

*Atty Bruce Matzkin Re Judge Shaban
3/2/12*

Chairman Fox, Chairman Coleman, Members of the Judiciary Committee, Representative James Albis who has been very generous with his time, and also Rep. O'Neill who was kind enough to listen to my concerns over the phone recently... thank you for hearing my testimony today. I learned that although CT-N had scheduled to cover this hearing today, that changed, and so I am disappointed my efforts to raise the serious issues I have come here to discuss, may not have the impact that I had hoped.

In two years as a law clerk for the justices of the Massachusetts Superior Court following my graduation from Boston University School of Law in 1996, I drafted over 100 decisions and it never once occurred to me to not address the losing sides' arguments and authorities.

Our own Conn. Practice Book, § 6-1, states very clearly: "[I]n rendering judgments in trials to the court . . . [t]he judicial authority's decision shall encompass its conclusion as to each claim of law raised by the parties and the factual basis therefor."

Since becoming a solo practitioner in 2004, time and again I have had the indescribably frustrating experience of expending numerous hours, months and even years on a legal case, only to get a decision in the end that failed to apply the law or, sometimes, even acknowledge material facts.

One of my first clients was a victim of sexual harassment in her job. We won a jury verdict under the Fair Employment Practices Act, but the judge would not award a proper attorney fee according to the "lodestar" calculation. The CHRO joined our appeal because of the harm to the discrimination statute if an attorney could be jipped out of a fair fee award. We cited the Appellate Court's 2000 decision, Laudano, which stated that although the lodestar amount could be adjusted based on various factors, "no one factor is a substitute" for doing a lodestar calculation.

In a 2009 decision, the Appellate Court acknowledged there had been no lodestar calculation, but because no articulation had been requested, stated it would "read an ambiguous trial record to support, rather than to undermine, the judgment." The court's prior statement in Laudano was not mentioned.

From 2004 to 2006 I handled a matter for a client seeking return of a real estate deposit after not qualifying for a mortgage. In our post-trial brief we cited Norwalk Door, a well-known Supreme Court of Conn. decision that holds liquidated damages are not enforceable if there are no actual damages. The Judge Trial Referee wrote a decision upholding the forfeiture of the deposit as liquidated damages, not acknowledging Norwalk Door. In 2008, the same Judge Trial Referee wrote a decision in another real estate deposit case, cited Norwalk Door, and awarded the buyer their deposit back.

These, and other, experiences have contributed to my decision to come here today to talk about Judge Daniel Shaban. As explained in the letter I emailed and mailed to each of you and which is posted on the Committee's website's public hearing testimony page, I and my co-counsel, Atty. Bradford Sullivan who is here with me today, and our client, an

LLC formed to develop senior and assisted housing on land in Bristol, received a decision from Judge Shaban last August after five years of litigation, in which Judge Shaban ignored the law for construing insurance policies, and the insurance policy provisions that we'd relied on all those years. Only a month before, Judge Shaban wrote a decision in another insurance case, R.T. Vanderbilt, in which he fully acknowledged and applied this same controlling legal standard. In our case he also ignored a series of Conn. Supreme Court decisions and a statute which were directly relevant to the dispositive issues he decided against us.

After two other law firms appeared, for the little money I could myself afford to pay them, Judge Shaban denied their motion for reargument without a hearing or written decision, or any acknowledgment of even his own prior decisions in which he applied the legal standard he ignored in our case. One of those firms is now handling the appeal, for basically nothing, just as Atty. Sullivan took on the trial as my co-counsel for no money based on the insurance policy language and the legal standard for interpreting it, never imagining these would be ignored by the trial judge.

Members of the Committee, the late, great Judge, Robert Satter defined judicial integrity as "doing the job of judging honestly.... Making findings of fact on the basis of all the evidence, and not ignoring evidence that runs counter to the judge's own conception of the case. . . . Integrity also means a judge applying the law rigorously and rendering the decision required by the application of a clear statute and controlling precedent, even when he does not like it. A judge who lacks that kind of intellectual integrity is a disaster on the bench."

I hope you will consider postponing your vote on Judge Shaban. I think you'll find members of the Bar willing to talk to you – perhaps even coming out of the woodwork to do so – if you take some time in light of what has been brought to your attention. And if you ask other experienced litigators, I predict you will not find one who can show another documented example of what I have shown you: a judge applying the law in one written decision, and then ignoring the same controlling law in another decision issued shortly thereafter, despite it having been cited and relied on by the party he ruled against.

A journalist, Mara Leveritt, observed in her book "Devil's Knot", about the railroading of innocent teenagers by unethical prosecutors in the famous "West Memphis 3" case, that "Holding people accountable – or not – is the privilege of those in authority." I would add that it is the duty of those in authority to hold people accountable. In Connecticut, this constitutional reappointment process is the only accountability for judges who refuse to apply the law fairly and impartially.

Today should not be the end of your inquiry into Judge Shaban's qualifications for reappointment for eight more years. It should be the beginning. Because a whole subprofession of lawyers, those who invest their time in cases for parties without financial resources, are at risk when they cannot rely on the judge to apply the law. And when these lawyers disappear, so does access to the courts for people who need them.