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OF THE DELAWARE STATE BAR ASSOCIATION

In This Issue:

- Nominations Sought for Bench and Bar Award
- The Combined Campaign for Justice Donor List
- Upcoming CLE Seminars



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By Matthew M. Greenberg, Esquire



I just returned from the Midyear Meeting of the ABA, which took place in Atlanta in February. There were many issues addressed at this conference, all affecting lawyers and the practice of law locally and nationally. Some of the most important discussions I attended at this conference, however, were those that examined the fundamental changes which are occurring in the practice of law and their impact on all lawyers—especially on a majority of our colleagues who practice in solo or small practices. Programs and conversations addressed globalization, inter-state licensing, and; most notably, the growing number of offerings of legal services on the internet.

The discussions at the conference covered several aspects of these debates: Should inter-state licensing be allowed? Should it be extended to out-of-the-country lawyers, as well? How will it impact the practice of law in each state? Not surprisingly, in the discussions occurring throughout the country, members of the profession are on all sides of these issues.

The profusion of legal services offered on the Internet and the Internet's ancillary impacts on the practice of law are two areas attracting the most attention and concern. This is especially challenging for small and solo practitioners as they try to integrate and adjust to rapidly evolving technology and its requirements. Technological advancements can be challenging and costly for practitioners to implement. Bar Associations and small and solo

practitioners around the country are working to develop innovative solutions for this important segment of the Bar. These changes go beyond social media developments. Lawyers must develop tools to develop and maintain existing business; to remain in contact with clients who demand instant responses; to perform work for clients more quickly and efficiently; and to administer their practices.

I urge you to contact the DSBA with your suggestions and ideas so that we can continue to be a valuable asset to your practice and provide you with the membership benefits you need.

One of the plenary speakers, Richard S. Granat, a Maryland lawyer residing in Florida, expressed his view that the key to survival of the solo and small law firms in this new environment is to expand their strategic options by widening their client base and opening new client markets. They can do so by embracing technology, according to Mr. Granat. Participants at the meeting agreed that combining digital applications with traditional human service is a way to increase small law firm profit margins, without increasing the amount of time the attorney spends on each transaction.

DSBA is planning to open a dialogue with the Small Firms and Solo Practitioners Section to gain a full understanding of how the DSBA can develop solutions for this large percentage of our Bar. If our Delaware small firms and solo practitioners

agree that to survive they must embrace new technologies, DSBA wants to be in a position to help them get there.

In addition to moving forward with technological assistance, the DSBA wants to ensure that we continue to provide our membership with benefits and services that support all of our members. The DSBA provides members with numerous services for you to take advantage of including:

- **Continuing Legal Education.** The DSBA offers approximately 40 courses annually. Led by local practitioners and scholars, as well as invited guest speakers, the seminars are offered at various levels of expertise, to reach new and experienced lawyers. The programs cover numerous areas of law and are geared to helping Delaware lawyers stay on top of fast-changing legal developments and fulfill their CLE requirements. Almost all of these courses are available live throughout the state as a result of the technological advancements we have implemented over the past few years.

- **Sections and Committees.** As the practice of law becomes more specialized, and life in the legal profession becomes increasingly more complex, the Bar Association offers its members the opportunity to increase expertise and expand professional contacts through membership in its many sections and committees. Membership in sections allows lawyers to meet colleagues who share their interest in a special field of law, to receive section publications, and to receive advance notification of

proposed legislation. Membership in committees provides an opportunity for leadership in service to the Bar Association, to the legal community and to the public in numerous areas.

- **Delaware Lawyers Assistance Program and Wellness Education.** This program was established to confidentially assist lawyers who experience problems that interfere with their personal lives or their ability to serve as lawyers. In addition, the DSBA offers weekly wellness programs to assist lawyers in addressing the stress of daily practice.

- **Publications.** The DSBA publishes this magazine to inform lawyers as to developments in the Bar Association and the profession. The DSBA also publishes the *Delaware Law Review* and the *Delaware Legal Directory*. As an additional service to be offered this year, we expect to have an “app” that will allow you to access the legal directory on your phone.

- **Lobbying and Legislation.** The Bar Association and its sections are in-

volved in drafting and revising federal and state legislation that impacts our practice and our community. We work with our lobbyist to ensure that this critical legislation is enacted.

- **Pro Bono Coordination and Support.** Through our new *pro bono* coordinator, the DSBA has implemented a program to coordinate *pro bono* efforts in Delaware and support lawyers and legal service providers in providing *pro bono* assistance to Delawareans in need.

- **DSBIS.** The DSBA has formed DSBIS, its wholly-owned subsidiary, to provide a full-service source of business, professional, and personal insurance coverage at competitive prices for members.

We realize that we can do more to provide our members services, particularly for small and solo practitioners. The Bar Association is currently evaluating implementation of several additional benefits for members including: web design and hosting services; computer support and assistance; discounted pricing for frequently used services; and linked

forms, practice aids, and resources that practitioners regularly use to the DSBA website. While we plan to work with sections and committees of the DSBA to develop additional services, I urge you to contact the DSBA with your suggestions and ideas so that we can continue to be a valuable asset to your practice and provide you with the membership benefits you need. ☯

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By Seth L. Thompson, Esquire



This Has Everything To Do with the Law

If my timing is right, when this issue arrives in the office's morning mail along Bedford Street, I should be in a plane somewhere over the Georgia/Florida border, simmering on the way to a boil in terms of excitement. When the wheels touch down in Tampa, one of Philadelphia's aces will be completing his warm-up at Brighthouse Field just across the causeway in Clearwater.

Five years ago, my first visit to Phillies spring training felt like a trip back to a time I have only seen in photographs and the images conjured by great writing, when all ballgames were during the day, stadiums held under 10,000, and the players made it a point to sign autographs afterward. It also brought back memories of my initial glimpses of the Grapefruit League games—in Vero Beach, a.k.a. Dodgertown, while visiting my grandparents.

Just as wins and expectations have piled higher and higher since then, so has the number of attendees. This time around, I do not expect Jimmy Rollins to approach my group and ask to sign something, as he did in 2007. However, if he does, it will be a great opportunity to express my gratitude—for getting a twenty-five-year-old growing gorilla off the collective back of the Philadelphia fan base who, prior to the 2008 World Series, had not enjoyed a parade down Broad Street since the 1983 Sixers; and for the deluge of congratulatory text messages my friends and I exchanged after the clinching game. Ideally, there will also be a chance to tell Roy Halladay just how much last year's playoff no-hitter meant, as evidenced by

my measured and stoic father's borderline giddy phone call, at a time when both of us would have otherwise been asleep, on a day of the week when we would not have spoken outside of some emergency. That call was less a conversation and more a series of excited statements, predominantly focused on the performance putting to bed any thought of Doc Halladay suffering from "nerves" during his first career playoff start. It proved to be a fitting beginning to a post-season career for a

There is the need to remain ever-vigilant and to re-focus our efforts until the repetition of professional conduct becomes ingrained into muscle memory.

workhorse player who, by all accounts, is the first one to arrive in the morning and the last to leave, dating back to the moment he joined the team. (Contrast this with former Phillie John Kruk, who is credited with responding to a question about his seemingly improper eating and drinking habits by saying, "Lady, I'm not a professional athlete, I'm a baseball player." What a difference in perspective.) Most likely, even if the opportunity arose, virtually all of that would go unsaid, reduced to "Thank you," and a large part of me expects Halladay's response would be, "It's my job."

Pitching is no longer Andy Pettitte's job, as he announced his retirement from baseball at the end of January. As I drove up Route 1 that morning, the sports radio circuit was buzzing with the news, followed chiefly by two questions:

1) Who is going to fill the hole in the Yankees' rotation?; and 2) Will Andy Pettitte be inducted into the Hall of Fame in Cooperstown some day? My immediate response to the former was, whomever the Steinbrenners buy from a struggling team in a small market prior to the trade deadline. On the latter, my gut reaction was, no. I had not measured any of Pettitte's career statistics to those currently enshrined and then factored in the whole performance-enhancing drugs quagmire.

I just recalled watching him pitch and how I felt. Other than suits, I've never worn pinstripes; my curve does not complement a fastball in the mid-90s; and my pick-off move to first base is the opposite of deceptive. Still, I felt comfortable spontaneously judging

Pettitte's credentials, then listening to the commentators' comparative analysis until I reached the parking garage.

The destination for the drive that Friday was the American Inn of Court Third Circuit Leadership Summit in snow-piled Philadelphia. Judge Ambro spoke and enumerated these eight keys to developing professionalism:

1. Mentoring;
2. Having a sense of history (e.g., Judge Seitz's decision on integrating schools);
3. Preparing;
4. Reading (as your means of investing intellectual capital, with speaking and writing as expending said capital), with an emphasis on materials outside of work;
5. Lacking ego, since the profession is, after all, a service to others;

6. Observing civility/dignity;
7. Keeping credibility, formed by always telling the truth;
8. Following your conscience.

With guidance now on how to attain professionalism, the question became how to recognize professionalism. The audience was asked to ponder how to identify professionalism in the legal field, and into my head popped David Halbertam's quote: "Being a professional is doing your job on the days you don't feel like doing it." Judge Ambro then articulated the following guideposts for gauging professionalism:

1. Skepticism without cynicism;
2. An ability to admit a weakness and properly deal with it;
3. Perspective over the personal element;
4. An ability to show mercy;
5. An ability to know when enough is enough.

Recognizing the difficulty in defining specific boundaries, Judge Ambro noted that it, nevertheless, may be akin to Justice Stewart's test for obscenity, "I know it when I see it."

That is, in all likelihood, the same standard that guides our clients, co-workers, adversaries, and any others with whom we come in contact. Hence, there is the need to remain ever-vigilant and to re-focus our efforts until the repetition of professional conduct becomes ingrained into muscle memory. I employed Justice Stewart's test in passing instantaneous judgment on Andy Pettitte's Hall of Fame chances earlier that morning and only afterward listened to specific facts. Call me a homer, but I suspect I will come to a different conclusion on Hall of Fame potential with Halladay, whenever I first catch wind of his retirement (hopefully a long time from now). I'll think of that no-hitter in his first play-off appearance, when stakes were most high, and the phone call afterward, and I'll recall the stories of the multiple Cy Young Award winner still being the one to turn the training facility's lights on in the morning and out at night. 🏆



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Calendar of Events

March 2011

Thursday, March 3, 2011 Morning

Basic Trusts for Real People

Second in the Estate and Trust Planning, Estate Administration, and Related Tax Issues Series

3.5 hours CLE credit

Live at Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor in Georgetown, DE and

Community Legal Aid Society in Dover, DE

Thursday, March 3, 2011 Afternoon

The Basics of Special Needs Trusts

Third in the Estate and Trust Planning, Estate Administration, and Related Tax Issues Series

3.0 hours CLE credit

Live at Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor in Georgetown, DE and

Community Legal Aid Society in Dover, DE

Friday and Saturday, March 4-5, 2011

Women and the Law Retreat: Topics for Successful Women Lawyers

6.0 hours CLE credit

The Bellmoor, Rehoboth Beach, DE

April 2011

Tuesday, April 5, 2011

Short Topics in Real Estate

3.0 hours CLE credit

Live at Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor in Georgetown, DE and

Community Legal Aid Society in Dover, DE

Tuesday, April 19, 2011

Labor and Employment Law Update 2011

Delaware State Bar Association, Wilmington, DE

Wednesday, April 20, 2011

Small Firms and Solo Practitioner Seminar

Delaware State Bar Association, Wilmington, DE

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This committee provides peer counseling and support to lawyers overburdened by personal or practice-related problems. It offers help to lawyers who, during difficult times, may need assistance in meeting law practice demands. The members of this committee, individually or as a team, will help with the time and energy needed to keep a law practice operating smoothly and to protect clients. Call a member if you or someone you know needs assistance.

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Section & Committee Meetings

March 2011

Monday, March 7, 2011 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting
Delaware State Bar Association, 301 North Market Street, Wilmington

Tuesday, March 8, 2011 • 12:15 p.m.

Small Firms and Solo Practitioners Section Meeting
Delaware State Bar Association, 301 North Market Street, Wilmington

Thursday, March 10, 2011 • 5:30 p.m.

Litigation Section's Reception with the Superior Court (Members Only)
Hotel du Pont, 11th & Market Streets, Wilmington

Monday, March 14, 2011 • 4:30 p.m.

Worker's Compensation Section Meeting
Young Conaway Stargatt & Taylor LLP, 1000 West Street, Wilmington

Tuesday, March 15, 2011 • 12:30 p.m.

Labor & Employment Section Meeting
Richards, Layton & Finger, P. A., 920 North King Street, Wilmington

Thursday, March 17, 2011 • 12:00 p.m.

Executive Committee Meeting
Delaware State Bar Association, 301 North Market Street, Wilmington

Thursday, March 17, 2011 • 3:00 p.m.

Law and the Elderly Committee Meeting
Law Office of William W. Erhart, P.A., 1011 Centre Road, Suite 117, Wilmington

Wednesday, March 23, 2011 • 4:00 p.m.

Family Law Section Meeting
Kelleher & Laffey, 1509 Gilpin Avenue, Wilmington

Friday, March 25, 2011 • 12:30 p.m.

Social Security Disability Section Meeting
Linarducci & Butler, PA, 910 West Basin Road, Suite 100, Wilmington

Monday, March 28, 2011 • 12:00 p.m.

Corporate Counsel Section Meeting
Delaware State Bar Association, 301 North Market Street, Wilmington

Monday, March 28, 2011 • 12:00 p.m.

Section Chair and Executive Committee Joint Meeting
Delaware State Bar Association, 301 North Market Street, Wilmington

Monday, March 28, 2011 • 4:00 p.m.

Taxation Section Meeting
Morris Nichols Arsh & Tunnell LLP, 1201 North Market Street, Wilmington

April 2011

Monday, April 4, 2011 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting
Delaware State Bar Association, 301 North Market Street, Wilmington

Tuesday, April 5, 2011 • 3:30 p.m.

Estates & Trusts Section Meeting
Young Conaway Stargatt & Taylor LLP, 1000 West Street, Wilmington

Wednesday, April 6, 2011 • 12:00 p.m.

Multicultural Judges and Lawyers Section Teleconference

Thursday, April 7, 2011 • 4:00 p.m.

Real & Personal Property Section Annual Meeting
Delaware State Bar Association, 301 North Market Street, Wilmington

Monday, April 11, 2011 • 4:30 p.m.

Worker's Compensation Section Meeting
Young Conaway Stargatt & Taylor LLP, 1000 West Street, Wilmington

Tuesday, April 12, 2011 • 12:15 p.m.

Small Firms and Solo Practitioners Section Meeting
Delaware State Bar Association, 301 North Market Street, Wilmington

Report: Results of the Midyear Meeting of the ABA House of Delegates

By William D. Johnston, Esquire

This is to report on the results of the Midyear Meeting of the American Bar Association's House of Delegates.

The House of Delegates is the 560-member policymaking body of the ABA. Members of the House met on Monday, February 14, at the conclusion of the Association's Midyear Meeting in Atlanta. The "Delaware Delegation" comprised of The Honorable Henry du Pont Ridgely (Delegate from the Appellate Judges Conference of the ABA Judicial Division), Harvey Bernard Rubenstein (Delaware's State Delegate), and yours truly (State Bar Delegate).

The session of the House convened with remarks from Representative John Lewis of Georgia. Congressman Lewis, a leader of the civil rights movement, encouraged delegates to keep pushing for justice. (The next day, Congressman Lewis was awarded the Medal of Freedom by President Obama.) The House also heard from Texas Supreme Court Chief Justice and President of the Conference of Chief Justices Wallace B. Jefferson. Chief Justice Jefferson, Texas' first African-American justice and chief justice, addressed the funding crisis that confronts courts throughout the nation. ABA President Stephen N. Zack likewise emphasized the need for adequate funding of courts if they are to fulfill their constitutional mandates. And, he underscored the critically important need for civic education and for the funding of legal services for the poor.

As before, various resolutions were withdrawn from presentation to the House for additional vetting with interested groups within the ABA. Resolutions presented to, and adopted by, the House during the session included those that:

- Reaffirmed support for the principles of law school self-governance and academic freedom, as well as ethical independence of law school clinical programs consistent with the ABA Model Rules of

Professional Conduct, and opposed attempts by persons or institutions outside law schools to interfere in the ongoing activities of law school clinical programs and courses (Resolution 100A);

- Amended the Model Rule for Admission by Motion, dated February 2011, to eliminate provisions that prohibit in-house counsel and judicial law clerks from qualifying on the basis of practice performed in the jurisdiction where admission on motion is being sought (100C);

- Urged states and territories to adopt the Model State Code of Military Justice and the Model Manual for Courts-Martial to provide an updated body of law for military forces not subject to the Uniform Code of Military Justice when military forces are serving under the exclusive jurisdiction of Chapter 47 of Title 10, United States Code (103);

- Urged federal, state, territorial, tribal, and local courts to adopt a procedure whereby a criminal trial court shall disseminate to the prosecution and defense a written checklist delineating in detail the general disclosure obligations of the prosecution under *Brady v. Maryland*, 373 U.S. 83 (1963), its progeny and applicable ethical standards (104A);

- Urged Congress to amend 28 U.S.C. §§ 2241(d) and 2255(f)(1) to provide equitable tolling of the one-year statute of limitations for filing for post-conviction relief when the prisoner who has an attorney has timely requested post-conviction counsel to file a § 2254 petition or a § 2255 motion (104B);

- Urged the U.S. Sentencing Commission to assess current federal policy regarding sentences for economic crimes and, based on that assessment, to reconsider its approach to ensure that the guidelines are proportional to offense severity by reevaluating emphasis on monetary loss and combinations of multiple specific offense characteristics that overstate the seriousness of the offense (104C);

- Urged federal, state, tribal, local, and territorial governments to use electronic monitoring and home detention at government expense for juvenile offenders who are legally eligible for secure detention, but whose risk of flight or further offending does not require secure pre-trial detention or incarceration (104D);

- Urged Congress to enact legislation amending Title 10, United States Code, to permit the payment of military Survivor Benefit Plan benefits to a special needs trust for the benefit of a disabled beneficiary (105);

- Urged federal, state, tribal, territorial, and local officials to prevent and remediate the existence and dangers of bullying, including cyberbullying and youth-to-youth sexual and physical harassment, by defining these acts and developing education programs to assist teachers, parents and children in identifying victims and enhancing appropriate interventions (107A);

- Urged federal, state, territorial, tribal, and local governments to create and provide appropriate support for Youth or Teen Courts that will divert youth from the formal consequences of juvenile court petitions, proceedings, adjudications, or juvenile justice sanctions (107B);

- Urged federal, state, tribal, territorial, and local legislative bodies and governmental agencies to enact laws and implement policies to ensure the humane treatment and disposition of seized animals in a timely manner (108B);

- Approved the Uniform Partition of Heirs Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein (109A);

- Approved the Uniform Faithful Presidential Electors Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring

to adopt the specific substantive law suggested therein (109B);

- Approved the Uniform Electronic Recordation of Custodial Interrogations Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein (109C);

- Approved the 2010 Amendments to Article 9 of the Uniform Commercial Code, promulgated by the National Conference of Commissioners on Uniform State Laws in 2010, as appropriate amendments to that Act for those states desiring to adopt the specific substantive law suggested therein (109D);

- Approved the Uniform Military and Overseas Voters Act, promulgated by the National Conference of Commissioners on Uniform State laws in 2010, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein (109E);

- Supported efforts by the Law Library of Congress and the Library of Congress to create and continue programs that (1) develop, maintain, and enhance the Law Library's services, facilities, operations, and staff, and the acquisition of materials and their preservation and care, and (2) utilize the best technologies and methods available to make the Law Library's vast and growing collections accessible (110);

- Supported evaluation of inventions relating to DNA technology by the same uniform standards that apply in evaluating patent eligibility of inventions relating to other natural materials or subject matter, and opposed new exclusionary rules for DNA that go beyond the longstanding exceptions to patent eligibility recognized by the U.S. Supreme Court (111);

- Reaffirmed the judicial independence and authority granted to the Central Panel Administrative Law Judges in the Model Act Creating a State Central Hearing Agency, adopted by the House of Delegates in February 1997 (112);

- Supported the development and use of evidence-based, clinical or medi-

cal practice guidelines or standards regarding patient care and safety that are created by independent organizations comprised of experts, recognizing the need to incorporate updates on a continuous basis, and further recognizing that such guidelines are not necessarily synonymous with the applicable standard of care in any particular jurisdictions (113);

- Urged Congress to enact legislation to reform the Toxic Substances Control Act (118);

- Supported the ongoing efforts by the Administrative Office of the United States Courts to update and enhance the functionality of the Federal Judiciary's Case Management/Electronic Case File system, to continue to meet the case filing needs of judges, chambers, clerks' offices, the bar, debtors, litigants, claimants, trustees, and other users in light of changing technology (10A);

- Urged Congress to enact legislation similar to H.R. 1956 and S.B. 3989 (111th Congress) that would amend the federal tax code to let states recover overdue debts due to them, including court-ordered victims' restitution, fines, fees, and costs, by intercepting federal tax refunds that are due to the non-indigent debtors who owe the debts to the state (10B);

- Urged the United States House of Representatives to restore the right of District of Columbia citizens to have their elected Congresswoman vote on proposed legislation considered by the House in Committee of the Whole (10C);

- Opposed any proposal to cut funding to the Legal Services Corporation for Fiscal Year 2011, and urged Congress to support increased funding of the Corporation to the level necessary to provide needed services to low income Americans (10E); and

- Urged federal, state, territorial, and local governments to require civic education for elementary, middle, and secondary students in the nation's public schools and to provide competitive

grant funding for programs to meet this requirement (300).

Of note is that the Delaware State Bar Association co-sponsored Resolution 10A (addressing the Federal Judiciary's Case Management/Electronic Case File system) and Resolution 10E (addressing funding of the Legal Services Corporation). Also of note is that Delaware's own Michael Houghton of Morris Nichols Arsht & Tunnell LLP, as a Commissioner of the National Conference of Commissioners on Uniform State Laws, did an excellent job speaking in favor of Resolution 109D (amendments to Article 9 of the Uniform Commercial Code).

For a full recap of the business that came before the House of Delegates, please see www.abanow.org.

* * *

Three quick "pitches," if you'll indulge me:

First, as I've urged previously, if by chance you currently are not a member of the ABA, please consider joining (or re-joining). If you currently are a member, many thanks, and please encourage your colleagues to join.

Second, the benefits of ABA membership are many. Please see www.americanbar.org. One of the most recently-added benefits is "AirMed." In short, it is a health insurance enhancement that will provide for medical evacuation by air to your home hospital if you and/or your family members are outside the U.S. (or in certain states) and run into an emergency. Already, the economical coverage has been popular with numerous ABA members. Please see www.airmed.com/abi.

Finally, the American Bar Association Fund for Justice and Education, or "FJE," has provided over \$3 million in scholarship assistance to over 200 historically underrepresented law students. Please consider making a contribution in support of this important, diversity-promoting effort on the part of our profession. See www.americanbar.org/groups/departments_offices/fund_justice_education.html.

ABA Midyear Meeting (continued on page 13)

By Charles Slanina, Esquire



Ethics Online

One of the few advantages of having done this column for virtually 20 years is that I can revisit former topics without much chance that anyone will catch on to my “recycling” unless I admit it. On the other hand, some articles in my archive are so old that significant changes in the law, and the world in general, necessitate an update.

Back in December of 1997, I did a column called “Ethics in the Ether” which dealt with ethics and professional responsibility resources on the Internet. At the time, most of these sites were simple libraries of rules and case law. Today, there is a large number of blogs, listserves, and personal commentaries on ethics and professional responsibility available, and this month I return to the topic with an emphasis on the latter.

Legalethics.com

This website focuses on the ethical issues associated with the use of technology by legal professionals. It is maintained by Mercer University School of Law professor David Hricik.

Law.cornell.edu

This website remains from the 1997 list. It is a digital library maintained by Cornell University of both the codes and rules setting standards for the professional conduct of lawyers, including commentary on the law governing lawyers organized on a state by state basis. (It does not include Delaware, but does include approximately 19 other states.)

Law.georgetown.edu

The *Georgetown Journal of Legal Ethics* website provides a searchable database of the *Journal's* four annual issues and featured symposia. The *Journal* has been

issued for approximately 24 years, and individual articles and entire issues are available for download for a fee.

Lexisone.com

This site provides links to dozens of practice resources, legal publications, legal subject outlines, and legal research sites. There are even links to law school exams with model answers.

Americanbar.org

This website, maintained by the ABA, includes a link to ETHICSearch which provides direct access to the ABA Center on Professional Responsibility via telephone and email inquiries. Simple questions are handled for free, with more complex questions billed at an hourly rate. All questions are answered by reference to the ABA/BNA Manual on Professional Responsibility with citations to relevant ABA Model Rules and ABA Ethics Advisory Opinions.

LLRX.com

This is the self-proclaimed “premiere, free, independent, one-person-produced Web journal dedicated to providing legal, library, and IT professionals with up-to-date information in legal blogs on law and technology.” It was established in 1996 by founder, editor, and publisher Sabrina I. Pacifici. The monthly installments of articles, guides, and topical resources was voted best overall legal blog of 2004.

Legalethicsforum.typepad.com/blog

Three law school educators joined to create a blog featuring materials on issues in legal ethics with links to many academic sites and journals.


Freivogelonconflicts.com

Noted authority on professional responsibility and legal ethics, William

Freivogel maintains this “practical online guide to conflicts of interest for lawyers with sophisticated business and litigation practices.”

If all of this is not enough, there are also numerous listserves with minute-by-minute postings by law professors and practicing attorneys on every aspect of disciplinary defense, professional defense and prosecution, and professional responsibility issues which can be accessed by members of the National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers. As always, read it, learn it, live it.

**“Ethically Speaking” is intended to stimulate awareness of ethical issues. It is not intended as legal advice nor does it necessarily represent the opinion of the Delaware State Bar Association. Additional information about the author is available at www.delawgroup.com.*

***“Ethically Speaking” is available online. The columns of approximately the past two years are available on www.dsba.org. *

Delaware Wills for Heroes will host a

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**The Widener School of Law
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NOMINATIONS SOUGHT FOR BENCH & BAR AWARD

The Delaware State Bar Association and the Awards Committee are seeking nominations for The First State Distinguished Service Award to be presented at the 2011 Bench & Bar Conference. The award is described below:

First State Distinguished Service Award – This award is given annually at the Bench & Bar Conference to a member of the Delaware Bar who, by exemplary leadership and service dedicated to the cause of good citizenship in civic and humanitarian service over a period of many years has maintained the integrity and honored recognition of the legal profession in community affairs and who, as an outstanding Delawarean, unceasingly advances the ideals of citizen participation and community accomplishment, thus reflecting high honor on both country and profession.

DELAWARE STATE BAR ASSOCIATION AWARDS NOMINATION FORM

Name of Candidate: _____

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Brief statement of reasons that candidate is deserving of Award (Please attach sheet if necessary):

Nominations should be submitted to **Rina Marks, Executive Director**, e-mail rmarks@dsba.org or fax to (302) 658-5212. The deadline for nominations is April 11, 2011.

ABA Midyear Meeting (continued from page 11)

The next session of the House of Delegates will take place on August 8 and 9 during the ABA Annual Meeting in Toronto, Ontario, Canada. Please consider attending the Annual Meeting. Toronto was very popular with individuals and families when the meeting was last held there. (See www.americanbar.org for registration information.) And, in the meantime, as always, please contact me at (302) 571-6679 or wjohnston@ycst.com with any questions, concerns, or suggestions. It continues to be my privilege to serve as your State Bar Delegate.

Bill Johnston serves as State Bar Delegate in the American Bar Association's House of Delegates, elected by the members of the Delaware State Bar Association. Bill is a partner in Young Conaway Stargatt & Taylor, LLP and is a Past President of the DSBA. 



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The staff and clients of the three legal services providers wish to thank the many judges, lawyers, law firms, corporations, banks, foundations and other individuals who, once again, gave their generous support and made this Campaign a continued success.

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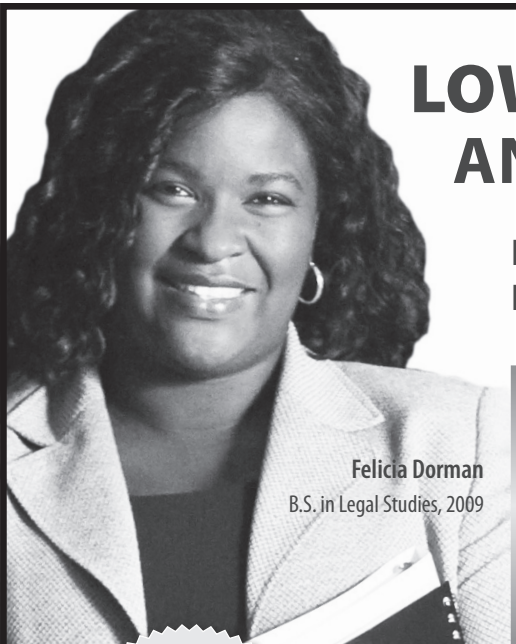
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By Carol P. Waldhauser, Executive Director



Impact of Spirituality on the Dimensions of Wellness

Introduction by Carol P. Waldhauser; Article by R. Judson Scaggs Jr., Esquire

Depending upon your view and culture, spirituality may include, but not be limited to, prayer, meditation, and active participation in a place of worship; or it might be a walk in nature or a community project.

This month, our guest columnist, R.J. Scaggs, writes his view on the impact that spirituality has in dealing with life, stress, and civility. Needless to say, spirituality has many definitions, but at its core, spirituality helps to give our lives context. In fact, spirituality is not necessarily connected to a specific belief system or even religious worship, but as Mr. Scaggs points out, it shapes us both professionally and personally. In other words, spirituality connects us to ourselves and to others while it develops our personal value system and our search for serenity and meaning in life.

Mr. Scaggs is a partner in the Wilmington law firm of Morris, Nichols, Arsht & Tunnell, where his practice is concentrated in corporate and business litigation. R.J. was a Marine Corps officer from 1981 to 1985, is a graduate of Washington & Lee University, and received his J.D. degree from the College of William and Mary in 1988.

• • •

"And the wind brings a chill,

*The patient is near death my friend,
and the doctor is ill.*

*They're carrying a cross up to the top
of boot hill*

And you gotta stand there and play."

From the song *Cold Rain in Kansas* by Don Lange

We know, at some level, our situation. Often our profession takes a toll

on our families, our friends, and ourselves. We feel the undertow of stress. We work in a system designed to deliver justice, but one that is often human, imperfect, flawed. We aim for success in a system—a pretty darned good system here in Delaware, in comparison to many others—that cannot deliver its goal: justice and equality for all.

The legal system, *the patient*, is inherently near death. That is to say, in each case it can fail to provide justice for the persons in that case. Worse yet, the persons charged with keeping the system healthy, the *lawyers*, are ill. We are not brethren of superheroes who live to dispense justice with wisdom and compassion. Rather, we are paid advocates with our own worries, fears, and frailties. Sadly, our own human frailties may get the better of us. Furthermore, some of us may be tempted to grab any advantage, to work too hard, to neglect our families, to charge too much, to view our adversaries as enemies, or to be short or sarcastic to attorneys appearing before us. We struggle. We "gotta stand there and play." Perhaps, these reasons may contribute to why addiction rates within the profession are twice the national average.

Moreover, while our rules of professional conduct, our guidelines on professionalism, and our mandatory CLE courses on civility are all sound, they alone cannot be enough to produce ethical, moral, civil, and fulfilled attorneys. The reason is that we are, first, people. In other words, there are no laws, nor are there rules that can legislate morality or professional conduct.

Plus, no professional success—standing alone—can provide individual happiness or wellness to an individual. In my opinion, we cannot function well within the system and maintain our own wellness without believing in something beyond the system and beyond ourselves. I will dare to advocate, at least in general terms, something we seek to avoid in our politically correct society. Spirituality provides a perspective on life and a purpose for life that trumps success at lawyering and provides a platform of stability for enduring bad cases and difficult decisions. In other words, spirituality has a direct impact on the dimensions of wellness.

Equally as important, in my opinion, there is a huge elephant standing in the corner of the room whenever we discuss wellness, civility, balance, professionalism, *pro bono* work, or any other subject outside of legal skills, competence, or compliance with ethical requirements. That elephant is our spirituality—our view of whatever is greater than ourselves and of the highest priority to us.

Yes, our profession stands in a cold rain. It is difficult and stressful. The system as a human endeavor is always on the verge of failing to accomplish its mission of justice and equality. Lawyers are human with defects and weaknesses. If we stop at difficult times in our practice and seek guidance from above, or beyond, or wherever your beliefs lie, we very well could have a better system and live better, healthier, and happier lives while we work within it. As a professional organization, we cannot and should not endorse any particular faith

or religion. On the other hand, is there any reason we should not be more open in sharing our personal views about life's higher purposes? As C.S. Lewis wrote, "Aim at heaven and you will get earth thrown in. Aim at earth and you get neither."

• • •

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people who care

Wayne Holden's life has been guided by his father's actions and words. "He treated everyone with respect, kindness and generosity and directed us to always leave a place a little better than you found it," Wayne recalls.

Helping others and improving his hometown of Dover are his passions. Together with his wife, Betsy, Wayne is working to benefit organizations in need now through a donor-advised fund at the Delaware Community Foundation. They have also provided for a charitable fund at the DCF in their estate plans. The Wayne and Betsy Holden Fund will enable their children to continue the family's tradition of giving even after they're gone.

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Reviewed by Richard A. Forsten, Esquire



If You're Happy and You Know It: *The Happy Lawyer*

By Nancy Levit & Douglas O. Linder (Oxford Univ. Press, 2010)

Why do lawyers seem so unhappy? Are they really all that unhappy compared to other professions? Are lawyers more inclined to be unhappy as compared to others; and, what is “happiness” anyway? Finally, if lawyers are, generally speaking, so unhappy, what can they do about it?

These questions, as well as many others, are the subject of *The Happy Lawyer, Making a Good Life in the Law*, by Professors Nancy Levit and Douglas O. Linder. Part science, part psychology, and part self-help manual, *The Happy Lawyer* is less about the law than life in general and finding a better perspective.

As a preliminary matter, lawyers do seem less happy when compared to other professions, including clergy, doctors, architects, engineers, airline pilots, and financial planners. Even housekeepers, butlers, and repair persons report higher levels of happiness. In fact, roughly 43% of lawyers say they are “very happy.” Not great, perhaps, but not too bad either. Or, so it seems. Other studies suggest things are not quite so rosy. The legal profession suffers from a much higher rate of depression and substance abuse than the general population. There is a fair amount of turnover in the legal profession, particularly at large firms among junior associates.

Personality may also play a role. Although extroverts outnumber introverts in the general population by three to one, in the legal profession, introverts outnumber extroverts. A career in law is probably more appealing to introverts than other professions, but, at the same time, introverts tend

to be more pessimistic, risk adverse, and have other traits which suggest they are going to be less happy than extroverts. Thus, in some respects, the legal profession could be said to face the proverbial chicken-and-the-egg problem. Are lawyers, as a whole, unhappy because they are lawyers, or do more people with a propensity for unhappiness become lawyers? The answer is probably a little of both.

Yet, when asked, most lawyers (three-quarters) will also say they are satisfied with their decision to become lawyers. So, there seems to be something of a mixed bag. On the one hand, lawyers are less “happy” than most other professionals, while on the other, lawyers report high levels of satisfaction. Happiness and satisfaction are not necessarily the same thing, of course, and one is rarely “happy” on a continuous basis, so the polling data may be suspect. But, even if most lawyers are satisfied by their career choice, frustrations remain, and the evidence suggests lawyers are less happy than the general public.

However, simply observing and polling lawyers about whether they are happy or not only begins to scratch the surface. Professors Levit and Linder spend time asking the philosophical question about what happiness is, and they also spend time describing brain chemistry. They look at what aspects of lawyering provide happiness and what leads to frustration. They spend a fair amount of time describing the “happiness toolbox”—those things that lawyers can do to achieve greater happiness and less frustration.

One of those tools is the downward comparison. Often, folks will compare

themselves to a person doing better than themselves, and it will gnaw at them and leave them feeling inadequate, unfulfilled, or frustrated. But, by shifting focus, one might just as easily feel at least some contentment. For example, researchers have found that bronze medal winners tend to be happier than silver medal winners at the Olympics. Why? Because silver medalists compare themselves to the gold medal winner, and feel frustrated they did not win. Meanwhile, bronze medalists take greater satisfaction in simply having medaled, realizing that most of their competitors did not receive any medal at all. Or, put more directly, if we only compare ourselves to those we think are doing better than us, we are going to be unhappy. Happiness is, in some respects, relative. As H. L. Mencken once observed, “A wealthy man is one who makes \$100 more than his wife’s sister’s husband.”

There are other tools available in the toolbox as well, many of which seem obvious, but nevertheless are worth repeating: finding work that plays to your strengths; taking control of your work by setting timetables and meeting them; personalizing your work space; and having strong connections with others. Indeed, of all the things that make lawyers happy, more lawyers come up with the same answer—people—than any other. Lawyers who interact regularly with colleagues and clients they like and trust are more likely to be happy than those who do not.

In addition to an individual’s own toolbox, the authors also look at ways in which law firms can promote happier, and therefore more productive, attor-

neys. Promoting interaction, providing autonomy, feedback, and many other strategies can lead attorneys to be happier in the role. Even office architecture and design can have an effect on happiness.

While parts of *The Happy Lawyer* may strike the reader as more of a self-help manual, there are surprises and insights throughout, and much of the book is thought-provoking. In the end, Professors Levit and Linder sum up their book in five short aspirations: (1) Find work that interests you; (2) Align your work with your values; (3) Balance your work and the rest of your life; (4) Deepen workplace relationships; and (5) Savor the small pleasures. These may seem like jingoistic clichés, but the authors put meat on the bones and do a good job of explaining and expanding these goals so they are more than simplistic points. Ultimately, of course, no one is ever going to be happy all the time; but, after reading *The Happy Lawyer*, maybe one will not be quite so unhappy either. 🕒



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Disciplinary Actions

INTERIM SUSPENSION: MARLEE JAMES BUCKSON

SUPREME COURT NO. 45, 2011. EFFECTIVE DATE: FEBRUARY 3, 2011

By Order of the Delaware Supreme Court dated February 3, 2011, Marlee James Buckson, a Delaware lawyer who was admitted to the Delaware Bar in 2008, was immediately suspended from the practice of law in Delaware, pending final disposition of attorney disciplinary proceedings. In its Order, the Court concluded that Ms. Buckson, an attorney formerly employed by The Lawson Firm, LLC, Rehoboth Beach, DE, had committed violations of the Delaware Lawyers' Rules of Professional Conduct and posed a significant threat of substantial harm to the public and to the orderly administration of justice.

A receiver for Ms. Buckson's law practice to protect the public was not appointed in view of the fact that she has no current clients and that all past clients are being represented by her former law firm. 

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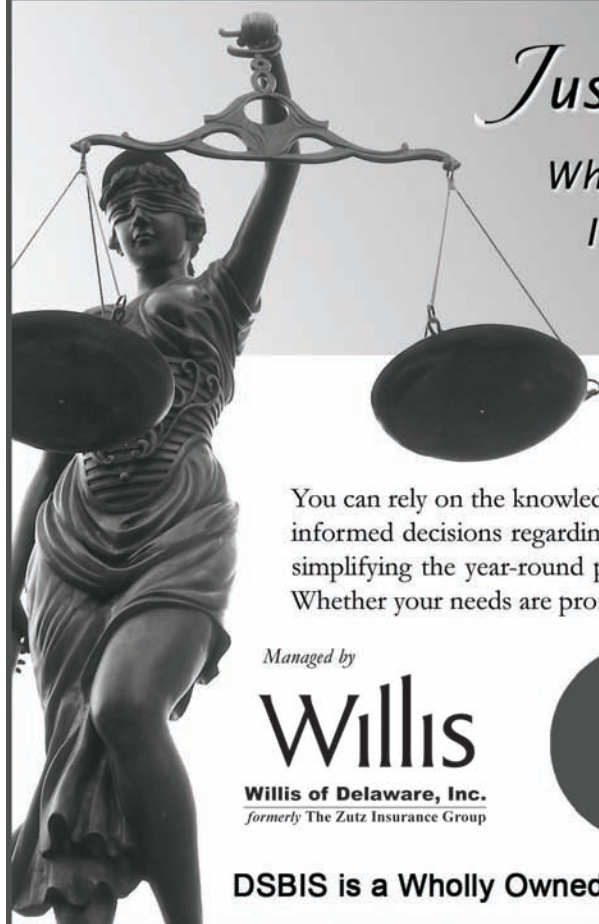
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The Judicial Palate

By **Ciro C. Poppiti III, Esquire**



Big Macs I Have Known

When in the course of human events, it becomes necessary for each of us to take stock of one's life, to analyze touchstones of the past and to ponder the path toward future success.

In that vein, this month, I mark fifteen years that I have not eaten at McDonald's.

Avoiding McDonald's has been an overt act on my part. It is a symbolic reminder to myself that I have changed lifestyles. Fifteen years ago, I had topped out at 252 pounds and had then begun to conscientiously diet and exercise. On that March day, I completed my first twelve-mile run, and in "celebration," I fought my way through a dark and stormy night, where at length, as the shades of the evening drew on, I found myself within view of the melancholy House of the Golden Arches. Not long after the celebratory meal, I realized that if I was committed to losing weight and keeping it off, I could never return.

And so, a love affair with a jealous mistress came dramatically to a close. But oh! how it went out with a bang, as my last Big Mac became the bellows and the fan to cool a gypsy's lust.

Yes, I remember that dinner with exact detail. For hors d'oeuvres, I started with twenty pieces of chicken McNuggets (the *family* size), heavily doused with a combination of barbecue sauce and sweet-and-sour sauce. My entrée was a Big Mac, overflowing with American cheese and encased in a sesame seed bun, paired nicely with two containers of french fries (Super-sized, *natch!*). For dessert, I devoured an apple pie—not the current baked

offering, but an old-school, hot-pocket, sugar-laden, so-piping-hot-it-had-a-caution-label apple pie. All washed down with a *Diet Coke* (I was after all trying to cut back), for a meal totaling approximately 3,000 calories.

My dinner partner, a good-looking brunette who would later become my wife, looked upon me with confusion, for from man to pig, and from pig to man again, it was impossible to say which was which. I was soon borne away by the waves of gluttony and lost in darkness and distance.

Now, in contemplation of that moment, I realize there are certain foods I could never, ever give up. To be sure, the list starts with extra-virgin olive oil, that green-golden elixir which makes everything taste better. As celebrity chef Mary Ann Esposito notes, "a drizzle of extra-virgin olive oil is all that is needed to satisfy even the most demanding foodie." I also love blueberries; few treats are better than diving into a big bowl of those indigo pearls. In slot three is gouda cheese; well, maybe gouda at 3A and brie at 3B. I was chagrined last year when *Wine Spectator* listed its top 100 cheeses and gouda was not to be found. Personally, I find that gouda pairs nicely with a wider range of wines than most other cheeses. Try it with some hummus, crackers and a French Bordeaux; you will thank me later.

On a final note with which I think many of you, dear readers, can identify: My weight continues to be a daily struggle. Yet, I beat on, a boat against the current, borne back ceaselessly, but with optimism toward reaching the open sea.

HIDDEN PUZZLE: This column contains seven phrases. Each phrase is part of the opening or the ending from a different work of literature. Identify each phrase and its famous work. For example, if you had spotted the phrase "Call me Ishmael" above, that, of course, is the opening to *Moby Dick*. The first three people who correctly identify at least five phrases and their famous works will win a selection of gourmet Belgian beers. E-mail entries to CCPoppiti@aol.com. The complete list of answers will be shared with only those who submit an entry, so you must play to be part of the game. ♣

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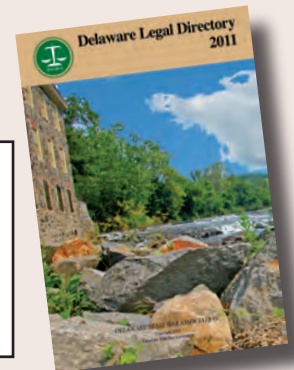
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