation's founding principles, in that "[w]e are not to forget that all statutes are to be construed, as far as possible, in favor of equality of rights." *Id*. at 137.

"Justice, which is of interest to all, requires that all have the fullest opportunity for the exercise of their abilities."

–Chief Justice John Duane Park,
In re Hall, 50 Conn. 131, 138 (Conn. 1882)

While Mary Hall's admission to practice opened a door in 1882, it was not until 1927 that the CBA opened its doors to women, when Frances L. Roth became the first woman to be accepted for membership in the CBA. J. Agnes Burns, the first woman to graduate what is now the University of Connecticut School of Law, was admitted to practice in 1925,[11] and was accepted for CBA membership in 1932.[12] In 1935, the CBA reorganized its membership, opening the doors for all 2,500 lawyers practicing in the state to join.[13] This led to a period of significant growth. By 1961, the membership constituted 85 percent of the Connecticut bar, and the number of committees had grown to 31, covering "national and international matters of concern."[14]

Even as diversity of membership grew slowly, meaningful achievement of equity and inclusion remained a challenge for the CBA. It was not until 1989, 107 years after Mary Hall was admitted to practice, that Marilyn P. Seichter would become the first woman to serve as president of the CBA. She was succeeded by two other women, Carolyn P. Kelly and Susan W. Wolfson, who served as president in 1990 and 1991, respectively. It was not until

Continued on page 40 →

CONNECTICUT
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Using real-world examples from the simple to the complex, attendees will learn how to efficiently gather, analyze, and present a case while avoiding the perils and pitfalls of the adversarial mindset.

SESSION I: The Complexity of What Is Simple
Time: 10:15 a.m. – 12:15 p.m.

This session will focus on the attorney’s role and goal from client contact, investigation, identification of claims, and defenses, through resolution outside the adversary system.

SESSION II: The Simplicity of What Is Complex
Time: 2:30 p.m. – 4:30 p.m.

This session will focus on the tools and strategies to collect, analyze, and present inter-connected facts from complaint, discovery, summary judgment, and trial.

Register online at ctlegalconference.com beginning April 17, 2022

Full Day	Members	Non-Members**	Students (Law/paralegal)
Early Bird (Non-Refundable) 4/17 – 4/30	$279	–	–
Regular 5/1 – 5/31	$299	$499	$99
Late 6/1 – 6/13	$319	$499	$99

Conference registration includes a ticket to the Annual Meeting and Luncheon and parking in designated garages.

*Member registrants can earn 6.0 CLE credits at the conference and will receive access to on-demand versions of more than 30 conference seminars to earn additional CLE credits.

****Non-member registration pricing includes a one-year membership (July, 2022 – June, 2023) with the Connecticut Bar Association.**

Ralph J. Monaco Memorial Civics Education Award and Fund

***Ralph J. Monaco**, the CBA's 87th president, passed away on July 10, 2021. Attorney Monaco served as president during the 2010-2011 bar year, and was, at the time of his service, the second youngest president in the history of the Connecticut Bar Association. He was a dedicated member of the CBA, leading numerous important initiatives, before, during, and after his service as president. Attorney Monaco was a partner at Conway, Londregan, Sheehan & Monaco in New London, Connecticut and was renowned for his skill as a trial lawyer.*

Attorney Monaco was a champion of civics education, revitalizing the Civics Education Committee, on which he served as a co-chair and member for many years thereafter. He was also instrumental in the efforts to create the CBA Paralegal Section. Attorney Monaco served as co-chair of the Rule of Law Committee and the Financial Impact on the Legal Profession Subcommittee of the COVID-19 Task Force, which provided much-needed information, resources, and advocacy for the profession at the height of the pandemic. Additionally, he served as the legislative liaison of the Litigation Section. He previously served as chair of the Opioid Taskforce, as a member of the House of Delegates and Board of Governors, and as chair of the Young Lawyers Section. He was a true role model for many within the profession, and always exhibited the highest levels of professionalism and civility.

The CBA Ralph J. Monaco Memorial Civics Education Award

The Connecticut Bar Association (CBA) has established the Ralph J. Monaco Memorial Civics Education Award ("Monaco Civics Award"). The inaugural Monaco Civics Award will be presented by the CBA during its 2022 Law Day Celebration, scheduled for May 6, 2022, and will be presented annually thereafter. The Monaco Civics Award may be accompanied by a monetary grant each year, drawn from the Ralph J. Monaco Civics Education Fund.

Award Criteria: The Monaco Civics Award will be awarded each year to one or more current Connecticut high school student(s), in their junior or senior year of study, who have demonstrated a significant commitment to advancing civic engagement, civics education and/or the rule of law. Participation in extracurricular activities promoting civic engagement, civics education, and the rule of law, such as mock trial, student government, speech and debate, Model U.N., or other forensic activities and student activism shall be considered favorably.

Monetary Award: The Monaco Civics Award may be accompanied by a monetary grant to the selected recipient(s). The amount(s) of such monetary grant(s) shall be determined by the Award Committee annually.

Award Selection: The CBA has established the Ralph J. Monaco Memorial

Fund Committee ("Monaco Memorial Fund Committee"). The Monaco Memorial Fund Committee is responsible for promoting the Award, selecting the recipient(s) each year, determining, within available funds, the number and amount of Awards to grant, and fundraising for the Ralph J. Monaco Memorial Civics Education Fund.

The Monaco Memorial Fund Committee suggests that nominations be submitted by a teacher, coach, club advisor, or similarly-situated individual with personal knowledge of the nominee's activities and commitment to civics education and the rule of law, which may be described in greater detail in the nomination form. In the event of a self-nomination, a letter of reference from such an individual, while not required, would be helpful in the Committee's consideration of the nominee.

Nominations must be submitted by April 1, 2022 to be considered for the 2022 Award. Selected recipients must

be available to attend the May 6, 2022 Law Day celebrations, to be held at the Connecticut Appellate Court in Hartford, Connecticut at 10:00 a.m.

The CBA Ralph J. Monaco Memorial Civics Education Fund

The CBA has established the Ralph J. Monaco Memorial Civics Education Fund ("Monaco Memorial Fund") at the Connecticut Bar Institute. The Connecticut Bar Institute ("CTBI") is a 501(c)(3) non-profit organization. The mission of the CTBI is to offer continuing legal education to Connecticut lawyers and the public, to provide scholarly legal publications, and to provide community outreach.

The Monaco Memorial Fund is a designated fund at the CTBI. The sole purpose of the Monaco Memorial Fund is to provide funding for the monetary grants accompanying the CBA Ralph J. Monaco Memorial Civics Education Award. The full principal of the Monaco Memorial Fund shall be available for that purpose.

The Ralph J. Monaco Memorial Fund Committee

Cecil J. Thomas
Livia DeFilippis Barndollar
Francis J. Brady
Raeann Bromark
Regina C. Graziani
Daniel J. Horgan
Dina Monaco
Lawrence Morizio
Daniel A. Schwartz
Jonathan Weiner
Keith J. Soressi

To submit a nomination or donate to the fund, visit ctbar.org/MonacoAwardandFund.

Upcoming Education Calendar

MARCH

14 Legal Entrepreneur Series | Start it Up: Opening Your Own Law Practice

16 Develop Mastery of Essential Skills for Your Legal Practice Series | Nurturing Connections: The Essential Skill

22 Constance Baker Motley Series: Critical Race Theory in Practice*

23 Residential Real Estate Closings

23 Develop Mastery of Essential Skills for Your Legal Practice Series | Decision Quality: Advising Clients on the Best Decision

24 ADR Seminar

28 Bridge the Gap Series | The Corporate Transparency Act: An Overview

29 Jennifer's Law: It's Impact on ROs, Divorces, and Family Law Cases

30 Develop Mastery of Essential Skills for Your Legal Practice Series | Story: Storytelling for Persuasion

31 Sexual Harassment Training*

31 Cybersecurity

APRIL

5 Legal Entrepreneur Series | Money Talks: Revenue Building and Management for Your Small Law Firm

6 Best Practices Onboarding Employees

6 Develop Mastery of Essential Skills for Your Legal Practice Series | Value Creation: How to Create and Capture Value for Clients

8 Sexual Harassment Training—Supervisors*

14 Trial Advocacy Institute: Direct and Cross

18 Bridge the Gap Series | Depositions 101

28 Federal Tax Institute of New England*

29 More Effective Writing Makes More Effective Lawyers

MAY

9 Legal Entrepreneur Series | Part 3

10 Constance Baker Motley Speaker Series: Voting Rights*

12 Trial Advocacy Institute: Openings and Closings

19-20 Appellate Advocacy Institute

**Ethics credit available*

Seeking Leaders to Serve on the House of Delegates from 2022-2025

We are seeking leaders to represent their colleagues in the House of Delegates for a three (3) year term. Please consider volunteering your time to strengthen the CBA, bring new ideas and encourage growth to the association as we move forward in the coming years. The districts that have at least one (1) expiring seat beginning July 1st are 2, 4, 5, 9, 10, 11, 12, 15, 16 and 17.

Please keep in mind that if you currently are seated on the House of Delegates and your term is about to expire, you still need to follow the procedure for nomination once again.

We have made it easier to secure a seat in our election for the House of Delegates with our online nomination process. Please visit ctbar.org/HODNomination to find the instructions for nominating colleagues in your District and/or yourself. Completed petitions are due Friday, April 15, 2022.

Your membership is greatly appreciated and your participation in the governing of the Connecticut Bar Association will only strengthen our organization. If you have any questions, please feel free to contact Bill Chapman, bchapman@ctbar.org, or Carol DeJohn, cdejohn@ctbar.org.

GET THE NEWS and JOIN THE CONVERSATION
www.ctbar.org

CBA In-Person Visitor and Event Attendance Policy*

We require that all in-person visitors to the building or at off-site CBA-hosted events review our attendance and visitation policy below. **When visiting the building in-person or by registering for and attending an in-person CBA event, you agree that you have read the CBA's requirements listed below and affirm your commitment to comply with these requirements.** We appreciate your cooperation to help stem the spread of COVID-19 and ensure the safety of our staff and other visitors and/or attendees.

- All visitors and attendees must comply with all CDC, federal, state, and local laws, orders, directives, and guidelines related to COVID-19 and attending large gatherings.
- Do not attend an event or visit the CBA if any of the following apply:
  - You have tested positive for COVID-19 within the past ten days;
  - You have experienced COVID-19 symptoms within the past ten days;
  - You have been in contact with someone who has tested positive for COVID-19 or had COVID-19 symptoms within the past ten days; or
  - You are awaiting a pending COVID-19 test result.
- Please adhere to social distancing requirements whenever possible (e.g., maintain a minimum of 6ft).
- All visitors and attendees are **required to wear a mask** covering their mouth and nose in public spaces, except while actively eating, drinking, or addressing an audience from the front of a meeting room. Masks will be made available to visitors and attendees, if needed.
- All in-person attendees must verify that they have been fully vaccinated in accordance with CDC recommendations, or have received a negative viral COVID test administered by a healthcare professional within the seventy-two (72) hours preceding the event. The required proof of vaccination or a negative test result when registering for an event will depend on the nature of the event. Routine smaller events will require that attendees attest during the registration process that they have been vaccinated or received a negative test as specified above. Larger conferences and/or events will require attendees to verify through a third-party application selected by the CBA that they have been vaccinated or received a negative COVID test as specified above. The method of vaccination status verification for each event will be specified in the registration process for each such event.

To protect the health and safety of staff and attendees, we are limiting the capacity of our in-person events. Hand sanitizer and soap dispensers are available throughout the CBA building.

Any off-site CLE programming, section meetings, or other events are subject to all the requirements listed above. All additional requirements or policies imposed by the off-site venue or the municipality in which the venue is located must be adhered to by all in-person event attendees.

If you have tested positive for COVID-19 within ten days following your visit to the CBA or attendance at an off-site CBA-hosted event, please reach out to us at (860) 612-2025 to notify us of the same. Any personal information you provide will remain confidential.

The CBA reserves the right to amend, modify, or otherwise revise this policy in accordance with applicable federal or state guidelines.

Continue to check ctbar.org for updated information.

Inquiries and Concerns

If you need assistance, please call (844)469-2221 or email msc@ctbar.org.

During these unprecedented times, CBA members continue to have questions regarding how to navigate the practice of law. In an effort to assist its members in resolving issues and/or concerns, the CBA is providing an opportunity for members to post inquiries. The CBA will collect the inquiries and review them to determine the most efficient manner in which to assist in the resolution of the issues. You may post inquiries anonymously; however, if you submit your contact information, we will respond to you when we have a course of action and/or an answer. To submit an inquiry or concern, visit ctbar.org/COVID19Response.

**Unanimously approved by the CBA Board of Directors at its November 15, 2021 meeting.*

Image credit: A-Digit/DigitalVision Vector

CBA CLE Programming

Whether you prefer to attend in-person or from the comfort of home, with the CBA you can access high-quality CLE seminars covering the latest updates in numerous areas of legal practice.

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Connecticut Bar Association

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2022

FEDERAL TAX INSTITUTE OF NEW ENGLAND

Connecticut Bar Association

CBA HOSTS QUARTERLY VIRTUAL FREE LEGAL ADVICE CLINICS

On January 25 and 26, the Connecticut Bar Association (CBA) Pro Bono Committee and Statewide Legal Services of CT held a virtual Free Legal Advice Clinic where 27 attorney volunteers met with 63 clients over Zoom meetings. Prior to the clinic, 14 volunteer law students completed client intake forms and asked follow-up questions to help the attorneys prepare for the meetings and provide the best possible legal advice.

Image credit: VectorHot/iStock Getty Images Plus

On the days of the clinic, the volunteer attorneys provided free legal guidance to the clients in the areas of family law, landlord/tenant law, immigration law, tax law, fraudulent business or consumer debt, bankruptcy, employee rights/unemployment, and pardons. Nine law students were able to sit in on the meetings to learn more about the process of providing pro bono services.

"Because of the efforts of the CBA pro bono team and volunteer attorneys, there are 63 Connecticut residents whose burdens are lighter after receiving free legal advice through the clinic," said CBA President-elect and Pro Bono Committee Chair Daniel J. Horgan. "The CBA will continue these much-needed services as we work together to help close the access to justice gap."

In October of 2021, the CBA hired Attorney Jennifer Shukla for the newly created position of Director of Access to Justice Initiatives. With an increased capacity to pursue access to justice initiatives, the CBA's virtual Free Legal Advice Clinics are now planned to take place on a quarterly basis, with the next clinic scheduled for April 26 and 27. More information on the upcoming clinic as well as other opportunities to participate in pro bono work through the CBA can be found at ctbar.org/probono.

"The Connecticut Bar Association understands the significant fiscal challenges that prevent many Connecticut residents from acquiring professional legal advice," stated CBA President Cecil J. Thomas. "In response, we have maintained a longstanding commitment to increasing access to justice for those who are economically disadvantaged. In the last several years, we have significantly expanded our free legal assistance programs, using new technology to facilitate these impactful connections between our dedicated volunteers, and the members of the public who need legal advice. With the efforts of our new director of access to justice initiatives, Jennifer Shukla, we are poised to continue the expansion of these vital programs for the future."

Thank you to all those who volunteered at this important event that supports the public's access to legal representation. CBA members that participated in the winter Free Legal Advice Clinic include: Justin M. Ahern, John H. Aldrich, Dana R. Bucin, Patrick D. Coughlin, Ann-Marie DeGraffenreidt, Joshua Devine, Wendy D. DiChristina, Garlinck Dumont, Thomas G. Egan, Jr, Marc T. Finer, Paul Garlinghouse, Joel Grafstein, Angela Haen, Eric Hoffman, Ronald D. Japha, Adam Laben, John M. Letizia, Julie A. Moscato, Deborah Noonan, Erin O'Neil-Baker, Don Philips, Charlotte Ricketts, Theresa R. DeGray, Melvin A. Simon, Paige M. Vaillancourt, Russell Zimberlin, M. Nawaz Wahla, Kenneth E. Caisse, Craig Coulombe, Matthew Forrest, Betsy DeBlieux, Lindsay A. Alfano, Clare Hebert, Kassie L. Boucher, Emily P. Leen, Santanna N. Rocha, Ridhika Kartan, Lucy Lundgren, Sarah Frostbutter, Jenna Bator, Chelsea Connery, Corey Thomas, Stefanie McArdle, and Lillianna M. Baczeski.

IN MEMORIAM

Joseph A. Broder passed away on November 16 at the age of 82. Attorney Broder was a graduate of Bacon Academy, Trinity College, and Harvard Law School. He served as senior partner of Broder and Butts Attorneys at Law from 1974-2000 and then as a solo practitioner until his retirement in 2015. His lifelong call to service included serving as Commander in the US Navy Reserves Judge Advocate General's (JAG) Corps from 1965-1989; State Representative from Connecticut's 48th District; Special Counsel to the Town of East Haddam; and Colchester Town Attorney. A lifelong Colchester resident, Attorney Broder was active in many organizations, including the American Legion, Colchester Business Association, Colchester Fish and Game Club, Colchester Grange, Colchester Jaycees, and as former President of Rotary International (Colchester Chapter).

Charles P. Gallagher passed away at the age of 96 on January 20. He served his country in World War II in the US Army, earning a Bronze Star and Purple Heart for his actions during the Philippine Liberation in the Pacific Theater. Upon returning home, he graduated from Georgetown University Law School and the School of Foreign Service. He was employed for many years as vice president and trust officer in several local banks. He volunteered his time to many causes, including Kiwanis International, American Red Cross, and the Order of the Purple Heart as well as participated in pro bono work through the Connecticut Bar Association.

Lea Sandra Nordlicht Shedd passed away on January 19 at the age of 70. Attorney Shedd graduated from New York University, cum laude, and earned a law degree at the University of Connecticut School of Law. She served as chair of the Legal Studies Department at Quinnipiac College (now Quinnipiac University) from 1980 to 1986 and went on to enter private practice. In 1996, she partnered with longtime friend, Judith Hoberman, to form Shedd and Hoberman LLC, where she practiced until her retirement in 2015. Additionally, Attorney Shedd served as chair of the CBA Elder Law Section in 1992-1994, has served as co-chair of the Elder Law Section's Continuing Legal Education Committee, and has continuously served as a member of the Elder Law Section Executive Committee. In 2021, the CBA Elder Law Section's Executive Committee presented her with its first Lifetime Achievement and Career Service Award in recognition of and appreciation for her outstanding service as a lawyer, extraordinary leadership of and service to the Elder Law Section over the years, her work and efforts in the development of elder law, and her continuing commitment to excellence in the legal profession.

Robert N. Talarico passed away at the age of 79 on February 14. He was a lifelong resident of Danbury and attended St. Peter School and Danbury High School. He completed his undergraduate degree at the University of Connecticut and graduated first in his class from the University of Connecticut School of Law in 1965. Attorney Talarico was a partner in the law firm of Talarico Frizzell and Olivo, practicing law until 2020. He was a member of the Danbury and Connecticut Bar Associations and served as assistant corporation counsel for the City of Danbury as well as judge of probate. He was the founding director of the Pope John Paul II Center for Healthcare. He also served on the Board of Directors of Ability Beyond. He was a member and former director of the Regional YMCA, a member of the Exchange Club of Danbury, and of the Amerigo Vespucci Lodge S.O.I.A.

PEERS AND CHEERS

Attorney Announcements

Ashleigh Backman, Connecticut Veterans Legal Center's current interim executive director, was named to *Connecticut Magazine*'s 40 Under 40 list for her work as director of pro bono, partnerships and development in which she builds relationships with top law firms, corporate legal departments, and state bar associations to ensure Connecticut's indigent veterans have access to free legal representation.

ParrinolShattuck PC, located in Westport, represents individuals throughout Connecticut in a wide range of family law matters, and is pleased to announce that **Alexandra N. Baird** has joined the firm as an associate.

Murtha Cullina LLP is pleased to announce that **Proloy K. Das,** a partner at the firm, received the Trailblazer Award from the South Asian Bar Association of Connecticut (SABAC) at its 14th Annual Awards Celebration. This prestigious award recognizes a Connecticut resident of South Asian descent whose exemplary and noteworthy accomplishments mark them as a trailblazer among the members of Connecticut's South Asian legal community.

Saxe Doernberger & Vita PC is pleased to announce the elevation of **K. Alexandra O'Neill** to partnership. Her practice is devoted to policyholder representation in complex insurance litigation matters, and she has extensive experience in arbitration and mediation.

Sheldon R. Poole joined the law firm Carlton Fields as an associate in Hartford. He is a member of the firm's Mass Tort and Product Liability Practice.

Hinckley Allen has expanded its Trusts & Estates group with the addition of **Lisa P. Staron** as a partner at the firm. Attorney Staron's practice includes estate, tax, and business succession planning, and estate and trust administration.

Firm Announcements

Danielle M. Bercury has been named partner at **Brenner Saltzman & Wallman LLP**. Attorney Bercury is a member of the firm's Real Estate and Land Use practice groups. Her practice includes commercial real estate sales, acquisitions, financing and leasing and a broad range of land use and zoning matters, including significant development projects. The firm is also pleased to welcome Jacob P. Goldsmith as an associate in the Corporate practice group.

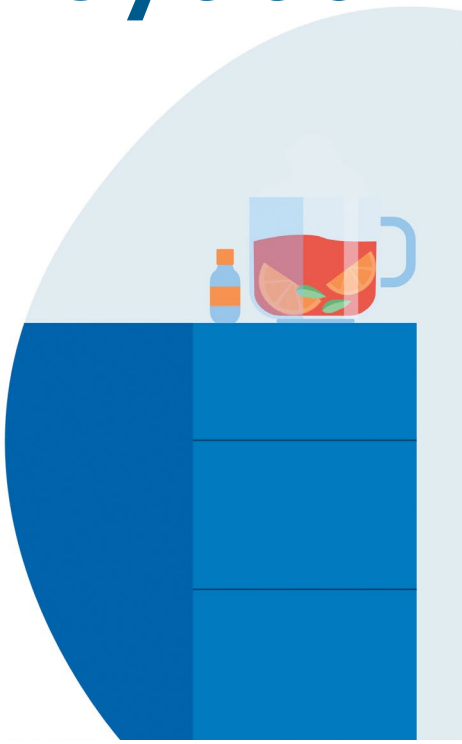
Garrison Levin-Epstein Fitzgerald & Pirrotti has recently welcomed two new attorneys, Betsy Ingraham and Jordan Sala, in response to surging demand for employees' rights lawyers. Attorney Ingraham is an accomplished trial lawyer, having tried more than 20 cases to verdict in Connecticut's state and federal courts. Attorney Sala has represented both employers and employees in her practice.

Louden Katz & McGrath LLC is pleased to announce that Managing Partner David McGrath has been elected as a Fellow of the American Academy of Matrimonial Lawyers (AAML). Comprised of the top matrimonial attorneys throughout the nation, AAML members are recognized as preeminent family law practitioners with the highest levels of knowledge, skill, and integrity. The firm also has announced the addition of Ashley A. Cervin as an associate. She is a 2021 magna cum laude graduate of Quinnipiac Law School. ■

PEERS and CHEERS SUBMISSIONS
e-mail editor@ctbar.org

The New Year Brings New Leave Entitlements and Benefits to Employees

By Erin O'Brien Choquette



JANUARY 1, 2022 MARKED THE BEGINNING of new leave rights and responsibilities for Connecticut employees and employers, as well as for the lawyers who advise them. As of that day, changes to the Connecticut Family and Medical Leave Act (CT FMLA) took effect, expanding both the pool of employees eligible to take job-protected leave under CT FMLA and the qualifying reasons for leave. In addition, income-replacement benefits under the Connecticut Paid Leave (CT PL) program became available. The CT Paid Leave program, which is administered by the CT Paid Leave Authority, creates a mechanism for eligible employees who cannot work due to a qualifying reason to receive income-replacement benefits.

Both the CT FMLA changes and the creation of the CT PL program resulted from Public Act 19-25, *An Act Concerning Paid Family and Medical Leave*, as amended by Public Act 19-117. The revisions to the CT FMLA can be found in sections 31-51kk *et seq* of the Connecticut General Statutes. The legislation creating the CT Paid Leave Authority as a quasi-public agency and establishing the CT PL program was engrossed in sections 31-49e *et seq* of the Connecticut General Statutes.

Under CT FMLA, an eligible employee who cannot work for a qualifying reason has the right to take leave from work and the right to return to their same job, under the same terms and conditions, at the end of the leave. One of the most significant changes to this law related to the definition of a covered employer. Prior to January 1, CT FMLA applied only to businesses with 75 or more employees. As of January 1, however, almost all Connecticut employers with **one or more** employees are covered by the CT FMLA. Notably, domestic employers are now considered covered employers. The only employers that are excluded from CT FMLA are the federal government, municipalities, boards of education, non-public elementary and secondary schools, and sovereign entities.

The eligibility requirements under CT FMLA were similarly expanded. Previously, an employee was required to work for an employer for at least one year and had worked at least 1,050 hours in the previous 12 months. Now, an employee is eligible for job-protected leave if they have worked for the employer for at least the three months immediately preceding the leave.

The maximum length of CT FMLA leave was changed from 16 weeks in a 24-month period for most leave reasons to 12 weeks in a 12-month period. Under the new CT FMLA, an employee can still take up to 26 weeks of leave to care for a family member injured in the line of duty on active duty in the Armed Forces. Additionally, the new CT FMLA allows an employee who is pregnant the ability to take two additional weeks of leave during their pregnancy if they need the time to go to doctor appointments or are experiencing compli-

Image credit: Surf Up Vector/iStock Getty Images Plus

cations or otherwise become incapacitated during their pregnancy.

Lastly, CT FMLA now has an expanded definition of the familial relationships for which a worker can apply for caregiver leave. The recognized family relationships include a spouse, child of any age, parent, grandparent, grandchild, sibling, or any individual related to the worker by blood of affinity whose close association the employee shows to be the equivalent of those family relationships.

Unchanged with the CT FMLA is the fact that the employee must apply to the employer for the FMLA leave and the employer is responsible for determining the employee's leave entitlements. The Connecticut Department of Labor (CT DOL) has created a dedicated page on its website for CT FMLA and CT PL issues: https://portal.ct.gov/DOLUI/newfmlaguidance. On this webpage, CT DOL has provided sample forms, FAQs, and other resources. The webpage is also the hub for employees who wish to file complaints alleging wrongful denial of FMLA leave and FMLA interference and retaliation claims and for employers to respond to such claims.

The Connecticut Department of Labor has posted proposed CT FMLA regulations on the state's regulations portal, eregulations.ct.gov. The comment period for these proposed regulations closed on February 28, 2022.

Unlike CT FMLA, the CT PL program does not provide employees with rights to job-protected leave. Instead, the CT PL program creates a mechanism for eligible employees who cannot work due to a qualifying reason to receive income-replacement benefits.

The CT PL program is entirely worker-funded. Starting in January 2021, Connecticut employers were required to deduct 0.5 percent from their workers' wages and remit those contributions to the CT Paid Leave Authority each quarter. Contributions are calculated based on the employees' FICA wages and are capped at the Social Security contribution maximum.

Unlike many other states, Connecticut does not require employers to pay into the program. If an employer fails to fulfill its obligation to remit the employees' contributions, however, it can be held financially responsible for the shortfall. To assist employers that did not begin processing the employee contributions promptly, the CT Department of Labor has authorized a temporary "catch up period" from January 1 – March 31, 2022. During this time, employers may deduct an additional 1 percent from employees' wages to help recoup contributions they may have missed in 2021. However, once this period ends on March 31, employer will need to obtain express permission from the CT Department of Labor to take any deductions for paid leave contributions above the statutory 0.5 percent.

Sole proprietors and self-employed individuals are not required to participate; however, they may choose to opt-in to the program. If they do so, they must remain in the program for a minimum of three years. A sole-proprietor who has workers on their payroll must withhold 0.5 percent from those workers' wages and remit them quarterly, even if the sole-proprietor has chosen not to opt-in to the program.

CT PL benefits became available for eligible workers as of January 1, 2022. To be eligible for these income-replacement benefits, a worker must be working for a covered employer, or must have been working for a covered employer within the 12 weeks immediately preceding the leave and must have earned at least $2,325 in the highest earning quarter of the first four of the five most recently completed quarters.

A covered employer, for purposes of the CT PL, is any person or entity who employs one or more employees in Connecticut, excluding the federal government, the State of Connecticut as to its unionized workforce, municipalities, boards of education, nonpublic elementary and secondary schools, railroads, and sovereign entities. Unionized employees of the state can collectively bargain to participate in CT PL. Similarly, if the unionized employees of a municipality or board of education collectively bargain to participate in CT PL, the non-unionized employees of that municipality or board will be covered as well.

Employers who wish to offer their employees an equivalent or better paid-leave program may apply to the CT Paid Leave Authority for permission to provide paid leave benefits to their employees through a private plan. Such private plan may be self-insured or fully insured by a Connecticut Insurance Department-approved insurer. Information about the private plan option, including the information about required plan elements and the application process, can be found at www.ctpaidleave.org. Notably, one required element is the obligation for the proposed plan to be approved by a majority of the employer's employees.

CT PL income-replacement benefits are available to employees for the same qualifying reasons as are available under the CT FMLA, specifically:

- to receive treatment for or recover from their own serious health condition;
- to care for a family member experiencing a serious health condition;

- to bond with a new child that has entered the worker's home through birth, adoption, or foster care;
- to care for a family member injured in the line of duty on active duty in the Armed Forces; and
- to attend to qualifying exigencies arising out of a parent, spouse, or child's call to active duty in the Armed Forces.

Additionally, CT PL benefits are available to a worker who takes leave pursuant to the CT Family Violence Leave Act (C.G.S.

§31-51ss), which allows an individual experiencing family violence to take up to 12 days in a calendar year to attend court proceedings, seek housing or temporary shelter, or attend medical or counseling appointments.

The CT Paid Leave Authority has received many inquiries as to whether exposure to COVID-19 is a qualifying reason for CT PL benefits. Under the CT Paid Leave Act, the definition of serious health condition is based on the definition of serious health condition under the CT FMLA. To summarize this multi-part definition, the individual must not simply be sick or injured but instead must be receiving medical treatment for the condition or otherwise be under the direct care and supervision of a health care provider. Accordingly, to receive CT Paid Leave benefits in connection with an exposure to or diagnosis with COVID-19, the employee must provide medical documentation from their health care provider demonstrating that the COVID-19 exposure/diagnosis results in the person having a condition that:

- requires an overnight stay in a hospital or other medical care facility; or
- causes the individual to be incapacitated for more than three consecutive days and for which the individual is required to receive ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care, such as prescription medication); or
- results in or exacerbates a chronic condition that causes occasional periods when the employee is incapacitated, and which require treatment by a health care provider at least twice a year.

Similarly, an eligible employee may receive CT Paid Leave benefits because they need to serve as a caregiver to a family member who was exposed to or diagnosed with COVID-19 only if the family member's health care provider certifies that the family member's exposure/diagnosis results in the family member having a condition that falls into one of those three categories.

An eligible employee who is unable to work for a qualifying reason can receive up to 12 weeks of income-replacement benefits in a 12-month period, measured on a rolling-back basis, for most leave reasons. Benefits taken in connection with leave under the Family Violence Leave Act are restricted to the 12 days available under that act. Like CT FMLA, an employee who is pregnant may receive up to two additional weeks of income-replacement benefits for incapacity during pregnancy.

The amount of income-replacement benefits available to an eligible employee depends upon their base weekly earnings, defined as amount equal to one twenty-sixth, rounded to the next lower dollar, of a covered employee's wages earned during the two highest-earning quarters of the first four of the five most recently completed quarters. An employee whose base weekly earnings are less than or equal to 40 times the CT minimum wage will receive CT PL benefits equal to 95 percent of such base weekly earnings. Employees who earn a greater amount will receive benefits equal to 95 percent of the CT minimum wage times forty plus 60 percent of the difference between their base weekly earnings and forty times the CT minimum wage, provided, however, that in all instances, the CT PL benefits are capped at 60 times the CT minimum wage. To assist employees in estimating their potential benefits, the CT Paid Leave Authority created a benefits estimator on the "For Claims" page of www.ctpaidleave.org.

The CT Paid Leave Authority has contracted with a third-party administrator, Aflac, to handle claims administration. Employees who wish to apply for income-replacement benefits from the CT Paid Leave Authority can do so either by accessing the "For Claims" page or by calling Aflac at (877)499-8606. The "For Claims" page includes a step-by-

step guide to the CT Paid Leave claims process, as well as a video guide on how to submit a claim; detailed information about the definitions and documents required for each of the qualifying reasons, and other helpful information.

Because the CT Paid Leave program is entirely employee-funded, the employer's involvement in the claim process is limited. By statute, the employee is required to notify their employer if they apply for CT Paid Leave benefits. In addition, as part of the claim process, the employee will give the employer an Employment Verification Form to complete and submit to Aflac within 10 days of receipt. The Employment Verification form is a two-sided document in which the employer must provide information about the employee's work schedule and sources of other income-replacement benefits. Employers can also expect to receive an email notification from Aflac advising them if their employees' claims for benefits have been approved or denied.

The CT Paid Leave Authority requests information about other income-replacement benefits for two reasons. First, the statute states that an employee cannot receive CT PL benefits concurrently with unemployment insurance benefits, workers' compensation benefits (which is broadly defined in the statute to include medical-only benefits), or other state or federal income-replacement benefits.

Additionally, the CT Paid Leave Act states that an employee may receive CT PL benefits and employer-provided income-replacement benefits at the same time provided the total amount does not exceed the employee's regular wages. The CT FMLA states that an employer may require or may permit an employee to use any sick or other accrued paid leave or paid time off while on approved leave, provided that an employee who is taking leave pursuant to Conn. Gen. Stat. § 31-51kk et seq. can retain not less than two weeks of such paid time off, as required by Conn. Gen. Stat. § 31-51ll(e).

As a result of the intersection of these two laws, the employee's CT PL benefits may be affected in one of the following ways:

- If an employee does not receive **any** employer-provided income-replacement benefits (through accruals, an employer-provided short-term disability policy, or otherwise), the employee will start receiving the full amount of CT PL benefits, with no offsets, as of the first day of the leave.
- If the employee receives employer-provided income-replacement benefits equal to the employee's regular pay for the full amount of time the employee is out on leave, the employee shall not

receive any CT PL benefits during that leave, but the employee's full allowance of CT PL benefits remains available to them in case of a future need.

- If the employee receives employer-provided income-replacement benefits equal to the employee's regular pay for a portion of the time the employee is out on leave, and the employee shall receive CT PL benefits only for the remainder of the leave (i.e., the period the employee is on leave but not receiving employer-provided paid time off).
- If the employee receives employer-provided income-replacement benefits less than the employee's regular pay, the employee shall receive CT PL benefits, but the benefits will be reduced as necessary to ensure that when the employer-provided paid time off is added to the CT PL benefits, the total does not exceed 100 percent of the employee's regular pay.

As a quasi-public agency, the CT Paid Leave Authority issues policies adopted by its Board of Directors after a public notice period. Copies of its policies can be found on the Resources page of www.ctpaidleave.org. Other useful resources, including Employee Fact Sheets, Employer and HR Toolkits, videos, FAQs, and links to scheduled webinars can also be found on the CT PL website. ■

Erin O'Brien Choquette *is the general counsel and chief operating officer for the CT Paid Leave Authority. Previously, she worked for the Connecticut Department of Administrative Services and Robinson+Cole. Attorney Choquette attended the Columbia University School of Law and the College of the Holy Cross.*

An Interview with David Williams

the New Executive Director of Lawyers Concerned for Lawyers of Connecticut

By Jeffrey A. Zyjeski

David Williams,
Executive Director of Lawyers Concerned for Lawyers

"LCL-CT is safe, effective and totally confidential. The sad and unnecessary pattern continues whereby an attorney will ignore or resist any help or support until too late. Help is a phone call or an email away."

David Williams worked for 29 years in the Family Division at the Connecticut Judicial Branch as a supervisor and lead counselor and nine years as a solo practitioner, focusing on individuals and families in crisis. He has volunteer with Lawyers Concerned for Lawyers-CT since 2010 and is also a participant in its programming. Attorney Williams received his JD degree from Quinnipiac University School of Law and his undergraduate and graduate degrees from Southern Connecticut State University. Chair of the CT Lawyer Advisory Committee, Jeffrey A. Zyjeski sat down with the David Williams, the new Executive Director of Lawyers Concerned for Lawyers of Connecticut (LCL-CT) to discuss his new role at the organization.

Jeffrey A. Zyjeski: Let's start with an explanation for readers who may not be familiar with Lawyers Concerned for Lawyers Connecticut (LCL-CT)—what is the organization and what does it do?

David Williams: LCL-CT is a non-profit corporation dedicated to providing prompt assistance to Connecticut lawyers, judges, and law students experiencing any number of issues related to mental health or substance abuse. LCL offers services including mental health counseling, support groups, aid in curtailing malpractice or disciplinary claims, and educating the legal community about issues that can impact the ability to practice law effectively. We currently have an active bi-weekly mental health group, a weekly women's group, and a weekly 12-step group. One of my first priorities is to update and reconstruct our website, which will provide a trove of information once it is completed.

JZ: What drove you as a lawyer and readied you for a position such as this?

DW: I was a supervisor with the Family Division and oversaw what then was called "Honor Court," an open speaker AA-based meeting at the courthouse. After leaving the judicial branch, I became a solo with a mission to support children and families in highly contested custody and visitation cases at minimal cost. I carried the same dedication to individuals I

represented in criminal and probate matters as well. I continued a dedication to 12-step activities including serving in different capacities at LCL-CT as necessary over the years.

JZ: How have you tackled professional and volunteer challenges as they've come up?

DW: I engage in challenges as they come without thought as to where they may lead. You never know when an issue will come up, whether in your personal, professional, or volunteer life. I just try to do the 'next right thing' and let events take their course. There will always be another challenge around the corner!

JZ: Getting back to LCL-CT for a moment, why are organizations such as this so important, particularly in this day and age?

DW: It is critical for our profession to be as healthy as possible. Recovery of any sort has been in the shadows for too long. There is a stigma attached to acknowledging a personal difficulty. That must end. In the meantime, LCL-CT is safe, effective, and totally confidential. The sad and unnecessary pattern continues whereby an attorney will ignore or resist any help or support until too late. Help is a phone call or an email away.

JZ: There is a rumor you enjoy cycling, sometimes long distances—where do you find the time?

DW: Time has been fleeting. This new role keeps my attention, but I find the time where I can. I try to manage my time cycling with shorter rides, mountain biking at West Hartford reservoirs, cycling somewhere and then back rather than doing the long point-to-point adventures that I really enjoy. I appreciate the outdoors and this is a great way to be in it and get some exercise and clear the head.

JZ: Given your life in the law and service, what advice would you give an attorney starting out today?

DW: Engage in an area of law that excites you. Be sure you allow for time for other matters in your life—family, social commitments, relaxation. Become associated with peers and superiors you truly admire. Focus on the person you want to be. ■

Why Public Service Is Important to Me

By Dena M. Castricone

AS AN ATTORNEY WHO HAS SPENT MOST OF MY CAreer practicing in privacy and healthcare, I had never considered the possibility that I may one day serve on the Citizen's Ethics Advisory Board (CEAB). The CEAB has nine members appointed by the governor and legislative leadership and is the governing body for the Office of State Ethics (OSE). While I did not know anything about the agency or its board prior to my appointment, after learning more about the OSE and CEAB, I decided to pursue the appointment.

The OSE is an independent regulatory agency that was created in 2005 to administer and enforce the state's Codes of Ethics. Those codes address the conduct of public officials, state employees, and lobbyists as well as lobbying and state contracts generally. Although the OSE's work is not related in any way to my healthcare and privacy law practice, I was drawn to the OSE's work as a citizen of the state who believes deeply in the importance of ethics in government.

With the support of the Connecticut Bar Association, then Governor Dannel Malloy appointed me to the CEAB in 2015 to complete the four-year term of a departing member and was reappointed in 2018. In 2017, the CEAB elected me to serve as the chairperson.

When I first joined, I recall being instantly impressed by the OSE leadership and staff. The OSE is a small but mighty independent agency that has earned the respect of all in state government for its accessibility, prompt and thorough legal advice, fair enforcement, and quality education programs. I also recall being concerned about my lack of familiarity with the ethics laws. But, thanks to the knowledgeable OSE staff, that was not an issue.

> "...the primary reason I love serving is that there is a true commitment to carrying out the mission of the OSE among all nine board members in a non-partisan manner."

While I had no ethics experience, my legal training has proven helpful to me while serving on the CEAB, especially when studying statutory language, assessing draft opinions from the OSE's legal division, serving as hearing officers, or sitting for a board hearing. One need not be a lawyer to serve, however. In fact, most CEAB members are not lawyers and I find the combination of lawyers and non-lawyers offers a diversity of perspective that is critically important to our work.

In terms of balancing my busy legal practice and the work of the CEAB, I have managed without significant difficulty. Serving as the board chair of a state agency is not nearly as time consuming as the role of a state legislator. In truth, I could never be a legislator because, during legislative sessions, those dedicated public servants often work well into the wee hours of the night. I go to bed at 9 p.m.

The monthly CEAB meetings, on the other hand, rarely run past 2 p.m. and subcommittee meetings generally occur immediately before or after regular board meetings. Service as a hearing officer is shared by the board members throughout the year and time-consuming board hearings rarely occur. Further, my regular communications with the OSE's executive director, Peter Lewandowski, are never lengthy or after my bedtime.

Board hearings present the most challenging time commitment. In those hearings, the board essentially sits as a jury in an enforcement matter where a judge has found probable cause. This has happened only once during my seven-year tenure on the board. The board sat for four full days of testimony and evidence and, following public deliberations, issued its findings.

On balance, the CEAB time commitment is not substantial. As with anything in life, if it is important to you, you will make the time for it. Fortunately, the OSE staff and their leader, Peter Lewandowski, make it easy to serve on the board and to continue to be involved. And being involved is very important to me.

There are many reasons I love serving on the CEAB, including having the opportunity to work with such a wonderful and engaged board and a talented OSE staff. But the primary reason I love serving is that there is a true commitment to carrying out the mission of the OSE among all nine board members in a non-partisan manner. While all board members are political appointees, political affiliation is virtually never a factor in our work. When the CEAB members gather to take on the business of the OSE, we do so as nine citizens of the State of Connecticut with a shared belief that good government cannot exist without ethics. And it's a privilege and an honor to do that work with them. ■

Dena M. Castricone *CIPP/US, CIPM, managing member of DMC Law, LLC, is a privacy and healthcare attorney with substantial experience helping healthcare providers navigate privacy challenges and counseling clients on compliance with privacy laws. Attorney Castricone also advises healthcare providers on a broad range of regulatory compliance, risk management, and day-to-day operational issues. Previously, she served as the general counsel and chief of privacy at one of the largest federally qualified health centers in the country. Prior to her in-house role, Attorney Castricone was a partner at Murtha Cullina, LLP, where she spent most of her career and was the chair of the privacy and cybersecurity group. She began her legal career as a law clerk to the Chief Justice of the Rhode Island Supreme Court in 2002.*

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Connecticut Bar Association

WHY I PRACTICE IN PUBLIC INTEREST LAW

BY YONATAN ZAMIR

I BECAME A PUBLIC INTEREST LAWYER because as I grew up, I was taught that America is a country of laws, norms, and principles and, at least according to the Pledge of Allegiance, of "justice for all." I also learned of the terrible injustice and the unfairness that is also part of our system, and strive to improve it.

My parents instilled in me something tangible that I carry and use each day: a love of people and a desire to use my skills and abilities to help them. Just out of college, with that spirit in mind, I volunteered for the AmeriCorps National Service program, and was stationed with the American Red Cross of Greater Chicago to provide disaster response during the overnight hours. That experience was nothing short of stunning. Serving victims of home fires and other calamities in the sub-zero Chicago winter, I was hit with the harsh reality that in the wealthiest, most powerful nation in history, an astonishing number of people live in or near poverty, with no real "cushion," no insurance (monetary or otherwise) to fall back on when life deals an unexpectedly harsh blow. Though I'd grown up just a few miles away in the suburbs, my life contrasted significantly from lives of those I provided emergency services to because of the very great privilege that my parents had provided for me—the very real "cushion" that their sacrifices, hard work, and yes, status as white Americans had bestowed, and which I continue to benefit from.

After getting a taste of what it means to practice law in the public interest, I attended law school, where I was a student in a housing-focused litigation clinic. Representing people who were marginalized by their status as immigrant day laborers, I helped them organize and use the legal system to address the horrible conditions in their apartments—apartments they paid a lot of money to live in. After a few years at the Legal Aid Society in the Bronx, I was fortunate to work in Congress during the height of the foreclosure crisis. I was given a front row seat to how many facets of the power in our great nation can and do coordinate to work together, and also how we still manage to fail so many. Yet, I missed the direct service that a "legal aid" lawyer provides.

Today, many of the clients I serve as an attorney with New Haven Legal Assistance Association are struggling in the grip of poverty. They are entitled to assert their rights and obligations under the law, and this is a good part of what I help my clients do each day. I am proud to be able to engage with my clients, to tell them that I'm their lawyer—I am the person they can count on to help them get through the difficult circumstances they've been dealt. My job is listen to them, provide them legal expertise, and help them pass through the storm of legal troubles they face. ■

Yonatan Zamir joined New Haven Legal Assistance Association (NHLAA) in 2014 as a staff attorney in the housing unit, where he represents clients in a wide range of housing matters, including eviction proceedings and preserving access to affordable housing. Before joining NHLAA, he served as a fellow with Hofstra University School of Law's Law Reform Advocacy Clinic, and previously, as counsel to a member of Congress and to the Committee on Oversight and Government Reform of the US House of Representatives. Prior to working in Congress, Attorney Zamir was a staff attorney at the Legal Aid Society of New York. Originally from Chicago, he earned his BA from the University of Illinois at Urbana-Champaign, and his JD from Hofstra University School of Law, where he received the Excellence in Housing Clinic Award. He is a proud AmeriCorps alumnus. Attorney Zamir is admitted to practice in Connecticut, New York, and the District of Columbia.

We're All in This Together

By DANIEL J. HORGAN

As I help lead the Pro Bono Committee through these unprecedented and challenging times, I am reminded that our 8,000 plus members are connected more than ever thanks to the efforts of our dedicated staff and unrelenting leadership of President Cecil Thomas. We share common goals to help one another reach our potential as lawyers through our CLE programming and the collaborative efforts of our sections and committees. One common goal is to help each other participate in pro bono services. We have responsibilities to meet our ethical obligation and participate in pro bono work as outlined in Rule 6.1 of Professional Rules of Conduct.[1] That is why our profession is not just a livelihood but a noble and honorable profession striving to attain ***justice*** for our clients. Our pro bono programs make it so easy to meet that obligation without interfering with the demands of operating your offices and serving your clients' needs. Trust me—as a solo practitioner litigator, the last two years have seen revenue streams reduced and many of us questioning how we are going to get through this pandemic with reduced staffing, closed courthouses, and financial hardships facing many of our clients. Remember, WE'RE ALL IN THIS TOGETHER and together we can make a positive impact on the lives of Connecticut's indigent citizens.

We are more than halfway through the bar year, and despite the challenges that the Omicron variation of COVID-19 has presented both in our practices and personal lives, the CBA's pro bono programs and agenda has been growing and expanding thanks to the continued support of our membership! We have already had two successful virtual Free Legal Advice Clinics on October 26-28 and again on January 25-26. The January sessions served over 60 clients. That number was double the clients served this past October. That tells us that the need for our continued free services is growing and with the uncertainties of the reopening of some courthouses, the access to justice gap is widening. We can and we must do better. We have mostly the same lawyers working the Free Legal Advice Clinics, but as the need grows, we need more help. If you are reading this column and you have not participated in the clinics, please consider signing up for one hour at the spring clinics, and/or recruit a colleague to participate.

Our Lawyers in Libraries program has now expanded into Bridgeport and discussions are underway to add Hartford. (Light that map up!). Most libraries in the program host a monthly two-hour session, and the program requires three lawyers to work each session. The program has been a huge hit with the libraries. I received the following email from the Middletown Library relaying what a client thought of the program:

Catherine Ahern, Russell Library

"Just wanted to say thank you so much for your Lawyers in Libraries program yesterday, Monday 11/22. For one thing, what a forward-thinking, progressive vision of what a library can be. On a personal level, this program accomplished what a month of cold-calling law firms could not. I've been looking for help with my landlord-tenant issue since the end of the summer, and most law firms won't touch it. I get the impression that it's not a very lucrative or desirable area of law. I couldn't get a call

Image credit: Kosmozoo/DigitalVision Vectors

back or a follow-up email. So, this was the first time I was able to truly get some information on my situation. If not for your program, I'd probably still be chasing fruitless leads. Please put a feather in the cap of whoever brought the idea to the table. Circulation desk staff answered a quick question for me, and reference desk staff checked me in for the event."

That remark inspires and validates what we are trying to accomplish, but we can and we must do better. Each library needs a pool of 5-7 lawyers from which three can manage one session. If you have any inkling to help out in any of the areas starred on the map, don't wait to get in touch with the CBA—simply call Kyle LaBuff at (607)229-4165 or me at (860)705-1293 right now.

The work and sacrifices that our Pro Bono Committee, Legal Aid organizations, and volunteer attorneys have done during the last two years is quite remarkable. If you haven't received an email or phone call from our new director of access to justice initiatives, Jenn Shukla, you will. Her direct outreach to members is resulting in more participation in our programs and fresh ideas being exchanged to improve existing and create new pro bono programming. The access to justice gap can be reduced through our efforts. Many of us are consumed with keeping our practices going and that is understandable, but we as members of the CBA can be the change that is needed for those who have nowhere else to turn to for their legal problems.

As legendary singer Sam Cooke sang, "Oh, there been times that I thought I couldn't last for long, but now I think I'm able to carry on, it's been a long, a long time coming but I know a change gonna come, oh, yes it will"

We can be that change. We can and we will. ■

NOTES

1. PRC 6.1- "A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."

Daniel J. Horgan *is the CBA president-elect and chair of its Pro Bono Committee. He is an experienced litigator with Horgan Law Office in New London.*

CBA Free Legal Advice Clinic:
Volunteers Needed

Tuesday, April 26
10:00 a.m. - 6:00 p.m.

Wednesday, April 27, 2022
10:00 a.m. - 6:00 p.m.

Connecticut Bar Association

If you have 30 minutes free, you can volunteer. Volunteer attorneys will answer legal questions in their area of practice during a 30-minute remote session with a client.

Volunteers are needed in the following areas:

- Fraudulent Business/Debt Collection
- Employee Rights/Unemployment
- Immigration Law
- Landlord/Tenant
- Family Law
- Tax Law
- Bankruptcy
- Pardons
- Wills and Estates
- Torts

Volunteer opportunities are available for paralegals and law students as well. Visit ctbar.org/FreeLegalAdviceClinics to learn more and register.

Many Hands Make Light Work

By MICHELLE DUPREY

For more than 15 years, a few other lawyers with disabilities and I have been pushing the legal profession in Connecticut to advance diversity, equity, and inclusion for lawyers with disabilities. Often, we are singular voices. Disability is not part of most DEI conversations, especially if we are not in the room.

Let's start with the statistics: people with disabilities make up about 25 percent of the American population, about 50 percent of people over the age 65 have one or more disabilities, and yet, in the latest CBA survey on diversity, only one percent of lawyers identify themselves as having a disability. Disability is a protected class that anyone can enter at any time by accident, illness, or age. There are certainly barriers to the profession for diverse groups, particularly people living with a disability who must craft creative ways to work in this profession. There's discrimination and fear of those living with hidden disabilities. And there's a misconception that disability means those with the most visible disabilities, like using a wheelchair or a guide dog to mitigate the effect of their impairment.

Last summer, I was a presenter at a Connecticut Legal Conference session where participants were asked if they had a disability at the start of the session and at the end. After educating attendees on what disability means under the Americans with Disabilities Act, more attendees identified as having a disability at the end. When you ask people if they have a health condition (physical or psychological) that affects one or more major life activities, those numbers naturally go up because, in their minds, it is different than what people see as having a "disability."

There are many lawyers living with health conditions that meet those criteria and yet they don't self-identify as having a disability. Disability pride, while long discussed in the disability rights community, has not made it to our mainstream culture yet. Should we be proud of being lawyers with disabilities? I say yes. Many attorneys that have worked with a hearing loss, a diagnosis of multiple sclerosis, major depression, and on and on, should be proud that those extra hurdles made them a better person and possibly a bet-

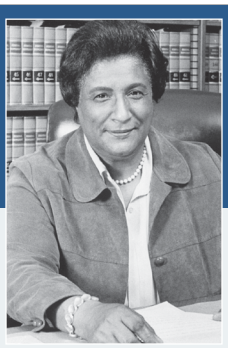
Image credit: Angelina Bambina & Rudzhan Nagiev/iStock/Getty Images Plus

"Disability is a protected class that anyone can enter at any time by accident, illness, or age."

ter lawyer. I challenge those lawyers today to speak up, to raise your hand when asked if you are a diverse lawyer.

My goal before the end of my career is that I and my current roster of vocal lawyers with disabilities are no longer the only ones in the room asking about disability diversity, making sure all lawyers with various disabilities are valued and given valuable opportunities. Opportunities our current small group may not have had for ourselves in our careers but hope that with the help of those of you now realizing you have a disability; you raise your voice to increase disability diversity in the legal profession because many hands make light work. ■

Michelle Duprey *is the Deputy Corporation Counsel, Office of the Corporation Counsel for the City of New Haven and a long-time disability rights lawyer, trainer, public speaker, and advocate.*



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Visit ctbar.org/MotleySeries
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CT LAWYER

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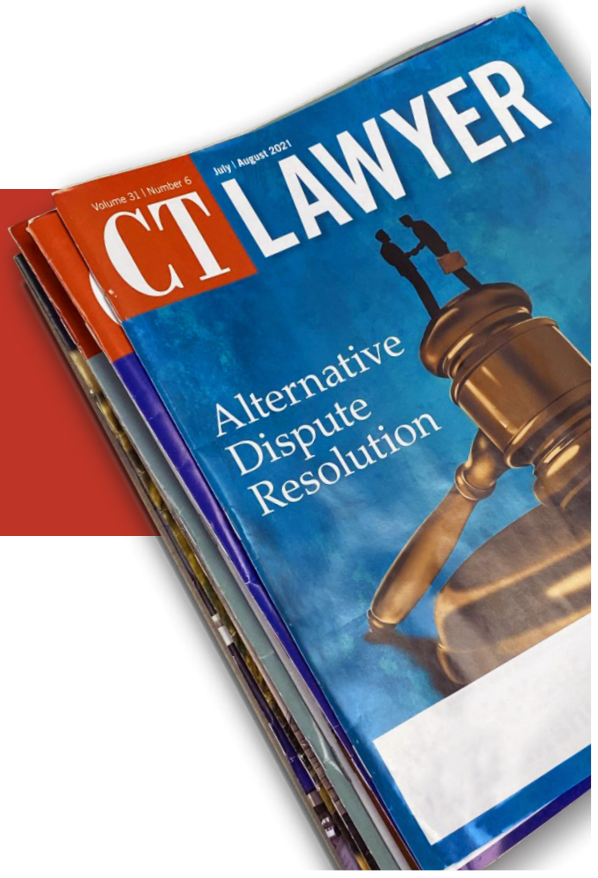

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Connecticut Bar Association

Meribear Productions, Inc. v. Frank: The Court Goes Its Own Way

By CHARLES D. RAY and MATTHEW A. WEINER

Take it from us, losing an appeal is not fun. But losing an appeal based on a legal doctrine from a different state that's applied by our Supreme Court without any input from the parties is an especially difficult way to suffer defeat. And that's exactly what happened to one of the defendants in *Meribear Productions, Inc. v. Frank*, ____ Conn. ____ (Sep. 22, 2021).

In 2011, the defendants, Joan and George Frank, decided to sell their home in Westport. Although the couple lived in the home, Joan Frank was its sole owner. The defendants contracted with the plaintiff, California-based Meribear Productions, Inc., to lease home furnishings and décor to help the house appear more attractive to potential buyers.

Under the terms of the contract, Joan, as homeowner, agreed to pay Meribear an initial fee of $19,000, which covered design services, the delivery of furnishings, the cost of removing the furnishings upon termination of the agreement, and the first four months of a lease. The agreement further required Joan to make monthly rental payments of $1,900 starting July 23, 2011. The agreement's initial term was for four months or until someone bought the home, whichever occurred first. If the home didn't sell before the initial term expired, the agreement would continue on a monthly basis, subject to the right of either party to end it by providing written notice.

Although Joan owned the home and signed the contract, she actually had little contact with Meribear. Instead, her husband, George, communicated and negotiated with Meribear's representatives. In fact, before Joan signed the contract, George made substantive revisions to it. For example, he attempted to change a choice of law provision by adding that "Connecticut laws will [supersede] those of California"—though he didn't alter a forum selection clause that provided that the parties would litigate any disputes in California. George also signed an addendum to the agreement, pursuant to which he "authorized the plaintiff to charge his…credit card a 'total amount' of $19,000." Before signing the addendum, George crossed out language that provided that he agreed to personally guarantee "any obligations that may become due." The contract provided that the addendum was "a part of this Agreement," and the addendum expressly referenced "this staging/design agreement."

The Westport home did not sell within four months and neither party terminated the agreement. Accordingly, Meribear sent invoices for additional monthly rental amounts due. The defendants refused to pay the rental amounts and, when Meribear sent a crew to remove the furnishings, the defendants denied the movers access to the home.

Meribear sued the defendants in California. On August 7, 2012, a California court entered a default judgment against the defendants in the amount of $259,746.10. Two months later, Meribear brought suit in Connecticut seeking to enforce the foreign judgment or, in the alternative, seeking recovery from the defendants for breach of contract and quantum meruit.

Before the trial court, the defendants claimed, among other things, that the California judgment was unenforceable because the California court lacked personal jurisdiction over them. Due to a service of process defect, the trial court agreed with Joan's claim. It rejected, however, George's claim, finding that, by signing the addendum, George established sufficient minimum contacts with California. After a bench trial, the trial court entered judgment against George on the common law enforcement of a foreign judgment claim in the full amount of $259,746.10 and against Joan for breach of contract in the amount of $283,106.45.

The defendants appealed to the Appellate Court, which affirmed the judgment. Regarding George's personal jurisdiction challenge, the Appellate Court concluded that he consented to personal jurisdiction in California by signing the addendum,

Image credit: FollowTheFlow/iStock/Getty Images Plus

which had been incorporated into the agreement containing the forum selection clause. *See Meribear Productions, Inc. v. Frank*, 165 Conn. App. 305 (2016).

After granting certification, receiving briefing, and hearing oral argument, the Supreme Court remanded the case to the Appellate Court with direction to dismiss the appeal. *See Meribear Productions, Inc. v. Frank*, 328 Conn. 709 (2018). As it turned out, the trial court had failed to address breach of contract and quantum meruit claims against George, leaving the case without a final judgment. On remand, Meribear withdrew these two counts against George, the defendants appealed again, the parties briefed the new appeal in the Appellate Court, and thereafter the Supreme Court transferred the case to itself.

In the new appeal, the defendants raised various issues, including George's claim that the California judgment was unenforceable against him because the California court lacked personal jurisdiction over him. Justice Ecker, writing for a majority that included himself, Chief Justice Robinson, and Justices McDonald and Kahn, ultimately concluded that the California court had personal jurisdiction over George. In so doing, the majority relied on a legal theory not advanced by the parties—a course that two dissenting justices found problematic.

The majority began its analysis with a refresher from first year civil procedure. It explained that, in California, a court has personal jurisdiction over a party where: (1) the party lives in the state; (2) there are minimum contacts with the state so that exercising jurisdiction does not offend due process; (3) the party participates in the suit; or (4) the party, lacking minimum contacts, nevertheless consents to personal jurisdiction. As the Appellate Court had determined in the first appeal, the majority found that the California court had personal jurisdiction over George based on consent. In doing so, however, the majority charted its own course, relying on a California legal theory that neither the parties nor the lower courts had addressed.

The majority observed that, under California law, a party consents to personal jurisdiction in one of two ways. First, a *signatory* to a contract consents to personal jurisdiction if the agreement contains a forum selection clause. Second, under the "closely related" doctrine, "a *nonsignatory* to a contract may be bound by a forum selection clause if the nonsignatory was so intimately involved in the negotiation, formation, execution, or ratification of the contract that it was reasonably foreseeable that he or she would be bound by the forum selection clause." (Emphasis added.) While the parties had litigated the first option, they had ignored the closely related doctrine.

For the majority, however, George clearly fell within the closely related doctrine, given that he had negotiated the agreement, "took charge of the project," made substantive changes to the agreement, paid Meribear, and "plainly enjoyed the use and benefit of the home furnishings and décor…." Reaching this conclusion obviated any need for the majority to address whether George satisfied the minimum contacts rule (as the trial court had decided) or whether his signature on the addendum constituted consent (as the Appellate Court had determined).

However, for Justice D'Auria, who was joined in dissent by Justice Mullins, the majority had gone "beyond the confines of our adversarial system" by identifying, researching, and deciding the case based upon a California legal theory never addressed by the parties. For the dissent, the majority's action raised two concerns. First, why, in this particular appeal—a "civil case, between two well represented parties"—should the Court look beyond the arguments raised by the parties? Absent an adequate justification, the majority's action might appear unfair not only to George Frank, but also to litigants in other appeals who could benefit from the Court's "ingenuity," but in which the Court limits its consideration to only those issues properly raised and briefed by the parties. Second, without any input from the parties, how could the majority be so sure that it had properly applied a legal doctrine from a foreign jurisdiction that no Connecticut court previously had addressed and that, apparently, no California court had applied where a plaintiff, rather than a defendant, sought the protection of a forum selection clause?

In reply to the dissent's concerns, the majority relied on cases that attempt to distinguish legal claims and issues (which, generally, an appellate court will not review unless properly raised by a party) from legal arguments (which, generally, a reviewing court may consider even if not raised by a party). The theory being that while it is incumbent upon the parties to identify the issues that they want the court to consider, "when [a case] is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law...."

However, there's something unsatisfying about that response, at least where reasonable minds (e.g., the two dissenting justices) can disagree as to the difference between a "claim" and an "argument" and the parties had no opportunity to weigh in. After nine years of litigation, two trips to the Supreme Court, and, we're assuming, the expenditure of considerable attorney's fees, learning that the case had been decided adversely based on a legal doctrine not considered by the trial or Appellate Court, not addressed by the parties, and never

Continued on page 40 →

■ Any views expressed herein are the personal views of DASA Weiner and do not necessarily reflect the views of the Office of the Chief State's Attorney and/or the Division of Criminal Justice.

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Matthew A. Weiner *is Assistant State's Attorney in the Appellate Bureau of the Office of the Chief State's Attorney. ASA Weiner clerked for Justice Richard N. Palmer during the Supreme Court's 2006–2007 term and litigates appellate matters on behalf of the State.*

Highlights | Recent Superior Court Decisions

The Connecticut Law Reporter is a weekly publication containing the full text of Superior Court opinions. For copies of the opinions described here, or information about the reporting service, call (203) 458-8000 or write The Connecticut Law Book Company, PO Box 575, Guilford, CT 06437.

Arbitration Law

Ship-Rite Packaging, LLC v. People's United Bank, N.A., 71 CLR 243 (Jacobs, Irene P., J.), holds that a contractual agreement to arbitrate makes arbitration a condition precedent to suit only if the contract plainly states that arbitration must be attempted before resorting to litigation. The opinion holds that an agreement stating that "arbitration is the exclusive remedy *if it is elected by either party*" does *not* establish arbitration as a condition precedent to litigation.

Civil Procedure

Boyd v. Feng, 71 CLR 206 (Sicilian, James, J.), holds that although an allegation that the plaintiff has failed to mitigate damages is not included in the Practice Book listing of the defenses that must be raised as special defenses, such a defense should be permitted because it alerts the litigants and the court that mitigation may be raised at trial.

A non-owner relative of a homeowner may prosecute possessory real property torts against third parties, but only for damages personally experienced by the plaintiff. *Hunt v. Woodbridge*, 71 CLR 212 (Abrams, James W., J.). The opinion also holds that a municipal entity not designated by statute as a "public body corporate and politic" may not be directly sued but rather sued only through its municipality.

In spite of the frequent statements that a ruling on a motion to strike a complaint may be based solely on facts alleged in the complaint, statements in a plaintiff's subsequent pleadings that are voluntary and knowingly made may constitute judicial admissions and be considered when ruling on a motion to strike a complaint. *Diaz v. Backes* (Genuario, Robert L., J.), 71 CLR 279.

Corporations and Other Business Organizations

A foreign corporation's sale of a component part for incorporation into an end product with knowledge that the part was likely to reach end users in other states no longer satisfies the due process requirement that an action against a foreign defendant be supported by evidence of contacts with the forum state. *McCoy v. General Motors, LLC*, 71 CLR 282 (Schuman, Carl J., J.). Rather, the plaintiff in such an action must now establish direct contacts by the component manufacturer with the foreign jurisdiction.

Criminal Law

A minor faced with a transfer to the regular criminal docket because of the seriousness of an offense is constitutionally entitled to a pre-transfer hearing on eligibility for youthful offender status, in spite of the seriousness of the crime. *State v. Puntiel*, 71 CLR 257 (Keegan, Maureen M., J.). The opinion reasons that the statutory presumption of eligibility for youthful offender status provides such significant benefits to a juvenile criminal defendant that a hearing is constitutionally required before eligibility is withdrawn. The opinion also holds that the state has the burden of proving by a preponderance of the evidence that the juvenile is not qualified for youthful offender status.

The exception to the three-year statute of limitations for filing a petition for a new trial for criminal cases in which the petition is based on "DNA evidence...or other newly discovered evidence...not discoverable or available at the time of the original trial," Conn. Gen. Stat. § 52-582, applies only to "forensic scientific evidence that was not discoverable or available at the time of the original trial...." The opinion holds that the exception is not applicable to a claim asserting that in the original trial the prosecution knowingly solicited and relied on false testimony from a key witness. 71 CLR 303 *Burgos-Torres v. State*, 71 CLR 303 (Bhatt, Tejas, J.)

Driving under the Influence

A police department's failure to preserve body and dashboard recordings of the arrest of a vehicle operator on DUI charges, in violation of the statute requiring that all records of DUI arrests be maintained for at least two years, Conn. Gen. Stat. § 14-227i, requires dismissal of the charges, even if the failure was accidental and other evidence may be available. The opinion in effect holds that arrest recordings of DUI arrests are so reliable and essential as to always require dismissal of charges when not preserved in compliance with the statute. *State v. Rodriguez*, 71 CLR (Oliver, Vernon D., J.).

Employment Law

The Whistleblower Statute applies only to employee reports of violations that have actually occurred or are in the course of occurring; the statute does not apply to reports of merely planned or discussed violations. *Harris v. Department of Public Health*,

71 CLR 299 (Rosen, Stuart D., J.). The opinion holds that the termination by officials of the Department of Public Health of an employee for raising concerns that a contemplated fine against a private employer for violations of COVID-19 regulations would be unlawful and which were modified to avoid the possible illegality did not constitute a violation of the statute because no actual violation occurred. The opinion is one of first impression.

Health Law

The private cause of action for the release of a person's HIV information, Conn. Gen. Stat. § 19a-590 does not require an intent to harm but rather only the defendant's knowledge that the information was restricted. *Hart v. NB Health Care, LLC*, 71 CLR 222 (Wiese, Peter E., J.). This opinion holds that allegations that a delivery service dropped a shipment of AIDS medication off at the home of a neighbor of the intended recipient, resulting in an accidental disclosure of the recipient's HIV status, are insufficient to state a claim under the act.

Insurance Law

In a motor vehicle accident case involving both an identified and an *un*identified tortfeasor in which the plaintiff has settled with the identified tortfeasor and sued its own insurer for UIM coverage, the settlement damages from the identified operator are not offset dollar-for-dollar against the insurer's UIM limits for purposes of determining eligibility for UIM benefits from the *un*insured tortfeasor. The defendant/insurer unsuccessfully argued that the recovery should be offset against the UIM limits, thereby eliminating any UIM recovery. *Garcia v. State Farm Mutual Automobile Insurance Co.*, 71 CLR 248 (Lynch, Ann E., J.).

The statute authorizing an exclusion of coverage, including UIM insurance, for vehicles being used for participation in "transportation network" businesses applies to vehicles used in connection with the Uber ride sharing program, including when no passenger occupies the vehicle. *Nguyen v. James River Insurance Co.*, 71 CLR 296 (Stevens, Barry K., J.).

Public Utilities

Direct Energy Services, LLC v. PURA, 71 CLR 226 (Klau, Daniel J., J.), holds that the Public Utilities Regulatory Authority's recent adoption of restrictions on the use of transferable certificates, known as "voluntary renewable offers" or VROs, limiting the purchase of VROs by local fossil fuel generators to ones that originate in states which contribute the most to this state's pollution (generally nearby states to the west and south of Connecticut), in order to provide an incentive the use those VROs that will make the greatest contribution to this state's efforts to reduce carbon admissions, does not violate the Interstate Commerce Clause. A VRO is a certificate representing a carbon reduction achieved by a renewable energy source which may be purchased at a premium to offset local generators' mandatory fossil fuel reduction targets.

Real Property Law

A petition pursuant to the 2018 Public Act authorizing an expedited procedure before the Tax and Administrative Appeals Session of the Superior Court to invalidate an allegedly false filing on the land records, Conn. Gen. Stat. § 47-31a, may only be brought by a party that has been expressly identified in the challenged land record. *Linden v. Islam*, 71 CLR 204 (Klau, Daniel J., J.).

A court that lacks jurisdiction over an action to foreclose a mechanics lien if the plaintiff fails to timely provide a lis pendens to the property owner, as required by the Mechanic's Lien Statute, Conn. Gen. Stat. § 39-39, also lacks jurisdiction over the plaintiff's alternate claim for breach of contract, at least where no contract claim was expressly asserted in the original foreclosure complaint. *Davidoff v. Star Partners, LLC*, 71 CLR 246 (Spader, Walter M., J.).

A deed reciting that it reserves to the grantor and heirs "a right of way and easement for all lawful purposes, in over and upon" a specified portion of the deeded land establishes two independent property interests, a "right of way" limited to use to access another parcel, and a separate "easement" granting rights to use the entire parcel for any lawful purpose. *Bianco v. Denning*, 71 CLR 292 (Krumeich, Edward T., J.T.R.).

State and Local Government Law

A premises liability claim against a municipal housing authority is subject to a motion for summary judgment based on a plaintiff's inaccuracy in the statutorily required notice of the location, date, and time of injury, Conn. Gen. Stat. § 8-67, only if the notice is so defective as to patently fail to meet statutory requirements, where "patently defective" means so inadequate as to deprive an authority of an opportunity to make a proper investigation. *Sawczuk v. Naugatuck Housing Authority*, 71 CLR 270 (Gordon, Matthew D., J.). The opinion holds that a two-day error in the date on which a claimed injury occurred is *not* "patently defective" thereby leaving resolution of the adequacy issue for trial.

Torts

A claim for apportionment need not be based on acts of negligence arising out of the same event. Therefore, an operator sued in negligence for injuries arising out of a motor vehicle accident may bring an apportionment complaint against a physician whose allegedly negligent treatment exacerbated the plaintiff's injuries. *Logue v. Yale University*, 71 CLR 30 (Kamp, Michael P., J.).

Although not yet definitively recognized by the state's appellate courts, most trial court opinions that have considered the issue hold that social hosts may be sued for negligently allowing a guest to become intoxicated at a social gathering and to operate a motor vehicle after leaving the gathering, resulting in injuries to a third party. *Daly v. Hussain*, 71 CLR 169 (Genuario, Robert L., J.). ■

Are You Accounting for Your Well-Being?

By JOSHUA J. DEVINE

Joshua J. Devine is the chair of the Connecticut Bar Association Young Lawyers Section for the 2022-2022 bar year. Attorney Devine is investigations lead counsel and associate general counsel at UnitedHealthcare in Hartford, where he advises on data protection and cyber security laws. He graduated from Massachusetts School of Law in 2012.

This bar year I have challenged my Young Lawyers Section peers to become comfortable being uncomfortable. In previous articles I wrote about stepping outside comfort zones to develop new skills or improve skills that need further development. In this article I challenge you to reflect on your own well-being. As young lawyers, our emotional and physical health is often overlooked due to the incredible stress and pressures that often come with a legal career, especially among young lawyers. If we've learned anything over these last two years of this pandemic and the subsequent isolation and disruption to traditional work-life balance, it's the paramount importance of our personal well-being.

I ask all of you to make time this week to look in the mirror and ask yourself what you are doing today to take better care of yourself. Are you setting aside time to work on your emotional and physical well-being? If not, what changes can you make today to ensure improvement in your self-care becomes a priority? Use your calendar to make time for yourself, even if it's just a half hour before or after work.

Personally, I find that my overall emotional health, focus, and energy levels benefit greatly from starting my day with physical exercise in the form or either a cardiovascular session or a strength training workout, and sometimes both. It energizes my mind and body and, while there are days when I would rather sleep in a little longer, I know without this practice my overall well-being suffers.

At the end of the day, I feel it's critical to ensure I leave enough time in my schedule to focus on my family's needs, which can be easier said than done due to the pressures of our profession. Not to mention, my family has grown from a family of three to a family of five in the past two years. While I've been able to be there for my family without missing any momentous occasions, at times I do find myself distracted and feeling obligated to review and respond to emails or text messages. As I reflect on this, I am challenging myself to be more disciplined in not being distracted by work for at least a few hours every evening.

Making time for yourself is not easy. For most of us there is far more work than hours in the day. If you need additional motivation or a better way to hold yourself accountable for taking time for your own well-being, here are some ideas. First, I recommend reviewing the CBA Well-Being Pledge, which you can find at ctbar.org/LawyerWellBeingResources. Second, the Young Lawyers Executive Committee has its own challenge underway where Executive Committee members are participating in a fitness challenge each month for the remainder of the year. As part of this challenge we are tracking the time spent working out and submitting them as part of a friendly competition with winners and awards given monthly. You need not be a member of the Executive Committee to participate. If you are interested, please contact me or any of the Executive Committee members for more details.

As young lawyers, of course we need to hold each other accountable as developing professionals, but maybe we should also hold each other accountable for our overall well-being. Peer-to-peer support is important to success. If you need an accountability partner, please reach out to me and we will get you set up with one.

Lastly, I'd like to provide an update on the Executive Committee's goal of providing 1,000 plus hours of volunteer and pro bono services. I am happy to report that we have completed nearly 600 hours of service and we're well on our way to reaching our goal! If you are interested

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in learning more about how you can get involved in volunteer and pro bono services, please join us for one of our monthly meetings or keep an eye out for upcoming events, such as our upcoming Habitat for Humanity project. Details on that project will be circulated soon.

Your emotional and physical well-being are critical to your success in this often stressful and high-pressure profession. Please know that the Young Lawyers Executive Committee is always available to support you in any we can on our collective journey. ■

President's Message

Continued from page 7

2017, 142 years after the CBA was founded, and 137 years after Edwin Archer Randolph was admitted to practice, that Karen DeMeola became the first person of color to lead the CBA.

In 2015, an editorial in the *Connecticut Law Tribune* pronounced that the "CBA is Failing in Diversity Efforts." This was a call to action, and an important moment of organizational self-evaluation and growth, which has produced significant results through the selfless efforts and commitment of many leaders. The CBA adopted its first Diversity and Inclusion Policy and its first Diversity and Inclusion Strategic Plan in 2015, which have guided so many critical elements of our organizational mission advancement. In 2016, we adopted our first Model Section DEI Plan, just significantly revised in 2021. The CBA Presidential Fellows Program, launched in 2016 and now in its 7th year, provides leadership training and development for young and diverse lawyers. In October of 2016, the CBA launched its Diversity and Inclusion Pledge, now grown to over 40 signatory organizations. We held our first Annual Diversity, Equity, and Inclusion Summit that year, which will be held for the 7th time in October 2022. In 2017, the Pathways to the Legal Profession initiative brought a new focus on our pipeline efforts, with the CBA becoming the host of LAW Camp in 2018 and launching the Future of the Legal Profession Scholars Program in 2019. Dr. Amani Edwards joined the CBA as our first director of diversity and human resources in 2019, and has become integral in all of our DEI efforts. In 2019, we held a full-year centennial celebration of the 19th amendment. In 2020 and 2021, we launched The Karen Lynn DeMeola Diversity, Equity, and Inclusion Fund; the Policing Task Force; the Constance Baker Motley Speaker Series on Racial Inequality in partnership with the Connecticut Bar Foundation; a new recurring DEI column in *CT Lawyer* magazine; and successfully advanced Rule of Professional Conduct 8.4(7) defining discrimination, harassment, and sexual harassment as professional misconduct. Since 2015, we have held two major symposia on implicit bias and achieving meaningful inclusion for lawyers and law students with disabilities, countless educational events, and many other events and initiatives which I cannot fully recount here.

Our DEI commitment must be to the journey. Our founders were prescient in their vision in some ways, deeply committed to their view of the good, and established the mechanisms by which we continue to advance the goals and ideals of our profession today. They were then, as we are now, imperfect. Were they to join us today, they would undoubtedly be amazed at the immense changes in the organization, in the practice of law, in technology, in the way we live and associate with each other, in the many ways we have made the world smaller and more immediately accessible. I would like to imagine that they would also recognize and appreciate the enduring quality of what they built, even if the expression of our collective efforts has changed significantly. In joining together to form the first statewide bar association in Connecticut in 1875, and then the American Bar Association in 1878, our founding members sought to bridge worlds and form ties across previously significant barriers. Today, almost 150 years later, the fabric of our bar association—the volunteer efforts of lawyers joined together to strengthen and protect the rule of law, uphold the integrity of our profession, advance our mutual interests, and to serve the public good—remains much the same. It is through this force, the power and potential when groups come together to advance greater common purpose, that we have advanced a more diverse, equitable, and inclusive CBA in recent years. That road still beckons us on, to continue to build a more diverse, equitable, and inclusive organization and profession, reflective of the society that we serve, for the future. ■

NOTES

1. Lawrence M. Friedman, *A History of American Law* (4th Edition) (2019), p. 634-5.
2. *Id.*
3. Constitution of the State Bar Association of Connecticut, Article III, Sec. 1 (1875)
4. *Id.* at Article III, Sec. 2 (1875).
5. Friedman, *A History of American Law*, p. 634-635.
6. Friedman, p. 635-639.
7. *Id.* at p. 639.
8. "A History of the First One Hundred Years of the Connecticut Bar Association 1875-1975," 49 *Connecticut Bar Journal* 2, p. 203-226 (June 1975).
9. Records of the State Bar Association of Connecticut (1875-1910) p. 125
10. Records of the State Bar Association of Connecticut (1921-1926) p. 81
11. "We March On - Women's Suffrage Exhibit." UConn School of Law, February 23, 2022. https://libguides.law.uconn.edu/womens-suffrage/uconnlawwomen.
12. 6 *Connecticut Bar Journal* 104 (1932)
13. "A History of the First One Hundred Years of the Connecticut Bar Association 1875-1975," 49 *Connecticut Bar Journal* 2, p. 245 (June 1975).
14. *Id.* at p. 260.

Supreme Deliberations

Continued from page 35

before litigated in Connecticut, must have been a bitter pill for George—and his attorneys—to swallow. Though defeat is never a good feeling, we suspect that it would have been easier to accept had the Court provided George's attorneys with an opportunity to address the applicability of the closely related doctrine, once the Court determined that it might be dispositive. And this would not have been difficult to accomplish given the common practice of supplemental briefing.

We commend the Court for its desire to "get it right" even when the litigants may have missed the mark. But we'd much rather see the Court err on the side of giving the parties a say. ■

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