President’s Column
By Peter M. Nolin,
Carmody Torrance Sandak & Hennessey

As we begin 2015, I am pleased to report that your Fairfield County Bar Association continues to be successful and in a strong position to serve our members. One of our primary functions is to offer educational seminars for our members. With your help, we continue to offer a diverse range of educational programs and have enjoyed good attendance and support for those offerings. We ask your continued participation in volunteering to present these programs and, of course, in attending them. As a Board, we continue to believe voluntary CLE participation is an important part of our profession and we encourage all of you to join us for any programs which may be relevant to your individual practices.

We will continue to weigh in on any issues which we think affect the practices of our members, with the Courts, the Legislature or the CBA. If you believe there is an issue on which you want our support or involvement, please contact our Executive Director Jeanne Urso or me at the FCBA.

I want to thank Jeanne and Lina Quintero for their continued good work for our Association and wish to note in particular the improvement to our website. We now have a full membership directory for those attorneys have chosen to participate and we look forward to other continued improvements to make the website more user friendly and interactive in the coming months.

Our major upcoming events include:

Probate Judge’s Lunch: April 22nd at Giovanni’s
Law Day Lunch: April 30th at Giovanni’s
Annual Meeting and Lobster Dinner: June 4th at the Stamford Yacht Club

If I can assist you with any other issues or if you have ideas to improve our Association, please contact me.
Graceful Exits – (authors: Mark Campbell and Kimberley Train)

Shareholders in family businesses, closely-held businesses or partnerships should plan for the unexpected. A plan should contemplate the possibility of a shareholder dying, becoming disabled, departing, or going through a divorce. A buy-sell agreement is an essential element in addressing such events. A buy-sell agreement places restrictions on the transfer of a shareholder’s interest and provides for liquidation of a withdrawing shareholder’s interest. It is important that transitions are handled effectively and efficiently to avoid disputes among remaining shareholders and limit business disruption. In essence, buy-sell agreements lay the groundwork for graceful exits and transitions.

Types of buy-sell agreements

- Repurchase agreements – the corporation or the partnership buys the interest from the transferring party
- Cross-purchase agreements – one or more individuals or entities purchases the interest from the transferring party
- Hybrid agreements – the corporation or partnership has first priority to repurchase and the other stockholders or partners have second priority
- Tag along rights – the same terms are put into place if the selling shareholder is the controlling shareholder

The agreement that makes most sense depends on the individual business’ facts and circumstances. Therefore, it is essential to first determine the objectives of the buy-sell agreement. The shareholders should consider which triggering event or events warrant a buy-sell agreement. The triggering event(s) may guide what type of agreement best serves those objectives. For example, if a controlling shareholder or a key-person were to exit the business, then continuity of the business and liquidity may be paramount to the remaining shareholders. Alternatively, the remaining shareholders or partners may be more concerned about decision-making authority and ownership structure.

When formulating a buy-sell agreement, it is important to consider hypothetical scenarios and prepare a decision tree analysis. An agreement can accommodate alternative scenarios and lay the foundation for what will take place if any of the hypothetical scenarios becomes a reality.

Valuation provisions

The buy-sell agreement should include provisions regarding the valuation process, which can range from the simplistic to the complicated. For example, an agreement may specify that the business interest should be valued using book value. However, book value can have many definitions. Therefore, it is important that a buy-sell agreement provides a specific definition of the valuation metric.

In many cases, the valuation of the business interest requires an appraisal. The buy-sell agreement should address the required elements of the appraisal which should include, but not be limited to, the following elements:

- Description of the interest or interests to be valued
- Purpose of the appraisal
- Distinction between controlling versus minority interests
- Marketability
- Valuation date
- Standard of value
- Going concern versus liquidation value

The components described above should be well articulated and defined in the agreement in order to obviate the opportunity for varied interpretation and conflict.

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How many appraisals will be solicited?
Do the shareholders/partners have specific business appraisers that they would like to value the business interest?
If the appraisers arrive at different values, then which value will serve as the basis for the valuation of the business interest? Will there be a mechanism, such as obtaining an agreed-upon, neutral third-party appraiser, to resolve differences in appraisal results?
What is the timing of the appraisal process (i.e., 60 days following a triggering event)?

Terms and funding
The shareholders should consider how they will fund an exit. The shareholders must employ careful scrutiny of the business’ financial and operational health. For example, a business may operate with little excess cash. Should a triggering event occur, the shareholders need to consider if they have access to other funds, such as a line of credit or an insurance policy, to cash out the exiting shareholder or their heirs. Alternatively, the shareholders may also want to begin earmarking funds for an unforeseen event.
The question, though, is not limited to how the shareholders will fund such an event; they also need to consider the terms of when the exiting shareholder will receive the value of his/her business interest. Payouts can range from one-time events to multi-year arrangements.

Coordination and planning
Shareholders do not want to think about what can go wrong, particularly when things are going right. Unfortunately, the unexpected happens. It is critical to develop and implement a buy-sell agreement in conjunction with a business’ advisors, including tax and trust and estate attorneys. It is also beneficial to revisit the document on an annual basis to ensure the agreement’s relevancy. A well-written agreement will enable the remaining shareholders to stay focused on the business instead of being distracted by internal operational conflict.

Mark Campbell and Kimberley Train are partners with BlumShapiro, the largest regional accounting, tax and business consulting firm based in New England, with offices in Massachusetts, Connecticut and Rhode Island. Mark is a CPA/ABV/CFF; his practice is focused on business valuation and litigation support. Kimberley is a CPA/ABV; her practice is focused on forensic accounting, business valuation and litigation.

The FCBA would like to thank the sponsors of the 2014 Annual Law Day Lunch
Take Action Against Identity Theft

Since last fall, when Target and Neiman Marcus reported unauthorized access to payment-card data, the potential of identity theft has been on the minds of consumers. Thieves steal personal information, such as your name and address, Social Security number and date of birth, to commit fraud — for example, getting a loan in your name.

The first line of attack is getting informed. The best source for information on how to protect yourself is the Federal Trade Commission, a federal agency whose mission is consumer protection and law enforcement.

The FTC website at http://tinyurl.com/blbmymb provides a series of action steps for those whose identity has been compromised, as well as preventive measures you can take to protect yourself.

Next, contact one of the three national credit-reporting companies: Equifax (http://www.equifax.com, 800-525-6285); Experian (http://www.experian.com, 888-397-3742); or TransUnion (http://www.transunion.com, 800-680-7289).

If your identity has been stolen, you’ll want to place an “initial fraud alert” on your credit file to help prevent new accounts being opened in your name, according to Cliff O’Neal, spokesperson for TransUnion.

The fraud alert is intended to raise a cautionary flag for creditors to make sure they are dealing with you instead of a scammer. The initial alert lasts for “at least” 90 days, but can be renewed. An alert with one bureau will trigger alerts with the other two. There is no charge for placing an alert.

To get a longer, “extended alert” for seven years, you’ll need to provide an identity-theft report based on your filing a report with a law-enforcement agency.

To read more about fraud alerts, visit www.ftc.gov/idtheft.

You also should request that a credit bureau send you a credit report. Under the Fair Credit Reporting Act, everyone is entitled to receive one free report every 12 months. You’ll want to review each and every item on the report to make certain fraudsters aren’t using your identity to borrow money in your name. You can request a free report at annualcreditreport.com.

If you have not been a victim but would like some protection, ask a credit bureau for a “security freeze,” which puts a complete block on your credit report indefinitely — that is, until you ask that the freeze be lifted either permanently or temporarily. If you request a freeze with one credit bureau, you’ll also need to contact the others, since a freeze is not shared between them.

If you intend to apply for credit during the freeze period, you’ll have to communicate with the credit bureaus to “lift” the freeze temporarily so that your legitimate creditors can access information. You can do this online.

Bureaus may charge a modest fee for a freeze based on the state you live in. For example, in California, the fee is $10 ($5 if you are 65 or older); Connecticut charges $10; New York’s initial request is free, and it is $5 for subsequent requests. There is no fee if you are an identity-theft victim; there is no cost to remove a freeze.

You can find a list of all states and fees charged on the TransUnion website (go to http://tinyurl.com/lok92ze and click on “Credit Freeze Fees”)

You also may consider signing up for monitoring services with one of the credit bureaus. For example, TransUnion provides monitoring for $14.95 a month, which includes identity-theft insurance covering certain expenses during the time you take corrective action as a result of identity theft. According to their websites, Equifax charges $16.95 a month, and Experian charges $15.95.

Another step is to opt out of credit offers based on your credit record. You can do that by going online to www.optoutprescreen.com or by calling 888-5-OPT-OUT (888-567-8688). You can choose to opt out for five years or permanently.

You also can opt out of mail and telephone lists produced by the Direct Marketing Association by calling 212-768-7277, ext. 1888.

More than 16.6 million Americans were victims of identity theft in 2012, up from 11.7 million during the three-year period between 2006 and 2008, according to the Bureau of Justice Statistics.

More recent statistics can be found in Victims of Identity Theft, 2012, a National Crime Victimization Survey done by the Bureau of Justice Statistics, at http://tinyurl.com/knq64aj. The vast majority (85 percent) of identity theft involved the fraudulent use of existing account information, such as credit-card or bank-account information, according to the report.***

Julie Jason, JD, LLM, a personal money manager (Jackson, Grant of Stamford, Conn.) and award-winning author, welcomes your questions/comments (readers@juliejason.com).

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The Fairfield County Bar Association held its annual Bench/Bar Reception on Wednesday, October 15th at the Stamford Sheraton. Over 135 members and 20 judges were in attendance. The FCBA would like to thank Citibank for its sponsorship of the event.

Pictured from top left:
Wendy E. Prince (Vice President FCBA), Peter M. Nolin (President FCBA), Brian Williams (Citibank), Bill McAndrew (Citibank), Marc J. Grenier (Treasurer FCBA) & Gerard N. Saggese, III (Secretary FCBA)

Pictured from bottom left:
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SOCIAL MEDIA AND ETHICAL OBLIGATIONS FOR LAWYERS

By Stephen J. Conover and Liam S. Burke of Carmody Torrance Sandak Hennessey LLP

While Connecticut’s Rules of Professional Conduct did not change the specific definition of competence, the Official Commentary of Rule 1.1 (amended in 2013) identifies the need for a lawyer to keep abreast of changes in the law “including the benefits and risks associated with relevant technology” (the “Rule”). The implications of this amendment are as vast and imposing as the expansive reach of the internet. Nowhere are the “risks associated with relevant technology” more apparent than with the ubiquitous world of “social media”.

We define “social media” and “social networking” as websites that permit users to share pictures, video, messages, links, and other content online. Regardless of whether a lawyer actively uses social media in personal life or in business activities, the Rule now demands that a lawyer be aware of the risks and the ethical boundaries of use of social media and social networking by the lawyer and clients. Lawyers must be conversant with the social media network they and their clients use. This is a serious challenge that lawyers must appreciate and cannot take lightly. This year, two noteworthy publications provide lawyers with insight and guidance on this topic.

In March 2014, the New York State Bar Association's litigation section issued a detailed set of guidelines about the ethical use of social media networks. While the Connecticut Rules and the New York Rules are not exactly the same, these “Social Media Ethics Guidelines” provide concise and organized standards in rule-and-comment format in several broad areas:

• **Gathering evidence.** For example, a lawyer is generally permitted to locate impeachment material by looking at the public portion of an individual's social media accounts. However, a lawyer cannot review any restricted portion of a represented person's social media site without an express authorization from the person's counsel.

• **Advising clients about their social media accounts.** A lawyer may advise clients in most circumstances about how to protect the clients’ social media information by using privacy settings or curtailing public access, but only if such advice would not violate any decisions, statutes or rules on spoliation of evidence. However, a client may not delete material subject to a duty to preserve unless the client maintains an “appropriate record” of the information.

• **Reviewing jurors' profiles and posts.** Although a lawyer may view a juror's public social media information, there must be no communication with the juror even if the contact is automatically generated by the social media network.

• **Advertising.** Lawyers' social media profiles must not list them as “experts” or “specialists” unless properly certified.

The Pennsylvania Bar Association Formal Opinion 2014-300 is equally impressive in its comprehensive analysis and is worth reading. This Opinion cites numerous different social media ethics opinions from around the country, as well as providing numerous examples of both permissible and prohibited conduct. This opinion provides an incredibly clear and detailed roadmap for lawyers to use social media in a professional and ethically permissible manner.

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1. Lawyers may connect with clients and former clients.

2. Lawyers may accept client reviews but must monitor those reviews for accuracy (and remove or correct inaccurate endorsements).

3. Lawyers may generally comment or respond to reviews or endorsements, and may solicit such endorsements.

4. Lawyers may generally endorse other lawyers on social networking websites.

A Connecticut lawyer using social media to network should be very careful when “friending” or “connecting” with people in the legal community and recognize the prohibitions that the Connecticut Bar Association’s Standing Committee on Professional Ethics Informal Opinion 2013-06 imposes (“CBA Opinion”). The CBA Opinion provides that “a Judicial Official should not become a social networking ‘friend’ of lawyers who may appear before the Judicial Official.” Therefore barring exceptional circumstances, Connecticut lawyers should not extend an invitation to “friend” or connect with a judge or magistrate, and should decline an invitation from such judicial officers.

The Pennsylvania Bar Association’s Formal Opinion specifically discusses the ethical obligations of lawyer advertising and marketing with social media and focuses on Rule 7.2 of Pennsylvania’s Rules of Professional Conduct, which prohibits inaccurate and misleading comments about a lawyer’s services. The Opinion discusses the options available for lawyers using the popular social network LinkedIn, where lawyers must be vigilant to monitor and verify the accuracy of information posted including endorsements. For example, if a lawyer limits his practice to criminal law and is “endorsed” for family litigation on the lawyer’s LinkedIn profile, the lawyer has “a duty to remove or correct the inaccurate endorsement.” On the subject of advertising, the New York Guidelines suggest that a lawyer's social media profiles and posts are not subject to advertising rules if used solely by the lawyer for contact with friends and family. However, advertising rules apply when lawyers use social media primarily for business purposes.

Connecticut lawyers must be aware of their obligation of quarterly registration with Connecticut’s Statewide Grievance Committee of all domain names the lawyer uses primarily to offer legal services. See Conn. Practice Book § 2-28(a)(3). This registration requirement extends to social media websites used “primarily to offer legal services”. Neither Connecticut’s Practice Book nor the Connecticut Rules of Professional Conduct defines the term “primarily” in this context and this leaves a gray area for lawyers trying to stay within ethical boundaries.

Connecticut’s Statewide Grievance Committee and the Chief Disciplinary Counsel have enforced the advertising Rules for web-based communication from beyond the borders of Connecticut. If a lawyer who is not admitted in Connecticut advertises in Connecticut, the lawyer must comply with Connecticut’s mandatory filing rules regarding attorney advertising.


Connecticut’s Rules of Professional Conduct were not crafted to assist lawyers with the challenges presented by the internet and are not easily applied to the novel areas that now plague lawyers in the use of social media. Recognizing that Connecticut’s Rules are different, lawyers can look to the recent Pennsylvania Ethics Opinion and the New York Guidelines for general guidance to understand the ethical framework and help navigate this hazardous territory.
The FCBA held its Annual Meeting on June 12th at the Stamford Yacht Club. Pictured at left: Outgoing President, Andrew M. Zeitlin introduces the incoming President Peter M. Nolin.

Over 200 attorneys and judges came out for the annual event. The Ethics & Professionalism award was giving to Frank W. Murphy., former FCBA President.

The FCBA would like to thank the sponsors of the 2014 Annual Meeting
Seminar Roundup

Tuesday, September 16th, the Young Lawyers Committee sponsored a seminar, DIVORCE: A ‘THREE-LEGGED STOOL’ A MULTI-DISCIPLINARY WORKSHOP ON THE LEGAL, FINANCIAL, AND PHYOLOGICAL ISSUES OF DIVORCE. It was presented by Elizabeth Cox, CFP, Cox Financial Services, LLC; Maurice Segall, Esq., Maurice Segall, LLC & Linda Keller, L.C.S.W., L.M.F.T.

Wednesday, September 17th, the Family Law Committee sponsored a seminar LUNCH WITH JUDGE THOMAS D. COLIN AND THE STAMFORD FAMILY JUDGES.

Thursday, September 18th, the FCBA sponsored a seminar, FOIA 101: A CRASH COURSE IN THE FREEDOM OF INFORMATION ACT, it was presented by Thomas A. Hennick, Public Education Officer, Freedom of Information Commission & Amy J. LiVolsi, Esq., Former Freedom of Information Commissioner & current Assistant Corporation Counsel, City of Stamford.

Thursday, September 18th, the Young Lawyers Committee hosted a farewell celebration for the Honorable Jane B. Emons for her years of service as Presiding Judge for Stamford/Norwalk Family Matters. The event was held at Buttefield 8 and over 70 attorneys and judges came to wish her a fond farewell.

Tuesday, September 23rd, the Law Practice Management/Solos/Small Firms Committee sponsored a seminar, LEGAL ISSUES OF SOCIAL MEDIA. It was presented by Cliff Ennico, Esq., Law Offices of Clifford R. Ennico.

Wednesday, October 1st, the Bankruptcy Committee sponsored a seminar, BANKRUPTCY 101. It was presented by Elizabeth Austin, Esq., Pullman & Comley, LLC; Rich Finkel, BlumShapiro; Irve Goldman, Esq., Pullman & Comley, LLC & Nancy Gregory, BlumShapiro.

Wednesday, October 15th, the Bench/Bar Committee hosted the 24th Annual Reception Honoring Our Judges. It was held at the Sheraton Stamford Hotel. The event was sponsored by Citibank. Over 150 judges, members & guests enjoy cocktails and hors d’oeuvres in the gorgeous atrium. An enjoyable evening was had by all!

Wednesday, October 15th, the Family Law Committee sponsored a seminar, GAL REFORM: WHAT YOU NEED TO KNOW NOW. It was presented by Jill Plancher, Esq., CT Legal Services & Paul Tusch, Esq., Cacace Tusch & Santagata.

Wednesday, October 22, the Probate & Estates Committee sponsored a seminar, A REVIEW OF THE IMPACT OF THE 2007 CHANGES TO CONSERVATORSHIP LAW. It was presented by Hon. Daniel F. Caruso; Hon. Gerald M. Fox, Jr.; Hon. David W. Hopper & Stephen B. Keogh, Esq.

Thursday, October 23rd, the Business Law Committee sponsored a seminar, SWEEPSTAKES, PROMOTIONS, AND RELATED CONSUMER MARKETING ISSUES. It was presented by Russell Anderson, Esq & Jason Marsh, Esq., Jeffers Cowherd, P.C.

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Wednesday, November 19th, the Family Law Committee sponsored a seminar, BUSINESS VALUATIONS FOR LAWYERS: HOW TO MAKE THE COMPLEX SIMPLE AND UNDERSTANDABLE. It was presented by Mark Harrison, CPA, ABV, CFF, Esq., Meyers, Harrison & Pia, LLC.

Friday, November 21st, the FCBA sponsored a Shredding Day. The event was free and was open to all members. The FCBA staff asked for donations of non-perishable food items. These items were donated to the local food bank. Thank you to all who participated!

Wednesday, December 3rd, the Elder Law Committee sponsored a seminar, FAIRF LABOR STANDARDS ACT CHANGES & HOME CARE WORKERS: WHAT CHANGES ARE COMING FOR PRIVATELY AND PUBLICLY FINANCED HOME CARE?, It was presented by Steven B. Katz, JD, MBA, LLM, CPA, CMC, CDP, Certified Geriatric Care Manager, President, Sterling Care LLC; Marie Allen, Executive Director and William Shempp, Operations Manager, SWCAA

Tuesday, December 9th, the Tax Law Committee sponsored a seminar, EVERYTHING YOU WANTED TO KNOW ABOUT CHOOSING A BUSINESS ENTITY AND STARTING A BUSINESS FROM THE IRS/DRS PERSPECTIVE. It was presented by Mark Stern, Esq., Mark Stern & Associates, LLC & Luke Tashjian, Esq., Sturart B. Ratner.

Wednesday, December 10th, the Criminal Law Committee sponsored a seminar, THE PARDON PROCESS IN CONNECTICUT, It was presented by Attorney Russell Palmer, Member, CT Board of Pardon and Parole; Andrew Mosley, M.S., Manager of Pardons, CT Board of Pardons and Parole & Gregory Everett, Former Chair, CT Board of Pardons and Parole.

Wednesday, December 17th, the Family Law Committee hosted its Eleventh Annual Holiday Luncheon at Hudson Grille in Stamford. Over 50 attorneys enjoyed a delicious lunch with their colleagues. The event was underwritten by BlumShapiro.

Pictured below are the food donations from our Shredding Day
PROFESSIONAL ANNOUNCEMENTS

Gregory and Adams, P.C., Attorneys At Law is pleased to announce the 50th Anniversary of the firm, 1964-2014. To celebrate 50 years of service to their clients and the community, Gregory and Adams, P.C. made special grants to numerous organizations in the community.


DelBello Donnellan Weingarten Wise & Wiederkehr, LLP is pleased to announce that Jennifer Jill O’Hara has become a partner of the firm and chair of the Matrimonial and Family Law Practice Group and Rufina D. Beem has become an associate of the firm concentrating in the area of Matrimonial and Family Law.

Richard S. Gora is pleased to announce the opening of his firm, Gora LLC. He is located at 30 Quarter Horse Drive, Monroe, CT 06468, Tel: 203-424-8021; Email: rich@goralaw.com.

Aleksandr Y. Troyb is pleased to announce the opening of his firm, The Troyb Law Firm, LLC. He is located at 1266 E. Main Street, Suite 700R, Stamford, CT 06902, Tel: 203-658-5412; Email: alex@troyblaw.com.

Schoonmaker, George & Blomberg, P.C. is proud to announce that Jill Heitler Blomberg has been named a 2014 Super Lawyer. The firm is further proud to announce that Peter Bryniczka, Aidan R. Welsh, partners of the firm, and Amy Calvo MacNamara, senior associate at the firm, have been named 2014 Super Lawyers Rising Stars.

The FCBA would like to thank the sponsors of the 2014 Probate Judge’s Lunch

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<th>Month</th>
<th>Date</th>
<th>Time</th>
<th>Event and Details</th>
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<tr>
<td>March</td>
<td>Wednesday, 3/11</td>
<td>12:30 PM - 2:00 PM</td>
<td>Women in the Law Committee, <em>Women In Robes, Judges, Gender and Justice</em>. At Hudson Grille.</td>
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<tr>
<td>March</td>
<td>Wednesday, 3/18</td>
<td>12:30 PM - 2:00 PM</td>
<td>Family Law Committee: TBA</td>
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<tr>
<td>March</td>
<td>Tuesday, 3/24</td>
<td>Noon to 2:00 PM</td>
<td>Civil Litigation Committee, <em>What You Need To Know About Cyber Security</em>.</td>
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<tr>
<td>April</td>
<td>Thursday, 4/9</td>
<td>Noon to 2:00 PM</td>
<td>Ethics and Professionalism Committee, <em>The Judicial Selection Process</em>.</td>
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<tr>
<td>April</td>
<td>Wednesday, 4/22</td>
<td>~ The Annual Probate Judge’s Lunch</td>
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<td>April</td>
<td>Wednesday, 4/30</td>
<td>~ The Annual Law Day Lunch To Be Held At Giovanni’s</td>
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As always, the list of program dates and times is subject to change. Please refer to your mailings, and/or our emails for further information.