



## DEBATING CHANGE

### Bar Wants More Consistency, Less Flash From Next AG



George C. Jepsen



Martha A. Dean

By **DOUGLAS S. MALAN**

Come November, Connecticut will have a new attorney general for the first time in 20 years. And many attorneys in the state are eager to see what changes will follow the election of either Republican Martha A. Dean or Democrat George C. Jepsen.

One of them will replace current Attorney General Richard Blumenthal, a Democrat who is running for U.S. Senate.

"I think the real key is for the candidates to articulate a vision of what they would continue and what they would not continue from the era of Dick Blumenthal," said Daniel I. Papermaster, managing partner of Bingham McCutchen's Hartford office. "Understanding the candidates' goals of how they'll interact with businesses is very important."

Papermaster added that he has not yet decided on which candidate to support, mainly because of lack of information: "I honestly have heard much from them," he said.

Don't expect bar associations to weigh

in with official endorsements. The Connecticut Bar Association does not take a stance when it comes to political races, said CBA President Ralph Monaco. But the association is communicating with both candidates to discuss topics that affect the state's lawyers.

"We're still in the process of getting consensus [from CBA leadership] for what is most important to lawyers in the state," Monaco said, declining to elaborate on possible topics.

The Connecticut Defense Lawyers Association and the Connecticut Trial Lawyers Association don't endorse candidates, either.

Dean is an environmental law attorney in Avon who has run her own practice since 1994. She previously practiced at Robinson & Cole and Updike, Kelly & Spellacy in Hartford.

Jepsen has been of counsel at the Hartford firm of Cowdery, Ecker & Murphy since 2003 where he litigates cases involving businesses, white collar criminal defense and environmental law. Jepsen served

as state Senate majority leader for six years before joining the firm.

#### Intense Litigation

From discussions with attorneys throughout the state, members of the bar are interested in seeing adjustments in how the attorney general's office is run. Day Pitney environmental law partner John R. Bashaw has defended a significant number of cases prosecuted by the AG's office.

"You're looking for consistency in the application of law and looking for some clear guidelines and predictability as to what's acceptable conduct and what's unacceptable conduct," said Bashaw, who practices in the firm's New Haven office.

And he said he hasn't always seen that in his dealings with the current attorney general.

His clients have been on the receiving end of multiple-count complaints of "all paperwork violations," Bashaw said. For instance, business clients that store hazardous waste have faced lawsuits from the AG after placing the incorrect date on a label that in-

dictates when the drum is placed into storage, or after placing the wrong type of label on the drum.

Rather than working toward an agreeable solution, Bashaw said he has experienced aggressive, relentless litigation that leads to hundreds of thousands of dollars in fines and attorneys' fees. "Everything doesn't have to be nuclear war litigation," said Bashaw, who is supporting Dean. "There has to be some way of resolving conflicts without forcing companies out of business. Maybe some of these companies need to go out of business [based on their environmental records], but I think that's a rare circumstance."

Attorney Steven D. Ecker, of Cowdery, Ecker & Murphy in Hartford, has had similar experiences, and says the AG's office should trade in its aggressive stance for one that's more consistently reasonable and fair.

"In certain cases, I think there's been a feeling that those qualities could have been more apparent," said Ecker, who is supporting his colleague Jepsen in the AG's race.

One particular instance was when Ecker represented a group of female inmates at York Correctional Institution in Niantic who had written and published personal essays through a prison writing program. The AG's office placed a lien on the \$5,000 the inmate authors were paid for their work in 2003, arguing that they didn't deserve proceeds from the book in which their essays appeared.

Ecker ultimately prevailed, but the case was "far more difficult than it should've been," he said. "It's very easy for government lawyers to forget that the person they're investigating or prosecuting has a story, too."

### Public Persona

Another criticism of the attorney general's office's current approach is that the high-profile public announcements of investigations and litigation have helped create a perception that Connecticut is an anti-business state, several lawyers said.

"The press room is an overactive part of that office's function," said Brian C. Freeman, a senior associate in Robinson & Cole's environmental and petroleum practices who is supporting Dean.



Contributed Photo

**Day Pitney environmental attorney John Bashaw said that when it comes to litigation with the AG's office, 'everything doesn't have to be nuclear war.'**



Law Tribune File Photo

**For Glastonbury business litigator Kane Bennett, the best candidate for AG is the person who can blend business interests with citizen advocacy work and not use the office for political grandstanding.**

"There are reasons why Connecticut is seen as an expensive place to do business," he added. "The perception is there, and the perception is grounded in reality."

And Glastonbury business litigator N. Kane Bennett said the attorney general's office "absolutely" contributes to that perception with its handling of lawsuits and investigations.

"There's no bigger concern for a company than making a mistake and having everybody know about it," said Bennett, a name partner at Raymond & Bennett. "The general attitude among business owners is that the current AG's office is anti-business."

The new AG needs to balance creating a business-friendly environment with being an advocate for the citizens: "That makes the job more difficult and complex than it may appear," Bennett said.

Bennett, who sues on behalf of wronged consumers and also defends businesses, hasn't decided who he'll support. Overall, he said, "the best candidate would be someone who is not seeking higher office" and wouldn't use the position as a personal platform.

Shipman & Goodwin partner James W. Bergenn, who defends white collar criminal accusation and government investigations, said there's plenty of room for the new AG to allow freer rein among a group of staff attorneys that "possesses significant talent in various quarters."

Bergenn, who is supporting Jepsen, said

the AG can't be out in front publicly on every issue while also effectively managing a team of 300 attorneys.

"Attorney Blumenthal worked double-time to maintain the public persona necessary for public policy purposes," Bergenn said. "My sense is Jepsen would do some of that while also working to empower line deputies and leaders to turn some things around more quickly."

John F. Wolter, the managing partner at Updike, Kelly & Spellacy, has been involved in nursing home bankruptcies and receivership cases against the AG's office. Blumenthal's top-down management style meant that nearly every decision ultimately ran through him.

"A lot of times you're dealing with assistant AGs and you think you have a matter ready for resolution, but they don't have the authority to settle then and there," Walter said. "I think it would be beneficial to have someone who's more efficient and willing to delegate more."

But Wolter is not ready for a complete overhaul of the AG's office, especially after getting a feel over the past two decades for how the office operates. As a Democrat, Wolter is supporting Jepsen and said he has "a good sense" that Jepsen will run the office without making drastic changes.

"For me, I think the main question is going to be about management style," he said. ■