



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

NOMINATIONS SOUGHT FOR 2017 AWARDS P. 2

**2018 DELAWARE LEGAL
DIRECTORY CORRECTION FORM** P. 10

**NOMINATIONS SOUGHT FOR THE 2017
DISTINGUISHED ACCESS TO JUSTICE AWARDS** P. 37

Nominations Sought for 2017 Awards

The Delaware State Bar Association and the Awards Committee are seeking nominations for the following four awards* **:

Daniel L. Herrmann Professional Conduct Award
Outstanding Service to the Courts and Bar Award
Distinguished Mentoring Award
Government Service Award

These and other awards will be presented in a special Awards Luncheon in December 2017 at the Hotel du Pont.

Awards Description

Daniel L. Herrmann Professional Conduct Award

Awarded to a member of the Delaware Bar who, over the course of time, has demonstrated those qualities of courtesy and civility which, together with high ability and distinguished service, exemplifies the Delaware lawyer.

Outstanding Service to the Courts and Bar Award

Awarded to a Delaware lawyer or judge who, by exemplary service to the Delaware Courts and the Delaware Bar, has substantially assisted the courts and the Bar and has strengthened public trust and confidence in the courts in the state of Delaware and the administration of justice.

Distinguished Mentoring Award

Awarded to a Delaware lawyer or judge who, by distinguished mentoring of other Delaware lawyers (or future lawyers) over a period of many years, has served as an inspiration to and a model for those lawyers in striving for and maintaining the highest standards in their professional careers and in their community involvement.

Government Service Award

Awarded to a full-time government service employee in recognition of dedicated and distinguished contribution to the Administration of Justice.

**These are not necessarily annual awards. All or some of these awards will be presented only upon the recommendation of the Awards Committee and approval by the Executive Committee of the DSBA.*

*** Please note that previous nominations must be renewed to be considered.*

Delaware State Bar Association Awards Nomination Form

Name of Candidate: _____

Title/Occupation of Candidate: _____

Award: _____

Date: _____

Nominator: _____

Phone: _____ Fax: _____ E-Mail: _____

Firm: _____

Address: _____

Brief statement of reasons that candidate is deserving of Award (see above Award criteria). Please attach sheet if necessary.

Nominations should be submitted by **September 15, 2017** to Mark S. Vavala, Executive Director, e-mail mvavala@dsba.org or fax to (302) 658-5212.

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The *Bar Journal* is the independent journal of the Delaware State Bar Association. It is a forum for the free expression of ideas on the law, the legal profession and the administration of justice. It may publish articles representing unpopular and controversial points of view. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers, and all articles are subject to limitations of good taste. In every instance, the views expressed are those of the authors, and no endorsement of those views should be inferred, unless specifically identified as the policy of the Delaware State Bar Association.

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THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

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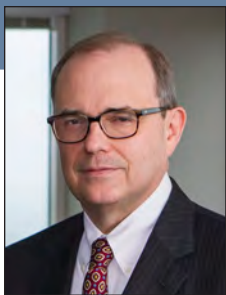
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Cover: Trap Pond State Park, Laurel, DE / Cover Photo Credit: © istockphoto.com/ zrfphoto



PRESIDENT'S CORNER

By Michael Houghton, Esquire

Step up, Lean in

Promoting Delaware Attorney Participation in Civic Affairs and Recognizing the Financial Contribution of the Delaware Legal Industry to the Delaware Economy

It is a privilege to serve as the new President of the Delaware State Bar Association. I have been a member of the Association's Executive Committee for 10 years and have learned a great deal from those who have served as outstanding Bar Presidents before me.

I want to thank my immediate predecessor, Mindy Clifton, for her outstanding work this past year as Bar President. What I hope to achieve builds on work Mindy and her predecessors have done. I will work hard for our Association and will need your help to deliver.

I'd like to tell you a little bit about myself. I am a Delaware native and live in Hockessin, in the suburbs outside of Wilmington. I grew up in Canby Park, on the outskirts of Wilmington, and attended St. Elizabeth's School for both grade school and high school. I attended the University of Virginia, undergraduate and law school, and upon graduating law school, returned to Delaware to clerk for the Court of Chancery, and then took a job with Morris, Nichols, Arsht & Tunnell where I have practiced law for the last 35 years. Staying in one firm for your entire legal career is unusual these days. But, I grew up at Morris, Nichols, met my wife, Leigh, at the firm, and found mentors who guided me — and also pushed me — into professional and civic experiences that I would not have without their encouragement. My practice for the last 25 years plus has involved representing companies in administrative law and legislative matters and also representing governmental entities. None of this is what I had planned to do with my legal career. Coming out of the Court of Chancery clerkship, I thought I would spend my career breathing the rarefied air available to a Delaware Chancery Court litigator. But, being pushed into other types of work led me to rewarding professional and personal experiences I would never have had if I had just litigated in Chancery Court. The lesson for younger practitioners is that I don't think you can plan your career; things happen that send you down other paths and

provide you experiences different than what you anticipate. In my case, those experiences made me a different kind of lawyer and person, one playing a much different role in the Delaware legal, business, public policy, and political community than many of my contemporaries in the Bar.

“What is my point? It's that we should all be open to opportunities beyond those we plan for, open to learning and serving our community, whatever age we are.”

What is my point? It's that we should all be open to opportunities beyond those we plan for — open to learning and serving our community, whatever age we are. After 35 years of practice, I'm still learning and trying to be of service to clients, folks in the Bar, and people I meet in organizations and groups to which I belong. This year, I want all Association members to look at your professional experience and interests and — in ways that work for you, consistent with the demands on your time and interests you have — deploy your experience and interests to help your profession and community. Newer members of the profession are looking for mentoring, practical professional guidance, and a way to serve the community, as well as ways to network, build business, and make friends. The Association can be a resource. It can add value by identifying opportunities for mentoring, networking, and civic and community service. I want to start building that resource within the Association this year.

Delaware's economy is not driven these days by just a handful of bigger businesses. Companies have consolidated or are gone. As a result, the level of support traditional businesses

offer the community has decreased, but the need for legal services for the indigent, membership on not-for-profit boards, advocacy for improvement in our educational, criminal justice, and mental health communities — to name just a few — grow constantly. But, these new challenges are creating a new energy among business and legal professionals in the State. All of us — and younger professionals in particular — have more chances to now engage in the civic life of our state, consistent with the Delaware lawyers' tradition of public service that has existed for generations. The recent Bench and Bar Conference theme of the "Citizen Lawyer" is not a moldy anachronism. It is a current opportunity for Delaware lawyers to help the community in New Castle, Kent, or Sussex County in which we live and work.

So, one of my initiatives is creating a committee on Civic Participation and *Pro Bono* Opportunities. This is not a sixth grade civics class project. This will take serious analysis and sweat equity. I want to identify ways for all lawyers to offer meaningful service to our community, in ways that fit their interests, their lifestyles, and their work demands. A cornerstone of Delaware attorney service has been *pro bono* work through those agencies in the State that provide legal services for those in need. I fully support these worthwhile, necessary services. But, I also want to engage lawyers in civic, social, governmental, and political service. We need to understand what opportunities current Association members find appealing. The Committee will survey Delaware attorneys to define

"I want to identify ways for all lawyers to offer meaningful service to our community, in ways that fit their interests, their lifestyles, and their work demands."

their interests, assess the time they have available, and get meaningful input on the ways they can engage. The Committee will reach out to government agencies and groups that serve our communities to identify needs and opportunities. I will be asking this Committee to produce a preliminary report by the end of 2017 and a final report by May of 2018. I will also ask this Committee to host at least one "gathering" this year, allowing organizations to meet with interested attorneys in a relaxed, social setting and educate us about service opportunities. The goal is to create a sustainable framework to promote attorney service to Delaware communities.

More senior lawyers and their firms should encourage younger lawyers to get involved in the community as a way of promoting networking and business development skills and providing younger lawyers a sense of fulfillment outside of the normal flow of paying work. Community engagement builds a vibrant social, cultural, and civic environment which is attractive to current attorney employees as well as recruits we are trying to convince to live and work in Delaware.

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Delaware lawyers can make a living and make a difference in this state by both serving our community and networking with colleagues and building their careers. I'm not just stringing platitudes here — those who know me know I like to get things done.

I am asking you to engage and support what I see as an old idea ready to be made new again — civic engagement by Delaware lawyers.

My second initiative is the commissioning of a study of the economic contribution the Delaware legal community makes to the Delaware economy. We know that, based on Delaware corporate and entity laws and our commercial, bankruptcy, and intellectual property practices, Delaware courts and lawyers create an economy which contributes significantly to Delaware's bottom line. But, there is more to the story. While our business courts and entire judicial system, and those who work in and around it, support the Delaware economy, do those people who fund our institutions and the infrastructure supporting them realize the value the legal economy brings, when required capital or technology expenditures or needed appropriations for personnel are at risk? The recent joint study of the Delaware courts conducted by the Delaware State Bar Association and the Delaware Chapter of the American College of Trial Lawyers shows that there is much that works well with the Delaware justice system, but there is also much that can be improved upon. The Delaware judiciary has encouraged and reacted favorably to this analysis — but some of these recommendations come at a cost. For Delaware policymakers, legislators and opinion leaders to fully appreciate the value to our state of the legal community — including the judiciary and the related parts of the legal economy — a thorough, detailed

assessment is required. I will work with the Delaware judiciary and other partners in State government, and in the private sector, to find the resources to fund this analysis. The study will be used to convince opinion leaders and decision makers in the State that the people, and the physical infrastructure, supporting the administration of justice in the State must be adequately resourced. This has to happen if the State's national business reputation is to be maintained and if businesses are to physically locate and grow in Delaware based, in part, on a system of regulation, permitting, licensing, and review that is prompt and efficient.

As I said recently at the Bench and Bar Conference, it is time for our profession to step up and lean in and advance the interests that we have based on the significant value we bring to the State as one of its leading industries. Through volunteer service, as citizen lawyers and *pro bono* participants, and by reminding the State all that our profession brings to Delaware, we can improve the profession, improve the State and provide a more personally fulfilling role for Delaware lawyers.

Thanks for taking the time to read this. I want you to contact me with any questions or concerns or ideas. I am looking forward to this year. And, thanks for allowing me to serve you as your President. 🏛️

Michael Houghton is the current President of the Delaware State Bar Association and is also Chair of the Delaware Economic and Financial Advisory Council ("DEFAC"), served as President of the Uniform Law Commission, serves as a member of the Boards of the Delaware Bar Foundation, the Delaware State Chamber of Commerce, the Delaware Public Policy Institute and the Pete du Pont Freedom Foundation. Mike is a partner with the law firm of Morris, Nichols, Arsht & Tunnell LLP. He can be reached at mhoughton@mnat.com.

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EDITOR'S PERSPECTIVE

By Benjamin A. Schwartz, Esquire

Three Forty-Something Delaware Lawyers and a Fourth-Grade Field Trip

Last month, I had the pleasure of chaperoning my daughter Josie's fourth-grade class field trip to Philadelphia. Josie is nine years old. Thankfully, she isn't yet too cool to sit next to me on the bus.

As part of the field trip, Josie's class visited the National Constitution Center. The Constitution Center is an amazing place. In the auditorium, we started our day with a presentation on how the Constitution came to exist, and then we moved into Signers' Hall.

Signers' Hall is a room full of bronze statues of the signers of the Constitution. In Signers' Hall, we ran into a couple of Delaware lawyers with whom you may be familiar — Richard Bassett and Gunning Bedford.

Bassett was 42 years old when he was sent to Philadelphia as part of the Constitutional Convention in 1787. At that time, he was practicing law in Dover. Bedford was 40 years old, and was at the time practicing law in Wilmington.

The three of us have a lot in common (if you disregard the fact that they signed the United States Constitution and I did not). You see, like them, I'm in my early forties (42), I am a Delaware lawyer, and I practice law in both Dover and Wilmington.

Josie and I waited until there was no one else in Signers' Hall — just the signers and us. All of her classmates and teachers had cleared out and moved on to their next activity. It was then that I was able to have the most interesting discussions with Richard and Gunning.

In fact, I interviewed them for this article. Josie took notes in her spiral notebook and we typed up the conversation as best we could remember it and reconstruct it from her notes when we got home from the trip.

I hope you will enjoy our little question and answer session. Perhaps it will inspire you to take a ride up to Philadelphia and meet Bassett and Bedford and the rest of the signers for yourself.

Gentlemen, perhaps you will permit me to take a moment of your time to interview you for the *Bar Journal*?

Bassett: *Bar Journal*? We have a *Bar Journal* now?

Yes, we have a monthly magazine that goes out to all the members of the Delaware State Bar Association. First question: what's the biggest change you have seen in the practice of law between the late 1700s and now?

Bedford: I would say, the invention of the horseless carriage. That one invention seems to have given rise to more litigation than anything else I can think of.

Automobile accidents?

Bedford: Yes, it's incredible. It seems that half the lawyers in the three lower counties today are handling car accident cases. Why on earth would one invent a machine and permit the general citizenry to operate it without having first invented an anti-collision system?

Well, I think when they invented the car, they didn't realize that cars would be crashing into each other. They just considered how much faster you could...

Bassett: Unacceptable! We had horses. Horses have horse sense. They don't crash into each other. When we rode horses, we did not need to pay strict attention to where we were going. The horse is smart enough not to bash into other horses and carriages. It is abundantly foreseeable that by replacing the horse with a relatively inattentive and distractible person, you are going to have multitudes of accidents. And, we got places plenty fast by horse!

So, there were no horse-related accidents resulting in personal injury litigation?

Bedford: Practically none. A broken fence now and again, but none of this collision business resulting from careless and imprudent drivers. It was so much safer in our day. Horses don't text and drive.



Bassett: Why would you invent a motorized carriage without figuring out how to install within it the horse sense to avoid collisions?

Bedford: That's my point, precisely.

Well, you know, they are working on self-driving cars, which should be "smart" enough to avoid colliding with one another.

Bassett: We will have come full circle then. In my day, I could start my horse on the path to the courthouse and lay down in the carriage and take a satisfying nap. After a few years, any horse can be self-driving (as long as you don't pass by an apple orchard).

Alrighty then. Here's my next question: What advice would you give to a young lawyer today?

Bassett: Learn how to try cases to a jury.

Bedford: Here we go again with the jury trials.

What's wrong with jury trials? I love jury trials.

Bassett: You know, I don't like to toot my own horn, but I came up with the whole "Trial by jury shall be as heretofore" thing in the Delaware Constitution. We really struggled with trying to come up with some language that would be simple and elegant and preserve the right to trial by jury.

Why didn't you just say something like, "Delawareans have a right to trial by jury?"

Bassett: Because, it's more than just having a jury trial. You get into questions of how many people are going to be on the jury, how many alternates you're going to have, whether the verdict will be unanimous, whether you can substitute an alternate once deliberations are underway — there's a lot to it!

Bedford: I hear they're bringing back Rule 16.1 arbitration in Superior Court. That's exciting.

Bassett: I fought for that "shall be as heretofore" language.

Bedford: One would think that as a former judge, one would gain a greater appreciation of the efficiencies attendant to arbitration and have less desire for the complications of jury trials.

Okay, so jury trials are important. Young attorneys should learn to try cases to juries. I agree. Mr. Bedford, what's your advice to young lawyers?


Bedford: Don't waste a week of the Court's time, your time, and your clients' money in a jury trial when you can get to the same place in a day with an arbitration.

Bassett: Isn't that just like saying don't waste time driving a horse and carriage when you can get to the same place in a motorized automobile? You might get there quicker, but you may find you lose the collective good sense of the jury and a "collision" may result.

Bedford: I suppose Schwartz is going to tell us not to worry, they will next invent self-driving juries!

• • •

Josie's teacher came back in to Signers Hall, looking for us. "The bus is about to depart," she said, with a stern look on her face. I patted each of my brothers at the Bar on their shoulders and said a quick good-bye. I'll be back.

To learn more about the National Constitution Center, and about Signers' Hall, go to www.constitutioncenter.org. 

Bar Journal Editor **Ben Schwartz** is Managing Partner of Schwartz & Schwartz, where he helps people recover after catastrophic injuries and accidents. He is a frequent speaker, writer, and blogger. For more information, go to facebook.com/schwartzandschwartz or email ben.schwartz@schwartzandschwartz.com.

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In order to have the correct information published in the 2018 Delaware Legal Directory, corrections must be received no later than September 15, 2017 – no exceptions!

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DEADLINE FOR LEGAL DIRECTORY CORRECTIONS AND PHOTOGRAPHS: SEPTEMBER 15, 2017

TOP 5 THINGS LAWYERS CAN LEARN FROM GAME OF THRONES

- 1 **Be Patient.** Arya Stark is a perfect example of a character who waited until the right moment to seize what she wanted, although it took many bouts of impatience before she learned this lesson.
- 2 **You can still be victorious with your integrity intact.** Brienne of Tarth, John Snow, Tyrion Lannister, and a handful of others have shown that sticking to your morals doesn't mean you lose.
- 3 **You can use the power that results from being underestimated.** A new lawyer can sometimes be Danerys, looking like she is small and weak, but having a couple of dragons in her briefcase.
- 4 **Women can succeed in a male-dominated world.** Cersei. Lady Tyrell. Danerys. The Sand Snakes. Asha Greyjoy. Too many to name. Women can get the job done and be a force to reckon with.
- 5 **Be positive despite your situation and be willing to help those in need.** Hodor. Okay, so (spoiler) it may not have worked out well for him, but he is a hero and sometimes we have to take one for the team.



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"DSBA provides me with valuable opportunities to stay in touch with so many friends and colleagues, and meet new ones. I consistently learn new things about practice, law, and life in general from our interactions. The social functions are just as important as the CLE seminars. I have been a presenter or an attendee at innumerable functions and seminars over the past 30 years, and always take back at least two or three practical and valuable lessons which I can implement right away. I am privileged to receive many personal injury referrals from my DSBA colleagues, and reciprocate in other practice areas, because of our unique ability to get to know and trust each other through DSBA."

Illustrations by Mark S. Vavala

Would you like to share why you belong to DSBA? Please let us know what DSBA membership means to you! Email Rebecca Baird at rbaird@dsba.org.

Something to Share?

Send brief member news and notices for DSBA Happenings to Rebecca Baird at rbaird@dsba.org. Please send announcements by the 15th of the month prior to publication to guarantee inclusion.

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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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CALENDAR OF EVENTS

September 2017

Thursday, September 7, 2017

The Second Movie Night at DSBA 2017: *And Never Let Her Go*
With the key players of the Capano Trial

1.0 hour CLE Credit

Delaware State Bar Association, Wilmington, DE

Tuesday, September 12, 2017

The First Amendment and Lawyer Advertising and Marketing
With Dean Rod Smolla

2.0 hours CLE credit in Enhanced Ethics

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, September 14, 2017

Fundamentals of Lawyer-Client Relations

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE,

Webcast to Tunnell & Raysor, Georgetown, DE

September 26 and 27, 2017

Delaware Corporate Law Anniversary Symposium

9.5 hours CLE credit

Hotel du Pont, Wilmington, Delaware

Friday, September 29, 2017

Supreme Court Review 2017

3.3 hours CLE credits

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

October 2017

Wednesday, October 4, 2017

Family Feud: What You Need to Know About Bankruptcy & Family Law Issues

1.5 CLE credits including 0.5 Enhanced Ethics credits

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, October 18, 2017

Fundamentals of Family Law

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, October 25, 2017

LOMAP Software Roundtable

2.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Visit www.dsba.org/cle for a complete list of upcoming CLE Seminars.

SECTION & COMMITTEE MEETINGS

August 2017

Monday, August 7, 2017 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Wednesday, August 9, 2017 • 12:00 p.m.

LGBT Section Meeting

Location TBD

September 2017

Monday, September 11, 2017 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Wednesday, September 13, 2017 • 12:00 p.m.

LGBT Section Meeting

Location TBD

Tuesday, September 19, 2017 • 2:30 p.m.

Executive Committee Meeting and Dinner

Hagley Museum Soda House, 200 Hagley Creek Road, Wilmington, DE

Thursday, September 21, 2017 • 4:00 p.m.

Elder Law Section Meeting

Boudart & Mensinger, LLP, 2300 Pennsylvania Avenue, Suite 5B, Wilmington, DE

Please contact Janice Myrick at jmyrick@dsba.org or (302) 658-5279 to have your Section or Committee meetings listed each month in the *Bar Journal*.

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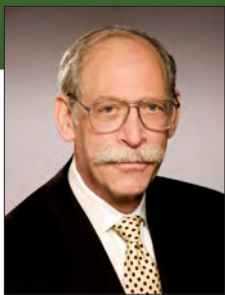
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TIPS ON TECHNOLOGY

By Richard K. Herrmann, Esquire

Courtroom Technology Back to Basics

As I peer back through the looking glass, I am reminded I taught an evening class at Delaware Law School in 1980, from 7:30 p.m. to 10:30 p.m. To keep the class engaged, I used graphics whenever possible. At the time, the most advanced means of communication was the overhead projector. The device permitted the professor to display any document, photocopied on clear acetate, to all the students simultaneously. This provided advantages over a traditional pure lecture. We could talk about the language of a paragraph, while seeing the document as we discussed it; we saved a great deal of time and avoided the interruption of having to distribute pages during the class; and we could mark up the language, and see the changes in real time, without damaging the original. Unfortunately, overhead projectors required a significant degree of darkness. Since the class was 3 hours long and stretched into the evening, I would have to turn on the lights every 15 minutes to be sure everyone was still awake. On occasion, my student assistant would have to turn on the lights to make sure I was awake.

I found the use of the overhead projector in 1980 a good communications tool. And, looking back on the experience, I learned two things: Don't teach a class until 10:30 p.m. with the lights off, and while technology may change, the purpose of its use often remains the same.

Nationwide, courts are spending incredible sums to add new technology to courtrooms and have been doing this for years. In many venues, the lawyers have not been trained on current technology and, over the years have been hesitant to embrace its use in hearings or trial. As a result, courtroom time is not being used as effectively and efficiently as it could. In other words, the courts and the public are not seeing their return on investment as they should.

There is a solution. We can go back to our roots — the basics. Most courtrooms outfitted with technology have a device known as a document camera. It sits on a stand next to the podium. Think of it as an old-fashioned overhead projector on steroids. You can display any document or device (such as a cell phone) from it and you do not have to turn off the lights. Its use requires no training and no court IT person is necessary. Frequent use of the document camera provides the same benefits available in 1980 with the overhead projector. The court will save a great deal of time and avoid the interruption of having to distribute exhibits during the hearing or trial. And, counsel or the witness can discuss an exhibit while it is being displayed to the trier of fact, whether a judge or jury.

Although referring to the document camera as “technology” may alienate some lawyers and put others at bay, it is in fact “technology.” If it is helpful, we can call it something else. Whatever it takes. The document camera has been available in many courtrooms far too long without adequate use, particularly in today's culture of instant



visualization via mobile device and social media. I challenge members of the Bar to take advantage of this opportunity whenever its use is appropriate. And, I respectfully submit to those on the Bench that you have the power. We at the Bar will always attempt to rise to the court's expectations. The use of the court's resources will be embraced more quickly, and used more frequently, when the lawyers are aware this is the preference of the judge presiding over the matter.

So, to all of you on the Bench and at the Bar, please join me by embracing this basic form of technology and I'll keep the lights on for you. ☺

Richard K. Herrmann is partner at Morris James LLP, handling many forms of complex litigation, including intellectual property, commercial, and technology. He can be reached at rherrmann@morrisjames.com.

"Tips on Technology" is a service of the E-Discovery and Technology Law Section of the Delaware State Bar Association.

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E-Discovery: It's Like Déjà Vu All Over Again

By Ryan P. Newell, Esquire

When it comes to electronic discovery, many litigators repeatedly find themselves wrestling with questions that seemingly appear in every case. When did the duty of preservation arise and was electronically stored information preserved? How much discovery is each party entitled to? How expensive will e-discovery be for my client? And, because there is no such thing as a perfect discovery process — have there been errors in the discovery process that might result in sanctions or that will prompt protracted saber rattling and threats of sanctions (which can often be as expensive to the client as sanctions)? The consequences arising from these questions are now routine parts of litigation — extensive letter writing campaigns, meet and confers lacking in transparency, but overflowing with invectives and threats of judicial intervention, and escalating discovery costs. As the great philosopher Yogi Berra once said, “It’s like déjà vu all over again.”

But, it doesn’t have to be. Instead of dealing with e-discovery in a reactionary posture once litigation has arisen or is reasonably likely to, parties may be wise to address e-discovery before there is a dispute. For contracting parties, they can address e-discovery in the same manner they address choice of law, forum selection, and damages. Likewise, companies can plan ahead with e-discovery terms in their governance documents.

By addressing these issues affirmatively in advance of any disputes, parties can inject more certainty into the

discovery process and reduce the time and expenses involved. For a thorough discussion of how parties can effectively do so, please see Jay Brudz & Jonathan M. Redgrave, *Using Contract Terms to Get Ahead of Prospective Ediscovery Costs and Burdens in Commercial Litigation*, 18 RICH. J.L. & TECH. 13 (2012). In their article, Brudz and Redgrave provide sample terms that can be readily implemented. So, before enduring that déjà vu feeling all over again, consider some of the terms suggested by Brudz and Redgrave, such as the following:

Discovery

The Parties¹ recognize that the costs of litigation, arbitration, or any other mode of dispute resolution can be substantial. Each Party agrees that in the interests of minimizing dispute resolution costs, speeding resolution time, and decreasing uncertainty of costs, it may be desirable for both Parties to waive certain rights to which it would otherwise avail itself. Accordingly, the Parties agree, with respect to any litigation, arbitration, mediation, or any other claim arising under or related to the Agreement.

Notice of Dispute

“Notice of Dispute” means a notice by one Party to the designated notice contact of another Party, setting forth the substance of the dispute, the timeframe of the relevant facts, a listing of initial known participants, the amount in dispute, and making specific reference

1. Please see the full article for definitions of the capitalized terms.

to the Agreement and the preservation obligations specified herein.

• • •

Within a reasonable time after receipt of a Notice of Dispute, the Parties shall:

i. Issue a Legal Hold Notice to its current employees directly involved with the subject matter of the dispute directing those employees to preserve relevant documents in their possession (with notices sent to additional current employees directly involved as those additional employees are identified);

ii. Take reasonable steps to preserve responsive Documents in the custody of current employees subject to a Legal Hold Notice who are terminated or transferred; and

iii. Take reasonable steps to preserve responsive Documents located in Server Based Systems.

• • •

No party is obligated to take preservation efforts prior to receiving the written Notice of Dispute and the Parties agree that they will not argue that any failure to preserve information prior to receiving the written Notice of Dispute is culpable, wrongful, or sanctionable in any fashion.

Determination of Individual Custodians

The Parties agree that:

i. In matters where the Claim Amount involves less than \$5 Million, each Party shall only be required to collect, search and produce Documents from no more than five

“Instead of dealing with e-discovery in a reactionary posture once litigation has arisen or is reasonably likely to, parties may be wise to address e-discovery before there is a dispute.”

(5) Individual Custodians directly involved in the dispute.

ii. In matters where the Claim Amount is greater than \$5 Million, the collection and production shall be limited to no more than twenty (20) Individual Custodians.

iii. The Requesting Party shall be entitled to identify the Individual Custodians specified in paragraphs i. and ii. above from whom documents are to be collected, by name or job responsibility.

iv. In the event that a Producing Party voluntarily produces Documents from an Individual Custodian not designated by a Requesting Party pursuant to paragraphs i. and ii. above (i.e. to support its own claims

or defenses), such Producing Party may be required, upon request of the Requesting Party, to collect, search and produce Documents from such Individual Custodian.

• • •

Absent a claim of fraud, misrepresentation, or bad faith supported by clear and convincing evidence, no Producing Party shall be liable for, and no Requesting Party shall seek any remedy for spoliation, adverse inference instruction or other sanction from any Producing Party provided such Producing Party has complied with its obligations under this Section.

Indemnification

If any Requesting Party seeks to compel a Producing Party to require greater

preservation, collection, or production requirements than are set forth herein (or seeks relief based upon the other party's failure to preserve, collect or produce documents beyond the obligations contained herein), or otherwise breaches any of the provisions of this Section, or challenges the enforceability of any provisions of this Section, the Requesting Party shall indemnify the other Party for any costs associated with defending against such efforts and any costs incurred as a result of any increased requirements that may result from such efforts, including all reasonable legal fees, outside vendor costs, and internal expenses associated with the collection, review, redaction, and production of such documents. Ⓢ

Ryan P. Newell is a Partner at Connolly Gallagher LLP, where he focuses on commercial and intellectual property litigation and serves as Chair of the Commission on Law & Technology's E-discovery working group.



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ETHICALLY SPEAKING

By Charles Slanina, Esquire

Winding Down a Law Office or Legal Career

There comes a point in almost every attorney's career when it is time to close shop. It can be an attorney closing an office or dissolving a firm to practice law in a new association. It can also be the result of a retirement.

This month's "Ethically Speaking" answers Frequently Asked Questions in both situations.

Question: Do I really want to retire?

First, decide if you really *want* to retire. Review Supreme Court Rule 69 to consider your options. "Retirement" has some advantages. There is an assessment exemption. No more Continuing Legal Education requirements. You won't get appointed by the court to perform *pro bono* work, but you can still volunteer services to the listed agencies.

But, it may be easier to retire than return. The Court may require proof of moral qualification and legal competency before permitting a return to active status. That evaluation can include a referral to the Board of Bar Examiners.

Another downside of "retirement" status is that you cannot otherwise practice law. No wills for family or friends. Probably no referral fees or fee sharing either.

Question: Are there other options?

Yes, members of the Bar may also go out on disability, inactive, or Emeritus status. Attorneys considering one of these other options should carefully review Rule 69 to determine what those membership categories permit and prohibit.

Question: Sounds great! How do I become "retired?"

Attorneys seeking retirement status must apply to the Clerk of the Supreme Court for a certificate.

Question: What do I need to do before I retire?

Before sending the application to the Court referenced above, notify all of your current clients with active matters of your intent to retire. Make sure that the notice provides adequate time for the clients to obtain replacement counsel and that any required motions to withdraw are filed and granted, or substitutions of counsel are provided to the Court.

Florida and Virginia are the only two states with Rules providing guidance on an attorney's responsibilities to clients when leaving a practice or dissolving a firm. In the absence of similar, local guidance, clip and save this column and the April 2011 "Ethically Speaking" article, "Help Your Practice Outlive You," with additional steps to take to help your practice either go on or wind down without you. Also consider ABA Formal Opinion 99-414 (September 8, 1999) *Ethical Obligations When a Lawyer Changes Firms*.

Question: What do I do with my files?

This is probably the most frequently asked of the frequently asked questions. Retiring attorneys often face the daunting prospect of dealing with decades of closed files of former clients in inactive matters. Delaware Professional Conduct Rule 1.15(d) requires attorneys to preserve the financial books and records relating to a law practice for at least five years. Otherwise, there is no specific direction with regard to file retention. Generally, the need to retain files is based on the content of the files. If the client was provided copies of the documents during representation or if there are no originals or client property of value in the files, the retiring attorney may attempt to return the files to the client, or a more practical solution may be to confidentially destroy the files.

Question: Should I keep insurance?

Prior to retirement, you should talk to your insurance agent or broker about coverage for claims made after your retirement. "Tail" insurance should be kept in effect for at least the applicable statute of limitations.

Question: What do I do about my bank accounts?

Whether an attorney is planning retirement (or one of the other categories) or dissolving a practice as part of a merger or some other new association with other attorneys, you should close your Rule 1.15A attorney operating and attorney escrow accounts. This is probably the step that results in the most attorney disciplinary issues. Too frequently, in an effort to "zero balance" the escrow account, attorneys will overdraft the

“If you simply abandon your practice or fail to wind it down properly, you can face significant disciplinary liability.”

account. Accounting errors can result in attorneys overpaying themselves or over-reimbursing clients for retainer balances. Banks also can cause problems for attorneys during this wind-down process. Banks will sometimes mistakenly charge the escrow account for stop payment requests, cashier's checks, and other fees. These errors, which might not have resulted in an overdraft while the account balance was high or when the attorney still has firm funds in the account as permitted by Rule 1.15(a), may result in an overdraft notification to the Lawyers' Fund as the account balance dwindles.

Question: Do I really want to close my practice?

Have you discussed your plans with the attorney you listed on your Annual Registration Statement as the person who will take over your practice? Also, don't forget that Rule 1.17 permits the sale of a law practice. That Rule provides that a lawyer or law firm may sell or purchase a law practice or an area of law practice including good will. However, it does require that the seller cease the private practice of law or at least the area of practice that is sold.

Finally, there are lots of purchase agreements available in which attorneys nearing retirement bring on new associates who assume the practice over a period of time in exchange for

a percentage of the accounts receivable or profits of the firm. That percentage may end after a fixed period or be reduced each year until the practice is "purchased."

Question: What happens if I don't make any arrangements for my practice after I'm gone?


If you simply abandon your practice or fail to wind it down properly, you can face significant disciplinary liability. If you leave your practice by death or incapacity without making proper arrangements, your practice will likely be placed in the hands of a Receiver.

Conclusion

With proper planning, the firm's clients, the courts, the public and your financial interests can all be served in the course of closing your practice and winding down your career.

Have a great summer!

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.

"Ethically Speaking" is available online. The columns from the past three years are available on www.dsba.org. 

Charles Slanina is a partner in the firm of Finger & Slanina, LLC. His practice areas include disciplinary defense and consultations on professional responsibility issues. Additional information about the author is available at www.delawgroup.com.

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The Women and the Law Section celebrated its 40th anniversary and honored Section co-founders Mimi Boudart, Esquire, and Judge Aida Wasserstein by establishing awards in their names. Judge Susan Del Pesco (retired) introduced the honorees and Justice Randy J. Holland (retired) presented each founder with the inaugural award.



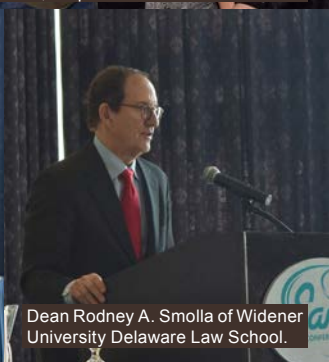
Natalie S. Woloshin, Esquire; Yvonne Takvorian Saville, Esquire, and Kathleen M. Miller, Esquire.



Natalie Wolf, Esquire; The Honorable Natalie J. Haskins; and Natalie S. Woloshin, Esquire.



CLE Panel entitled *How to Make It Rain* with Moderator Kathleen M. Miller, Esquire; and Panelists Victoria K. Petrone, Esquire; Elizabeth S. Fenton, Esquire; J. Kate Stickles, Esquire; and Rebecca S. Beste, Esquire.



Dean Rodney A. Smolla of Widener University Delaware Law School.

PA Executive Deputy Attorney General Advocates for Work and Pay Equality at 25th Annual Women and the Law Section Retreat

By Loren R. Barron, Esquire

Sara Manzano-Diaz, Executive Deputy Attorney General of Pennsylvania, and head of the Public Protection Division, spoke to a sold-out crowd at Delaware's 25th Anniversary Women and the Law Section Retreat on March 4, 2017.

Previously, Manzano-Diaz, who received her Juris Doctor from Rutgers School of Law, was nominated by President Obama to serve as the 16th Director of the Women's Bureau of the United States Department of Labor, the only federal agency mandated to protect women in the labor force. Her vision in that role was to empower working women nationwide to achieve economic security.

In the spirit of Women's History month, Manzano-Diaz urged the women lawyers in the audience to "celebrate the trailblazers in the community" and "not take for granted the journey of women." She encouraged women leaders to look at women achievers and learn from them how women have struggled and overcome challenges and consider how their methods

can impact us all. "We are standing on their shoulders," she exclaimed, "and we have our own personal role in this journey."

Manzano-Diaz described the women trailblazers in her own family — her mother was smart and her grandmother was strong — resulting in her becoming the "bold one." Her grandmother survived extreme poverty in Puerto Rico while raising ten children. Her own mother was illiterate due to lack of schooling.

Manzano-Diaz, however, raised herself up from her working poor family living in a one room apartment with a public bath and public kitchen. She recalls the great difference that public housing policies made in her childhood when her family was able to move into housing with its own bathroom and kitchen. As a child, she served as her family's interpreter and advocate just to get their basic needs met. While she dreamt of becoming a lawyer, no one else believed such a goal could be possible for a Puerto Rican woman. Yet, she always believed.

The concerns and statistics Manzano-Diaz shared regarding women in the

profession include the fact that, according to the *Legal Intelligencer*, only 25% of law firm lawyers are women and less than 10% are partners. She stated that while 72 million women in the United States were in the workforce, their influence is still not felt. She shared that the United States is one of only two countries in the world that does not have mandatory paid leave for new moms.



Keynote Speaker Sara Manzano-Diaz

The pay gap between men and women was one of the foremost concerns that Manzano-Diaz discussed. This gap is wide with women making approximately 70 cents for every dollar that men make. The statistics are even worse for African American women who are making 68 cents to the dollar and for Latinas who are making only 59 cents to the dollar. She provided that the result of this pay gap is the loss of income over an entire career of nearly \$500,000 to \$854,000. Add to this gap the fact that many women are the sole bread winners and the result is quite startling. Manzano-Diaz highlighted the fact that even professional women are affected by the pay gap with women lawyers making only 86% of what male attorneys make causing a ripple effect: the neighborhood one can live in, the schools one's children can attend, and the experiences one's family can enjoy. She mentioned, too, the "multi-layered bias in the workplace" with women of color often "cloaked in invisibility" and mistaken for staff.

Manzano-Diaz urged all in attendance to work to close the pay gap and emphasized that in order for this to occur women lawyers would need to push the law firms into adopting family-friendly policies without which many women lawyers leave their firms. She further reminded those in attendance of the subtle discrimination in law firms: the lack of women on compensation committees, the lack of women in client development meetings, and failure to give women credit for their work. She also encouraged women to purge their fear of asking for money, demanding credit when due, and insisting on negotiations with their bosses.

Finally, and most urgently, Manzano-Diaz advised all to push hard for the Equal Rights Amendment and to vigilantly pursue legislators on this issue because the ERA is the most critical means by which women can achieve more economically in this country. She exclaimed, "We must kick the door open so that we can keep it open." 🚪

Loren R. Barron is a Delaware litigator at Elzufon Austin & Mondell, P.A. and can be reached at lbarron@elzufon.com.

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DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

Chilling Out vs. A Chilling Reality

One late afternoon, a well-dressed, attractive female attorney stopped by my office. It was not long before the attorney, who I will refer to as Jane Doe, lapsed into what seemed at the time to be a very private confession. Suddenly and without warning, Jane leaned across my desk and whispered, “I think my drinking has gone beyond chilling out and that I might have crossed the line.”

It seems that Jane had a habit of “chilling out” by drinking wine late at night, alone, after a long day of work. She confessed, “In the beginning, I would pour one glass of wine; then suddenly that one glass of wine turned into a hardy tumbler of wine; and soon the hardy tumbler of wine became a bottle of wine, every night.” Finally, Jane asked: “Does my chilling out have a chilling reality?”

Recent studies suggest women may be taking their relationship with alcohol too lightly. Soon, there may be as many female individuals diagnosed with alcohol use disorders as male individuals. According to the National Institute on Alcohol Abuse and Alcoholism:

Women’s drinking patterns are different from men’s — especially when it comes to the type of beverage, amounts, and frequency. Women’s bodies also react differently to alcohol than men’s bodies. Subsequently, women face particular health risks and realities.

Clearly, women should be aware of the health risks associated with drinking alcohol especially because most women drink at least occasionally, and many women drink a lot.

Women in Young and Middle Adulthood

There is a growing body of research linking as few as two drinks (or even less) a day to health problems and showing that women are much more vulnerable than men to alcohol-related disease. Evidence supports that women start to have alcohol-related problems at lower drinking levels than men do. One reason is that, on average, women weigh less than men. Alcohol resides predominately in body water, and pound for pound, women have less water in their bodies than men do. So, after a man and woman of the same weight drink the same amount of alcohol, the woman’s blood alcohol concentration will tend to be higher, putting her at greater risk for harm. Other biological differences, including hormones, may contribute as well.

According to “Alcohol: A Women’s Health Issue,” by the National Institutes of Health and National Institute on Alcohol Abuse and Alcoholism, young women in their twenties and early thirties are more likely to drink than older women. No one factor predicts whether a woman will have problems with alcohol, or at what age she is most at risk. However, there are some life experi-



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ences that seem to make it more likely that women will have drinking problems. Research shows:

Heavy drinking and drinking problems among white women are most common in younger age groups. Among African American women, however, drinking problems are more common in middle age than youth. A woman’s ethnic origins — and the extent to which she adopts the attitudes of mainstream vs. her native culture — influence how and when she will drink. Hispanic women who are more “mainstream” are more likely to drink and to drink heavily (that is, to drink at least once a week and to have five or more drinks at one time).

Further research suggests that women who have trouble with their closest relationships tend to drink more than other women. Heavy drinking is more common among women who have never married, are living unmarried with a partner, or are divorced or separated. (The effect of divorce on a woman’s later drinking may depend on whether she is already drinking heavily in her marriage.) A woman whose husband drinks heavily is more likely than other women to drink too much.

Many studies have found that depression is closely linked to heavy drinking in women and women who drink at home alone are more likely than others to have later drinking problems.

Stress is a common theme in the lives of women. Research confirms that one of the reasons people drink is to help them cope with stress. DE-LAP refers to this as “negative coping” skills. It is not clear, however, how stress may lead to problem drinking. Heavy drinking itself causes stress in work and family. Many factors, including family history, shape how much a woman will use alcohol to cope with stress.

One causal effect seems to be that the rate of heavy drinking in working women is due to an effort to fit into the male-dominated business world. An ongoing study by psychologist Sharon Wilsnack, Ph.D. and sociologist, Richard Wilsnack, Ph.D., University of North Dakota, School of Medicine and Health Sciences in Grand Forks, surveyed a nationally representative sample of 1,100 U.S. women, 696 of whom have been observed since 1981. They have found that women in male-dominated occupations (any occupation that the U.S. Census measures as more than 50 percent male, including law) drink more than women in traditionally female professions such as teaching and nursing. Sharon Wilsnack suspects that the link between these types of jobs and drinking may not be coincidental. “In a male-dominated environment,” she says, “drinking may be symbolic of gender equality.”

In another study entitled “Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns among a Sample of Practicing Lawyers” conducted by Connie J. A. Beck, Bruce D. Sales and G. Andrew H. Benjamin and published in *The Journal of Law and Health*, Volume 10, finds under Female Lawyers that:

Nearly 10 percent of the practicing Washington lawyer sample are reporting levels of alcohol use that are likely to indicate current alcohol-related problems. As with male lawyers, however, this rate increases dramatically to 71 percent who are reporting a lifetime likelihood of alcohol related problems. Over the career span, the data reveals that almost three-fourths of female lawyers in the first three categories (those practicing up to and including ten years) are reporting a lifetime likelihood of alcohol-related problems.

Of course, it is not suggested that women give up their licenses to practice law in an effort to protect them from problem drinking. However, it is suggested that working women be educated on the subject. Working women should watch their level and frequency of consumption and fine-tune their radar for signs of growing dependence. “Drinking every night to relax is a major sign of trouble, even if you are not drinking that much,” Wilsnack says. Remember, men and women were created equal; however, they will never be equal in their physical responses to alcohol. This is an area where there are true physiological differences, and it is imperative that women are aware of them.

Consequences of Unsafe Drinking

The number of female drivers involved in alcohol-related fatal traffic crashes is going up, even as the number of male drivers involved in such crashes has decreased. This trend may reflect the increasing number of women who drive themselves, even after drinking, as opposed to riding as a passenger.

Long-term health problems from heavy drinking include liver, heart, and brain disease, suppression of the immune system, and cancer.

Because women are more likely to become pregnant in their twenties and thirties, this age group faces the greatest risk of having babies with the growth and mental impairments of fetal alcohol syndrome which is caused by drinking during pregnancy.


As for Jane, she realized that she was no longer “chilling out.” Her drinking had crossed the line. Today, however, Jane knows that as a woman, her genetic makeup shapes how quickly she feels the effects of alcohol and how drinking alcohol over the long term will affect her health and the chances that she could have problems with alcohol.

Treatment for an alcohol problem depends on its severity. For more information on this and other life issues call The Delaware Lawyers Assistance Program (De-LAP) (302) 777-0124 or 877- 24DELAP or e-mail cwaldhauser@de-lap.org.

The Delaware Lawyers Assistance Program (DE-LAP) and the Delaware Lawyers Assistance Committee would like to announce two weekly 12 Step Support Group Meetings for lawyers and judges: A confidential 12 Step Meeting every Thursday at 6:30 p.m. (closed to the public) and a new Women’s Support Group (meeting time to be determined). For location and more information about either group meeting, call Carol P. Waldhauser at (302) 777-0124 or 1-877-24DELAP or email cwaldhauser@de-lap.org.

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“Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns among a Sample of Practicing Lawyers,” Connie J. A. Beck, Bruce D. Sales, and G. Andrew H. Benjamin. *Journal of Law and Health*, Vol. 10.

“Alcohol: A Women’s Health Issue,” U. S. Department of Health and Human Services, National Institutes of Health and National Institute on Alcohol Abuse and Alcoholism. 

Carol P. Waldhauser is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at cwaldhauser@de-lap.org.



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By Alison W. Macindoe

The Small Firm Practitioner: Relevant and Meaningful

I write this column in June after having enjoyed a busy and exciting year. It has been a year of working with the largest group of legal practitioners: the competent, interesting, professional, and caring small firm and solo practitioners. I have had many relevant and meaningful talks with them — and some good laughs too.

I learned that the lawyer who runs his or her own office is a combination of practitioner of law, an entrepreneur, business owner, staff manager, office supply manager, property manager, public relations director, case manager, etc. Shall I go on? And, the lawyers who run those firms arrived at their small firm practices with amazingly different career histories. To add to the diversity, small firm practitioners work in every imaginable area of the law and, demographically, they are becoming more and more diverse. What a group!

When I first started this position, an attorney told me that it would be difficult because small firm practitioners are themselves difficult — that independence has created a curmudgeonly, “I can do it myself, so I don’t need your help” attitude. I have found just the opposite. Instead the attitude is, “Yes, I can do it myself, but I welcome your help because I don’t always have the time. I want to do it right.”

No wonder that my year in law office management assistance has been challenging and at times, overwhelming. Not only do lawyers have to keep

up with new laws and regulations, professional rules, and work long hours, but they have to keep up with the office technology that runs their offices (a whole new constantly changing world onto itself). The practice of law is one of the most highly regulated professions in the world and you add to that the rules and regulations of running a business and keeping up with technology, then you have got one busy small firm practitioner.

“It has been a good year, an interesting year, a challenging year, and it has left me with even more respect for the practice of law and the lawyers in it.”

I do wonder if the small firm practitioner has time to appreciate how relevant his or her law practice is to meeting the needs of our community. It should be easy. Assisting in buying a home, writing a will, defending someone accused of a crime, filing a lawsuit to right a wrong, sorting out a custody battle, all are issues that involve people’s everyday lives and these clients need someone to help them.

The “meaningful” part of the job must be even harder to find because it depends on the person doing the job. Your job might be relevant to the needs of your clients, but do you enjoy being relevant? Or, does your job make you miserable? As Jeena Cho, author of *The Gift of Doing Meaningful Work* said, “Yet, so many lawyers stay in jobs that they know are not right for them. It’s difficult to walk away from a career that you’ve spent years getting to, not to mention the overwhelming cost — both time and money. And, if we’re being honest with ourselves, leaving law also means in part leaving your identity and the prestige.” I would venture to say that most solo and small firm practitioners enjoy the kind of practice that they have, albeit at times, frustrating and time-consuming, but it definitely can be meaningful work.

Long ago, Solicitor General John W. Davis said about lawyers, “True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures — unless as amateurs for our own principal amusement. There is little of all that we do which the eye of man can see. But, we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men’s burdens and by our efforts we make possible the peaceful life of men in a peaceful state.” Still a valid statement for the men and women in law today.

The creation of the Law Office Management Assistance Program (LOMAP) of the Delaware State Bar Association is a testament to Delaware lawyers and to the support provided to them in the management of their law offices. The program was begun by a group of lawyers, the courts, your Bar Association — all of whom wanted to assist lawyers to do well by knowing the rules and working ethically for their clients. We want you to do meaningful work; we want you to feel relevant. LOMAP was created to help you do your job by providing a base of support to help you run the business side of your practice, so you can do the work you want to do.

It has been a good year, an interesting year, a challenging year, and it has left me with even more respect for the practice of law and the lawyers in it. I retired in June, but LaTonya Tucker has taken over the DSBA's Law Office Management Assistance Program. She is a familiar face to many in the legal community and will competently provide assistance with your law office management issues. As in everyday life, there are changes and this change will be seamless. Her email address is ltucker@dsba.org. If you have a question, ask LaTonya! ⚖️

Alison W. Macindoe is the outgoing Director of the Law Office Management Assistance Program for the DSBA. **LaTonya Tucker** is the new Director of LOMAP and can be reached at ltucker@dsba.org.



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APPLICATION PROCESS

For the year 2018, the Fellowship Committee will accept applications from August 15 through October 16, 2017. Applications are available at http://media.dsba.org/Applications/Arsht_Fellowship_Application_scholarship_2017.pdf

A decision will be announced by December 15, 2017 with one award being approved.

QUESTIONS?

If you have any questions regarding the Fellowship, please contact Jessica Zeldin at (302) 656-4433 or jzeldin@rmgglaw.com.

IMPORTANT DATES:

**APPLICATION
START DATE:**

August 15, 2017

**APPLICATION
DEADLINE:**

October 16, 2017

**DECISION
ANNOUNCED BY:**

December 15, 2017

Those wishing to make donations to the Roxana C. Arsht Fellowship Fund may do so by sending a check payable to the Delaware Community Foundation, 100 W. 10th Street, Suite 115, Wilmington, DE 19899 and noting "Roxana C. Arsht Fellowship Fund" in the memo line or by donating to the Roxana C. Arsht Fellowship Fund online at www.delcf.org.

If you have any questions regarding donating to or fundraising for the Fellowship, please contact Laina Herbert at (302) 622-7016 or lherbert@gelaw.com. And be sure to join us at Domaine Hudson on Sunday, September 24, 2017 for a 5-course wine dinner to support the Fellowship.



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BUSINESS DEVELOPMENT TIPS

By Marisa Facciolo, VP, Senior Wealth Director, BNY Mellon Wealth Management

Below are some of my top business development ideas. These ideas translate into any industry and show that even small changes to your practice can make a big difference. My suggestions focus on relationship-building, confidence, and thinking outside-of-the-box so that you can approach your practice with fresh ideas and renewed energy.

1. Venture out of your comfort zone. Over the course of my career, I have attended many local and national conferences and I have struggled with how to network in the most productive way. A couple of years ago, I attended a conference for an organization that was new for me. It involved the field of mergers and acquisitions, a specialty I have since developed as part of my professional development. At the end of the first day, I was impressed by the amount of new people I had met and, likewise, business cards collected.

Lacking a dinner invitation, I was tempted to take the easy way out and seek reprieve in my hotel room with dinner delivered to my door. Knowing that approach would not help me professionally, I came up with a plan. I decided to blind carbon copy all of the individuals I had met in an email and invite them to dinner.

Fast forward an hour and 7 of the 10 joined me in the hotel restaurant voicing appreciation for the invite. The dinner invite was simply a way for me to continue our conversations from earlier in the day. Now, years later, that same group of people are the source of many business referrals for me.

2. See them in their shorts. As many of us know, new business is often received through relationship building. It sounds simple to say that this principle could in fact deliver consistent referrals, but as I was once taught, you have to “see them in their shorts” in order to know that you have a solid relationship with someone. Now, you may wonder what shorts have to do with it. The point is that unless you connect with a referral source on a personal level – taking the time to meet their spouse, know their kids, hang out with them in your free time – you will never really know them.

How true this has proven as I have a group of six key people, or rather professional friends, that I view as A+ level referral sources. We know each other and trust that we will work to make each other successful in our respective practices. Seeing someone in their shorts is my test and until I do, I cannot expect a mutually beneficial relationship to evolve. It takes time, but it is worth it in the end.

3. Do you like me? Do business with people you like. It’s such a simple concept, yet so practical that we often make it more complicated than necessary. Do you welcome calls from the person or shy away and quickly hit the send to voicemail button? Do you dread calling the person back? If so, move on. Find those people that you want to hear from and, more often than not, the feeling will be mutual.

4. Just ask. Ask for the business. Several years ago, I was asked to participate in a golf outing that my company was sponsoring. We had been sponsoring the conference for years in an effort to garner new investment business from the conference chairperson.

I did my research and prepared myself to make “the ask” at a meeting with him during the conference. We met and the meeting was a success. He answered affirmatively and then noted that it was about time someone asked to manage his investment portfolio. I was shocked. He went on to say that he was surprised that we continued our sponsorship over the years without asking for his business, but he would welcome the opportunity to be one of our clients. An eye-opening experience for me that I often remember when in doubt of making “the ask”.


5. Let’s play musical chairs. I spend a good deal of time entertaining and networking with clients and advisors. Often these events take place at a restaurant and revolve around a meal. As we all know dinners often drag and conversation can lag. One of the practices I often use is to change seats at different times during the meal. It re-energizes the conversation (not to mention me too!) and makes everyone feel connected to their host.

6. Create experiences for clients. I tap my creative side and create experiences that my clients will look forward to and remember. I have hosted a beer, bourbon and barbecue event during the summer on a patio overlooking a picturesque scene. Clients come, relax and enjoy themselves without the pressure of a presentation or a pitch. Experiences are remembered and many times treasured.

7. The clock is ticking. Never underestimate the importance of time management in your career. Often, it is a struggle, but developing skills and techniques along the way will make it easier. A simple technique I use is to color code my calendar using two different colors for internal and external meetings. This ensures that I do not get overloaded with internal meetings and commitments that will lead to a decrease in my external networking and development.

8. Always know your value. One of the most influential lessons that I learned early in my career is never underestimate your worth. When I decided to pursue a law degree, I had to resign from my full-time job. At that time, one client gave me invaluable advice.

My client told me that as I build my career, I should never sell myself short. He explained that whenever he hires someone for his company he has a salary in mind for them and he always hopes that the candidate will ask for more. Simply put, he would never want someone working for him that does not value their own skill set more than he does. Always be confident and smart in positioning the value you will deliver to a company.

“Success Secrets” is curated by Emilie R. Ninan, Esquire. If you have a success secret to share, please contact her at ninane@ballardspahr.com. 

views from the SENIOR LAWYER

By William M. Aukamp, Esquire

A Quick Guide to Deregulation

To my fellow senior lawyers, the fact that you no longer actively practice law should not mean that you are uninterested in the issues of the day. One issue that has received a lot of attention of late is deregulation.

While President Trump vows to eliminate many regulations, he cannot accomplish this merely by executive fiat. There are some legal hoops he must jump through. Under the federal Administrative Procedure Act, a federal agency must publish in the Federal Register any proposal to adopt or repeal a regulation, and must afford the public an opportunity to comment on the proposal. However, the repeal would not extend to the underlying statute and would affect only such parts of the regulations that are not grounded on the letter of the law. Some enabling statutes give the regulators a lot of latitude in formulating and implementing regulations and some do not. The President could order the agencies to not enforce their regulations. There is some precedent for this, based upon the doctrine of prosecutorial discretion, but this has heretofore only been done on a one off basis.

The federal Congressional Review Act, passed in 1996 was, until recently, a seldom used statute employed by Congress to repeal regulations adopted within 60 legislative days (days Congress is in session) after they are reported to it and to the Comptroller General. The Act specifies the required contents of the report. It is complex law and contains numerous provisions that I will omit, for the sake of brevity. A joint resolution by a majority of both houses calling for the repeal is required. This action is required respecting each regulation targeted for repeal, which slows down the process. The Republican majority seeks to speed up the process and a bill has been introduced in and passed by the House, titled "The Midnight Relief Act of 2017." It would amend the Congressional Review Act to permit Congress to disapprove multiple regulations at one time instead of having to disapprove them one at a time, as is currently required. It remains to be seen whether the Senate follows suit. I invite you to contact me if you have comments on deregulation that you'd like to share. 📧

William M. Aukamp, Esquire, is Of Counsel to Werb & Sullivan and can be reached at waukamp@werbsullivan.com.



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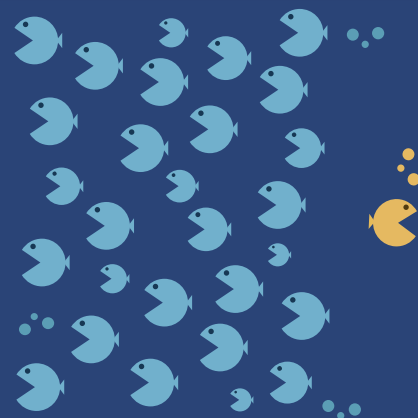
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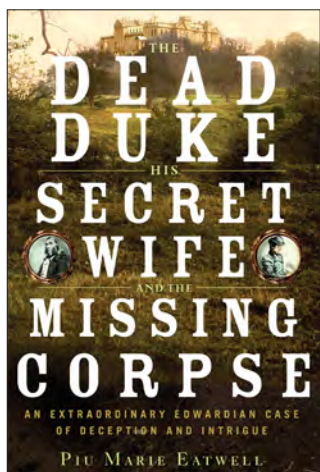
BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

Before There Was Court TV

The Dead Duke, His Secret Wife, and the Missing Corpse

By Piu Marie Eatwell (2014, Liveright Pub. Corp.)



William John Cavendish-Bentinck-Scott, the 5th Duke of Portland was the Howard Hughes of his day. Enormously wealthy, he was a man of many eccentricities who gradually withdrew from society to become a near total recluse. He had extensive subterranean passages and rooms built on the grounds of his estate, Welbeck Abbey; and, towards the end of his life, he stayed for weeks on end in his bedroom, communicating with the house staff by letters he would leave at the door with a bell he would ring whenever he put a letter out. The 5th Duke never married (his one marriage proposal having been rejected), and he died in 1879 at age 79 without issue — or did he? This is the mystery

recounted by Piu Marie Eatwell in *The Dead Duke, His Secret Wife, and the Missing Corpse*. Part mystery, part legal thriller, and part a look at life in Victorian England, Piu Marie Eatwell tells the true story of a court case that kept the country riveted in its day, but is now largely forgotten.

In the absence of any direct heirs, the Portland title devolved to a second cousin, the 22-year-old William John Arthur Charles James Cavendish-Bentinck, a young man who probably never imagined he might one day become so wealthy as the 6th Duke of Portland. Life was good.

But then, in 1897, one Anna Marie Druce applied to the London Consistory (or church) Court for an order to exhume the body of her deceased father-in-law, T.C. Druce, who had supposedly died and was buried in 1864. Mrs. Druce claimed (i) that T.C. Druce was, in fact, the 5th Duke of Portland, who secretly led a double life, (ii) that, as T.C. Druce, the 5th Duke had married and had children, (iii) that Anna Marie Druce's husband, the also-deceased Walter Druce was the legitimate son of T.C. Druce/the 5th Duke of Portland, and, therefore (iv) that her son, Sydney Druce, now living in Australia, was the rightful heir and the true 6th Duke of Portland. According to Anna Marie Druce, the coffin that had been buried in 1864 contained only lead weights (to simulate the weight of a body), and there was no body in the coffin. The Victorian newspapers of the time had a field day.

Exhumations (or “faculties” as they were called) were more common than one might think. They were often granted to allow heirs to retrieve valuables that had inadvertently been buried with the deceased, or to make room for another body, or to move a body to a new grave site. After considering the matter, the Court Chancellor granted the request and ordered the exhumation in 15 days, absent any objection from an interested party — and an objection came only two days later.

T.C. Druce's still-living first-born son, Herbert, objected. At some point prior to applying for the faculty, Anna Marie Druce had discovered that T.C. Druce had not married Herbert's and Walter's mother until after Herbert was born but before Walter was born. Thus, under the law, Herbert was illegitimate and couldn't inherit the Portland title, but Walter, the eldest legitimate son, could. Apparently T.C. Druce had always told the children that he had been married before any of them had been born. When his father passed, Herbert had been the named beneficiary in his father's will and had inherited T.C. Druce's business (a bazaar, or forerunner to a department store) and thereafter led a fairly comfortable middle class life. Although the precise reason for Herbert's objection is unknown (there is a suspicion that the 6th Duke of Portland

“Author and researcher Piu Marie Eatwell has done a masterful job of bringing Victorian England to life and keeping everything straight for the reader, while at the same time telling the story with the suspense and drama of a good page-turner.”

had a hand), his objection nevertheless made sense. Because he was illegitimate, Herbert could not succeed to the Portland title; but, if his father's grave was empty and Anna Marie Druce's claim was true, then Herbert's inheritance of his father's business was at risk and would most likely be set aside.

Proceedings and legal maneuverings dragged on for several years. Finally, in 1903, trial began in *Druce v. Young* — in which Anna Marie Druce had sought to set aside the probate proceedings for her father-in-law based on her claim that T.C. Druce was actually the 5th Duke of Portland — and then another bombshell broke.

On the first day of the hearings, two lawyers stood up on behalf of a party seeking to intervene in the matter. They announced that T.C. Druce (the 5th Duke's alleged alter ego) had been married before marrying Herbert and Walter Druce's mother, and that T.C. Druce had only re-married when his first wife (whom he had left years before) passed away. More importantly, though, for purposes of the proceedings, the lawyers told the Court that there had been legitimate sons by the first marriage and that the descendants of these sons would have a prior claim to the Portland title as compared to Walter Druce. These lawyers further told the Court that the true heir to the Portland title, one George Hollamby Druce, was then on his way to England from Australia.

With the new intervenor now in the case, any hope of Anna Marie Druce's son succeeding to the Portland title were dashed. George Hollamby Druce took up the challenge and continued with the litigation.

Trial was finally held in December 1907. By the conclusion of the hearing,

though, all appeared lost for the Druce cause. George Hollamby Druce's lawyers disavowed their star witness, while Herbert Druce, still opposing disinterment, presented strong evidence that T.C. Druce was dead and was buried in his grave. But then, before closing the defense, Herbert Druce dropped one final bombshell. Despite having put forward a strong case against opening the grave, he suddenly and inexplicably withdrew his opposition. The faculty was thus set for December 30, 1907, some ten years after it had first been requested.

As the foregoing summary makes clear, the mystery of the 5th Duke of Portland and the legal proceedings that mystery spawned were full of sudden and unexpected twists and turns. Author and

researcher Piu Marie Eatwell has done a masterful job of bringing Victorian England to life and keeping everything straight for the reader, while at the same time telling the story with the suspense and drama of a good page-turner. Even up until the opening of the casket itself, one can't be sure of how the case will end — and, indeed, one of the most fascinating parts of the mystery is that no one seemed to know for sure what they would find when they opened the coffin. When all is said and done, of course, the casket is opened and the mystery is solved, but Eatwell provides a touching epilogue to the story that suggests in a different age, things might have gone (and should have gone) differently. ⚖️

Richard “Shark” Forsten is a Partner with Saul Ewing LLP, where he practices in the areas of commercial real estate, land use, business transactions, and related litigation. He can be reached at rforsten@saul.com.

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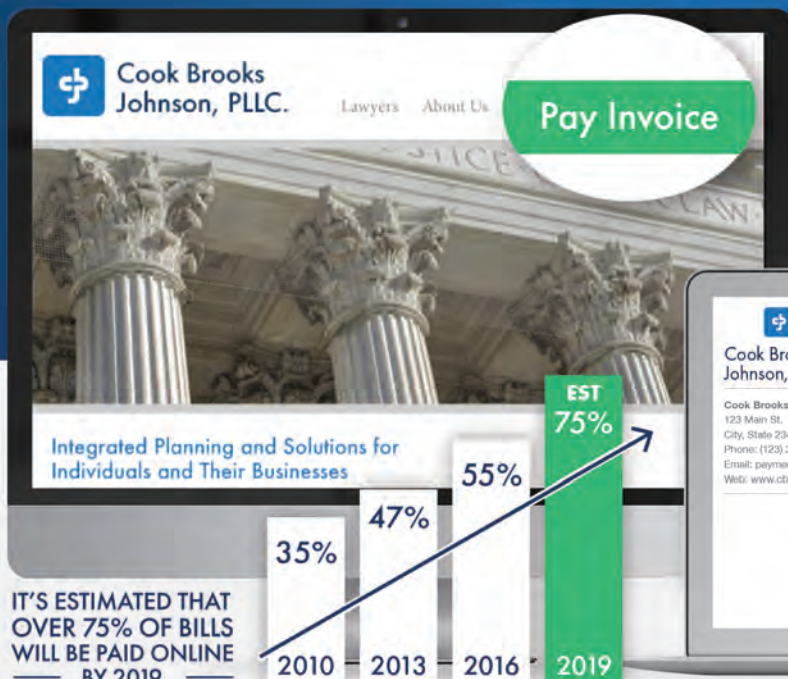
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A Recent Email Exchange Between a Delaware Attorney and Superior Court President Judge Jan R. Jurden

By Robert C. Collins II, Esquire and
The Honorable Jan R. Jurden

Dear President Judge Jurden:

I have recently been considering opening a bowling alley. However, I am not sure if I have a sufficiently good moral character to do so legally. 28 Del.C. § 905. Would you be willing to write a letter attesting to my good moral character so that I can further my dream?

Sincerely,
Robert C. Collins II, Esq.

Dear Rob,

Frankly, I think you might be setting your sights a little high with a bowling alley. I suggest that you start with something more within your abilities. Perhaps you would like for me to appoint you as a fence-viewer? As President Judge of the Superior Court, I must appoint at least five fence-viewers for each Hundred annually. 25 Del.C. § 1303(a). Now, I admit that the pay isn't great at eight dollars a day and seven cents a mile, 25 Del.C. § 1303(d), but you need to consider the prestige and important work that you would be performing. A good fence-viewer can prevent serious felonies, such as theft of swine. 11 Del.C. § 859.

I do have one requirement of the fence-viewers I appoint. You must be a strict constructionist fence-viewer. You should know the limits of your authority. When it comes to fence-viewers, I am of a distinctly "small government" mind. You should take heed of the Court of Chancery: "Quite frankly, until researching this matter, I would never have believed that what the defendants have erected was not a fence. It is called a 'chain link fence' and I cannot help but think that the immediate reaction of anyone looking at it would be to call it a fence. But at the same time I can find no case or treatise which defines a fence as anything other than an enclosure." *Gregg v. Zetlin*, 1983 Del. Ch. LEXIS 525 at *6-7. So if it's not a fence, don't view it.

If you are willing to faithfully and conscientiously fulfill your duties as a fence-viewer, I will write a letter to your good character at the end of your term.

Sincerely,
P.J. Jurden

Dear Judge,

I'll do it! As the owner of an extremely dilapidated fence, I am uniquely qualified for this position. I am sadly forced to view my own propped-up fence daily. Considering I have ties to Milford, Dover, Newark, and Wilmington, perhaps I could be appointed to all four applicable Hundreds?

I do have a few questions. You mentioned that I could prevent crimes like hog theft. I know that sheriffs aren't peace officers in Delaware, *Christopher v. Sussex County*, 77 A.3d 951, but are fence-viewers? If I am preventing felonies, then it certainly feels like I should be considered a peace officer. I only ask because I can think of any number of instances where I might need to exercise my peace keeping powers while viewing fences. For example, if I come across a sign advertising the performance of marriage services in another state, should I destroy it? 11 Del.C. § 1004. To what extent may I take action against any "unruly... goats" (25 Del.C. § 1302) I might come across while working? Most importantly, would I have sovereign immunity?

Thank you so much for your faith in me, and I promise not to let you down. I will fence-view like nobody has ever fence-viewed before. You watch. One day I'll open Paradise Alleys and it will all be thanks to you!

Sincerely,
Rob



The above exchange did not actually occur...but it could have. All of the laws cited are still "good law" today. When I first came across the fence viewing statute, I considered asking then-President Judge Vaughn to appoint me as a fence viewer if for no other reason than to have something interesting on my resume. As I continued to come across odd Delaware laws and cases, I started keeping a list. Several years passed, and I decided to share them with my colleagues. President Judge Jurden was kind enough to work with me to find what was (hopefully) a humorous way to convey these interesting laws. If any member of the Bar knows of additional interesting statutes or cases, I would appreciate it if you forwarded them to me at rob.collins@schwartzandschwartz.com. 📧

Robert C. Collins II practices personal injury law with Schwartz and Schwartz. He's a Delaware native who loves local history and legal oddities. **The Honorable Jan R. Jurden** is President Judge of the Delaware Superior Court. She can be a good sport when her former interns make bizarre requests.

The Art Connolly Race Judicata 2017

By Pat Quann, Executive Director
Delaware Law Related Education Center

The 12th Annual 5K Walk/Run was held on Saturday, April 1, in Brandywine Park. The event was sponsored by the Young Lawyers Section of the Delaware State Bar Association. It was a beautiful but chilly day and 238 people participated in the race, nearly double last year's number. We are grateful to Kelly's Logan House, which served as our host and to Arthur (Chip) G. Connolly III, Esquire, who served as the starter for the race.

The Art Connolly Race Judicata 2017 was organized by Allison McCowen, Esquire, from Saul Ewing LLP with help from Jenny R. Kasen, Esquire, of Kasen & Kasen, Alessandra Glorioso, Esquire, of Dorsey & Whitney, LLP and with the support of Kyle Evans Gay, Esquire, of Connolly Gallagher LLP and Chair of the Young Lawyer's Section. We thank our Business Sponsors: DLS Discovery and NextGen Reporting for their support. We are grateful to all the volunteers who helped with registration and other activities at the event, including students from Howard High School of Technology and the Delaware Military Academy, Shelia and Joseph Cratic, Mary Ann Miller, and Sorelis Duran, Alison Macindoe, and Susan Simmons from the Delaware State Bar Association.

Funds and donations raised by the race will benefit the programs of the Delaware Law Related Education Center, Inc. The Art Connolly Race Judicata raised over \$18,000 for the Center. We deeply appreciate the generous support from the following firms and individuals:

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Please Volunteer to go to a High School for Constitution Week September 18 – 22, 2017

"In honor of Constitution Day, all educational institutions receiving federal funding are required to hold an educational program pertaining to the U.S. Constitution; this year we are asking all schools around the country to join in a National reading of the Preamble called The Preamble Challenge!" From the Constitution Center's web site.

The Delaware Law Related Education Center is organizing a "Lawyer in the Classroom" activity for Delaware High Schools during the week of September 18-22, 2017. Volunteers will present the Preamble Challenge Lesson developed by the Constitution Center. If there is time, they will also discuss their area of practice, and answer questions. The lesson is available at the Constitution Center's web site: <https://constitutioncenter.org/.../constitution-day-resources> Look under Lesson Plans for the Preamble Challenge. The lesson will also include student handouts and other materials to be used in class. Volunteers will be matched with classes in all three counties. The time commitment is for one 45 minute class. Some visiting attorneys may be willing to do more than one class.

If you are interested in participating, please contact Pat Quann at delrecntr@aol.com or call 302-778-0643.

High School Mock Trial Competition 2017



DELREC Board Member Anthony Iannini presenting the Award and a \$750 scholarship check to Olivia O'Dwyer for winning the 2017 High School Mock Trial Competition Essay Contest. The presentation was made at Archmere Academy's Graduating Seniors Awards Ceremony on May 18, 2017.



Holly Williams from Sussex Central High School Mock Trial Team with the The Honorable James Horn at the National High School Mock Trial Championship. Holly came in second of the top 10 attorneys in the Mock Trial Competition.

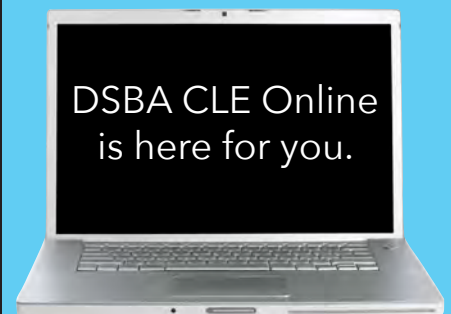
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The CLE Program, *The Citizen Lawyer: Exploring the Ever-Changing Role of the Lawyer in Society*, comprised two Breakout Sessions, each with three concurrent sessions from which to choose. Pictured above is the session titled "Beyond the Courthouse – The Lawyer as a Citizen in Service to the Community."



DSBA President Miranda D. Clifton, Esquire, welcoming attendees to the Annual Meeting.

DELAWARE STATE BAR ASSOCIATION 2017 BENCH AND BAR CONFERENCE

FRIDAY, JUNE 9, 2017 | CHASE CENTER ON THE RIVERFRONT, WILMINGTON, DE



DSBA President-Elect Michael Houghton, Esquire.



Many thanks to the Exhibitors and Sponsors of the 2017 Bench and Bar Conference.



Bartholomew J. Dalton, Esquire, introducing the recipient of the First State Distinguished Service Award, Charles M. Oberly III, Esquire.



Charles M. Oberly III, Esquire, recipient of the First State Distinguished Service Award.



Bartholomew J. Dalton, Esquire, and Charles M. Oberly III, Esquire.



Outgoing President Miranda D. Clifton, Esquire, passing the gavel to incoming President, Michael Houghton, Esquire.



Michael Houghton, Esquire, giving Miranda D. Clifton, Esquire, the President's Ring.



The UDairy Creamery Moo Mobile was a big hit!



Matthew F. Boyer, Esquire, and Mary I. Akhimien, Esquire.



Richard A. DiLiberto, Jr., Esquire, The Honorable Sheldon K. Rennie, and The Honorable Gary F. Traynor.



The Honorable Karen L. Valihura and Lewis H. Lazarus, Esquire.

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Visit www.dsba.org for the full program agenda and to register.

Nominations Sought for the Delaware State Bar Association's 2017 Christopher W. White Distinguished Access to Justice Awards

The DSBA and the Awards Committee are seeking nominations for the 2017 Distinguished Access to Justice Awards formerly known as the Distinguished *Pro Bono* Service Awards. The change in name is based on a desire to be more inclusive in designating those deserving of recognition. The awardees will be announced during Celebrate *Pro Bono* Week.

The Christopher W. White Distinguished Access to Justice Awards Ceremony

Thursday, October 26, 2017, Chase Center on the Riverfront

There are five categories for which individuals, firms, or organizations can be nominated.

The Leadership Award

This award is presented to a legal organization (legal department or law office) that has demonstrated outstanding leadership in the field of *pro bono* service to Delaware's indigent population based on the following criterion:

- The number of *pro bono* hours the organization contributes to the direct representation of indigent clients.
- The number of cases the organization accepts for *pro bono* representation.
- Flexibility and accessibility in accepting cases.
- The organization's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.
- Financial support to agencies providing legal services to Delaware's indigent population.
- The percentage of attorneys in the organization who accept *pro bono* cases.
- Fostering a culture, which recognizes the value of *pro bono* service.

The Commitment Award

This award is presented to a member of the Bar who has demonstrated a sterling commitment to *pro bono* work throughout his or her career by dedicating time and energy to the support and provision of legal services. The criterion includes, but is not limited to:

- The number of *pro bono* hours devoted to legal representation of indigent clients over the lawyer's career.
- The number of cases accepted for *pro bono* representation over the lawyer's career.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need over the lawyer's career.

The Achievement Award

This award is presented to a member of the Bar who has shown an exemplary recent contribution to *pro bono* services (generally in the past one to three years) and stands as a role model to other attorneys. The criterion includes, but is not limited to:

- The number of *pro bono* hours recently devoted to legal representation of indigent clients.
- The number of cases accepted for *pro bono* representation.
- Consistency, flexibility, and accessibility in accepting cases.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.

Service to Children Award

Awarded to an individual lawyer, legal professional, or organization principally including lawyers, which demonstrates outstanding commitment to, and work for, children in the provision of legal or community services. It may be given to volunteers or those employed in the provision of legal services for children. This award is given as warranted, not necessarily annually.

Legal Professional *Pro Bono* Service Award

Awarded to a person, qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity, who performs *pro bono* legal work in the pursuit of Access to Justice. This is a newly-created award that is given as warranted, not necessarily annually.

Delaware State Bar Association Awards Nomination Form

Name of Candidate: _____

Title/Occupation of Candidate : _____

Award: _____

Date: _____

Nominator: _____

Phone: _____ Fax: _____ E-Mail: _____

Firm: _____

Address: _____

Brief statement of reasons that candidate is deserving of Award (see above Award criteria). Please attach sheet if necessary.

Nominations should be submitted to Susan Simmons, Director of Continuing Legal Education and Access to Justice Coordination, e-mail ssimmons@dsba.org or fax to (302) 658-5212. The deadline for nominations is August 11, 2017.

Sidney Balick, Esquire

1932 - 2017

By Adam L. Balick, Esquire

As a child, I spent countless days watching my father practice law — Saturday mornings coming into the office with him so that he could open the weekend mail, and countless days tagging along with him on my days off from school. We would arrive at his office in the morning so that he could stuff an impossibly large number of files into his briefcase, before racing across Rodney Square to the courthouse. The courthouse was his domain. He moved effortlessly between Superior Court, Court of Common Pleas, and Municipal Court. At each stop, he would spend time with his clients to explain the process, communicate a plea offer, or to put them at ease. I watched the way he negotiated with prosecutors. I listened to his impassioned arguments to judges on behalf of his clients. I ate fried egg sandwiches with him and the other lawyers who routinely met in the “Blind Shop” on the lower level of the Court House. I could not imagine a better way to make a living. I wanted to be a part of it.

I remember telling one of my third grade classmates about my plan to become a lawyer. She told me that she also wanted to become a lawyer, and she asked if we might become law partners someday. The idea was tempting, but I explained that I already had a partner in mind. I was going to practice law with my father. That was the plan from at least as early as the third grade.

On May 18, 2017, my father, Sid Balick, passed away. He was 85.

My father’s list of accomplishments as a Delaware trial lawyer is significant. Those achievements include becoming a Fellow of the American College of Trial Lawyers, recognition in Best Lawyers of America, and being awarded the First State Distinguished Service Award.

He was a passionate volunteer to the Delaware Courts and to the Delaware State Bar Association throughout his career. From 1986 through 1993 he served on the Delaware Supreme Court Board on Professional Responsibility. He served on



committees at the request of the Courts such as the Delaware Supreme Court’s Long Range Court Planning Committee. He acted as a friend of the court, representing lawyers brought before the Supreme Court on disciplinary matters and representing individuals who required court-appointed counsel. He served on the Criminal Justice Act Blue Ribbon Panel of Attorneys from the day it was first created. This Panel was comprised of attorneys who were willing to represent indigent criminal defendants in the federal courts when the federal Public Defender’s Office had a conflict of interest. He served on too many boards and committees to mention, from service on various rules

committees, to the ABA standards committee, to Supreme Court advisory committees, among others.

One of his proudest acts of service was his participation on the Professional Guidance Committee from 1974 through 1994. This is a Committee comprised of Delaware attorneys who volunteer to assist other attorneys who may be having professional or personal difficulties. Back in the 1970s and 1980s, I viewed the lawyers on this committee as superheroes. The process inevitably started with a call, often from Victor Battaglia or Ned Carpenter. “We have a friend in need.” The lawyers on the Committee would spring into action to find ways to help their colleagues. Because the lawyers who received this support were assured anonymity, the lawyers who served on the Professional Guidance Committee understood that their work would never be publicly acknowledged. But, these lawyers (and those that have followed in their footsteps) helped a great many Delaware lawyers.

By the time I joined my father’s law practice in 1995, the evocative era of practicing in the Public Building was in its final decline. The pace and nature of a courthouse lawyer’s practice had changed. No more fried egg sandwiches in the “Blind Shop,” fewer leisurely lunches at lawyer-friendly restaurants like the Copper Kettle or the Grill.

Yet, my father and I found new enjoyment in working together. We tried cases together. We litigated important issues, frequently appearing before the Delaware Supreme Court. I learned to write from my father, as we shared and edited drafts of letters, motions, and briefs.

And, as important as the results always were, in retrospect what was so personally valuable to me was the incredibly rare opportunity to share time with my dad, who always taught by example. He was not one to offer unsolicited advice. Watching the way he practiced law did more to help me understand what it takes to be an effective lawyer than any other thing I learned along the way.

For Dad, it all started with his client's story. If his client had been wronged, nothing else mattered; not his client's ability to pay; not even the existence of favorable law. He committed fully to his client's cause and no obstacle was too great to overcome. Watching my father allowed me to see first-hand what it takes to commit fully. If his opposing counsel was unwilling to resolve the case fairly, he would handle the issue the way a trial lawyer does, by taking the matter to a jury. If the law was unfavorable, and his client was wronged, he was going to take the case and "fix" the law by appealing to the Supreme Court. On occasion, he even went to the General Assembly to try to convince them to make appropriate changes to the law.

By 1995 when I joined my father's firm, I had some experience under my belt. I had clerked in the Superior Court and worked for six years prosecuting cases at the Attorney General's Office. However, "fixing" the law was a concept I was unfamiliar with until I joined my father's firm. Dad would ask me to research an issue. When the law was against his client, I had the unpleasant task of delivering that news to my father. "Dad, the law is against us on this one." In the brief moment that always followed, I might allow myself to hope, if just for a moment, that this would be the time he would accept the long odds and

avoid taking the case. But, inevitably, Dad would respond, "The law's wrong. We're going to have to fix it."

And, from time to time, he did. Justice Ridgely once told me, "Adam, I don't think any lawyer in Delaware has gotten more Supreme Court reversals than your Dad."

Dad was a passionate lawyer and one of the most competitive people I have ever known. Yet, he was also committed to treating everyone with respect. I remember meeting a Wilmington Police Department detective very early on in my stint as a prosecutor. When the detective heard my last name, he asked if I was related to Sid. He said, "I'll tell you something about your Dad. I dread being cross-examined by him. I lose sleep over it. In fact, there is only one good thing I can say about the whole process." I took the bait. "What's that?" He smiled, "Having a beer with your Dad at Galluccio's after the case is over."

My mother Carol, and my sisters, Dana and Elizabeth, and I want to thank so many of the members of this great Delaware Bar for your kind notes and outreach over the past several weeks. Your stories and recollections about the people he quietly helped, many that we had never heard, have been a source of pride and comfort. 🏛️



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ESTABLISHED PERSONAL INJURY LAW FIRM is searching for a litigation associate attorney with at least 5 years of experience to grow with our firm. Experience in both personal injury and workers' compensation a plus. Candidate must have excellent oral and written communication skills and able to manage their own case load. We offer competitive salary and health benefits. Please submit your resume to Sandy at slavanture@schusterlaw.com.

SCHMITTINGER & RODRIGUEZ is an established Law firm in Dover DE. We are searching for an associate attorney with 2-4 years' experience to expand our firm. The position is in the area of Family and Domestic law. The successful candidate will have excellent oral and written communication, time management and negotiation skills, as well as the ability to analyze complex cases. We offer a competitive compensation package and benefits including medical, long term disability and 401K. Interested parties may submit a cover letter, writing sample and your resume to gquell@schmittrod.com.

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OF NOTE

Condolences to **Rodman Ward, Jr., Esquire**, on the death of his Daughter, Jennifer Ward Oppenheimer, on May 16, 2017.

Condolences to the family of **The Honorable William N. Nicholas**, who died on June 7, 2017.

If you have an item you would like to submit for the Of Note section, please contact Rebecca Baird at rbaird@dsba.org. ☎

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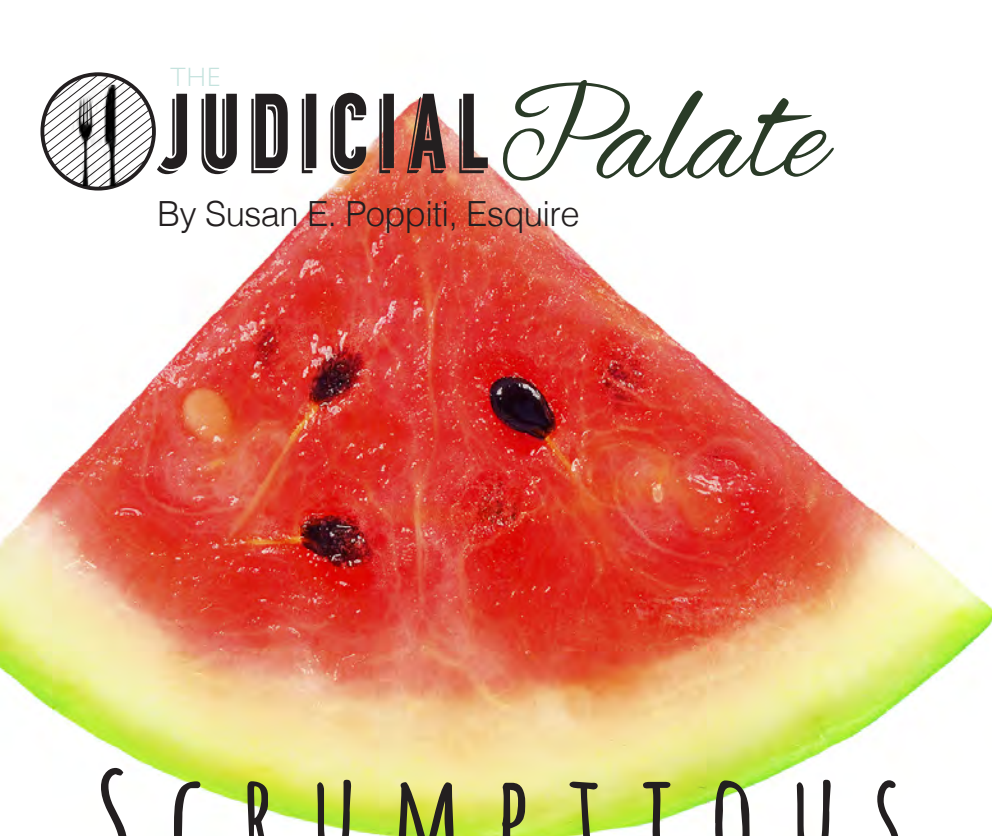


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By Susan E. Poppiti, Esquire



SCRUMPTIOUS SUMMER SALADS

Salad greens...a great source of iron. Yet, not all salads are just greens. In this summer issue, I share some salad recipes created by current and past Iron Chefs (from the famous *Food Network* cooking show) that are more than just greens.

Have a wonderful summer — one that's full of iron! ☺



Susan E. Poppiti is a mathematics teacher and director of the legal shadowing program at Padua Academy High School and managing member and cooking instructor for La Cucina di Poppiti, LLC and can be reached at spoppiti@hotmail.com. Other recipes and cooking tips are available on Susan's food blog at www.cucinadipoppiti.com.

Heirloom Tomato and Watermelon Salad

By Chef Geoffrey Zakarian

<http://www.geoffreyzakarian.com/>

Ingredients

- 6 to 8 ripe heirloom tomatoes, varying in size, at room temperature
- 1 small to medium yellow watermelon (about the size of a cantaloupe)
- 1 small to medium red watermelon (about the size of a cantaloupe)
- 1/8 cup extra virgin olive oil
- 1 teaspoon cracked coriander seed
- Maldon sea salt and cracked black pepper
- 1 1/2 teaspoons finely chopped fresh dill
- 1 1/2 teaspoons finely chopped Italian parsley

Instructions

Cut the tomatoes into chunks of varying sizes (about 1 to 1 1/2 inches long). Core watermelons, and chop into cubes of varying sizes (about 1 to 1 1/2 inches).

Combine tomatoes, watermelon, oil, coriander, and salt and pepper in a large bowl, and gently toss, taking care not to bruise the fruit.

Sprinkle with fresh dill and parsley, and serve immediately.





Focaccia Panzanella

By Chef Mario Batali

<http://www.mariobatali.com>

Ingredients

- 1 pound day-old focaccia with crust, cut into 1/2-inch cubes
- 2 overripe large heirloom tomatoes cut into 1/2 inch dice
- 2 cucumbers, peeled, seeded, and cut into 1/2 inch half moons
- 1 medium red onion, cut into 1/4 inch dice
- 1/2 cup extra virgin olive oil
- 1/4 cup red wine vinegar
- Maldon salt and freshly ground black pepper
- 10 fresh basil leaves, torn

Instructions

Combine the bread, tomatoes, cucumbers, and onion in a large serving bowl. Drizzle the olive oil and vinegar over the salad, stirring or tossing to mix well. Season well with salt and pepper and toss again. (The salad can be dressed up to 2 hours in advance and set aside at room temperature.)

Just before serving, tear the basil leaves and scatter them over the salad, then toss again.



Spinach Salad with Warm Bacon Vinaigrette

By Chef Jose Garces

<http://garcesgroup.com/>

Ingredients

- 3 strips thickly sliced lean bacon, cut into 1/4 inch strips
- 2 tablespoons extra virgin olive oil
- 1 shallot, minced
- 2 tablespoons sherry vinegar
- 1 tablespoon whole-grain mustard
- 1 teaspoon chopped thyme
- 2 small plums, sliced into thin wedges, or 4 fresh purple figs, quartered
- One 5 ounce bag of baby spinach
- Salt and freshly ground pepper
- 1/4 cup Marcona or other salted roasted almonds, coarsely chopped
- 2 ounces crumbled blue cheese, such as Cabrales
- 1/4 pound thinly sliced prosciutto (8 slices)

Instructions

In a large skillet, cook the bacon in the olive oil over moderately high heat until browned and crisp, about 6 minutes. Remove from the heat and stir in the shallot, vinegar, mustard, and thyme.

Scrape the dressing into a large bowl. Add the plums and spinach, season with salt and pepper and toss. Add the nuts and crumbled blue cheese and toss again. Transfer the salad to plates, top with the prosciutto and serve.

Grapefruit and Jicama Salad with Pistachios

By Chef Cat Cora

<http://catcora.com/>

Ingredients

- 3 large grapefruit (peeled and segmented)
- 3/4 pound jicama (peeled and coarsely shredded)
- 1 medium carrot (about 1/2 cup; peeled and grated or finely shredded)
- 1/3 cup fresh cilantro leaves (plus 2 tablespoons)
- 2 tablespoons pistachios (toasted and crushed)
- 1 Serrano chile
- 1 large garlic clove
- 1 tablespoon dark brown sugar (packed)
- 3 tablespoons fresh lime juice (about 2 medium limes)
- 1 1/2 tablespoons Asian fish sauce (preferably Nuoc Mam)

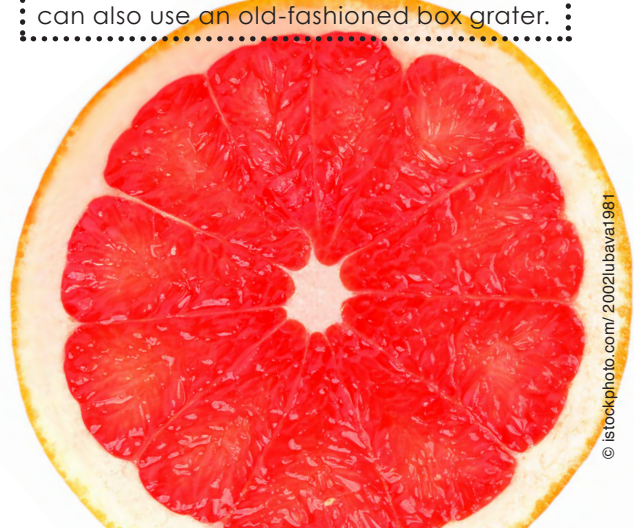
Instructions

For the Vinaigrette: Cut the chile in half, scrape out the seeds, and mince it, being careful to wash your fingers and the knife when you're done. (You should have about 1 1/2 teaspoons.)

In a small bowl, whisk together the chile, garlic, brown sugar, lime juice and fish sauce until the sugar has dissolved.

For the Salad: In a large serving bowl, toss together the grapefruit, jicama, carrot, and 1/3 cup of the cilantro leaves. Add just enough of the vinaigrette to lightly coat the grapefruit and vegetables. Scatter the pistachios over the salad and garnish with the remaining 2 tablespoons cilantro leaves.

Cat's Note: A food processor is the fastest way to shred the jicama and carrot, but you can also use an old-fashioned box grater.





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Morris James LLP is pleased to announce
Francis J. "Pete" Jones, Jr.
has been awarded the
Justice Franchini Golden Gavel Award

The Morris James Personal Injury Group is pleased to announce that Francis J. "Pete" Jones, Jr. is the recipient of the 2017 Golden Gavel Award. The award recognizes individuals who have demonstrated exemplary dedication and commitment to the goals and ideals of the National High School Mock Trial Program. The Honorable M. Jane Brady, Superior Court Judge of the State of Delaware, presented the award to Mr. Jones on May 13, 2017 in Hartford, Connecticut.

Mr. Jones has been involved in the Delaware Mock Trial Program since its inception in 1993. He has served as a coach, judge and program director for over 10 years in the Delaware program. He has been on the Board of Directors of the National High School Mock Trial Competition for over 20 years. While on that board, he has served on every committee and was at one time the chair of the organization.

Mr. Jones has over 30 years of experience litigating plaintiffs' personal injury matters. He has participated in a number of cases that have developed new law. He is also an active alternative dispute resolution practitioner, serving as both a mediator and/or arbitrator. Delaware Today magazine and Delaware Super Lawyers have recognized Mr. Jones as an outstanding lawyer in the fields of plaintiff personal injury and alternative dispute resolution.

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