



# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION



**Upcoming CLE Seminars** P.8

**Dr. Martin Luther King, Jr., Breakfast  
and Statewide Day of Service** P.26

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The Delaware State Bar Association is looking for a number of talented members to join the 2015-2016 Executive Committee and lead DSBA to continued success.

The following positions on the Executive Committee of the Association must be filled for the year 2015-2016:

Vice President-at-Large; Vice President, New Castle County; Secretary; Assistant Secretary; Treasurer; Assistant Treasurer; Six Members-at-Large

*Note: The Vice President, Kent County and the Vice President, Sussex County will be those persons selected by, respectively, the Kent County Bar Association and the Sussex County Bar Association.*

The following position must be filled for terms as noted:

One (1) DSBA Representative to the Delaware Bar Foundation Board for a four-year term

The Nominating Committee wants to consider all interested candidates. If you are interested in serving on the Executive Committee or would like to recommend a candidate, please send your name or the candidate's name along with a CV and at least one letter of nomination to Rina Marks, Executive Director, by e-mail at: [rmarks@dsba.org](mailto:rmarks@dsba.org) or by mail at: Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE 19801 by **February 13, 2015**.

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## DSBA BAR JOURNAL

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# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

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## PRESIDENT'S CORNER

By Yvonne Takvorian Saville, Esquire

**T**his time of the year is my favorite season for many reasons, both personally and professionally. Most importantly, of course, is the cherished, unhurried time we get to spend with our family and friends to simply enjoy each other. December brings a brief respite from the frenetic pace in which we live our lives, allowing us to engage in familiar traditions and customs with our loved ones. It truly is one of “the most wonderful times of the year.”

It is also an exciting time for the DSBA, as we get ready to welcome our newest lawyers to the Bar. There are two events for the new admittees that highlight the uniqueness of becoming a part of our Delaware legal community. In November, they are required to attend the Delaware Supreme Court’s Pre-Admission Conference, held at Widener Law School, and very artfully coordinated by Richard K. Herrmann, Esquire. For two days, they get a chance to participate in multiple seminars and hear from over 80 preeminent lawyers and judges from all courts who give them an overview of different fields of practice. They also get a terrific introduction to the “Delaware Way” of professionalism and civility, while learning “best practices” tips as they prepare for their admission.

In December, the many years of education, sacrifice, and dedication culminate into an event like no other, where each new member is moved by a Delaware lawyer and individually sworn by a Delaware Supreme Court Justice. No matter how many years have passed since our own admissions, I am sure we remember how special and rewarding the Ceremony was to us and our fami-

*“December brings a brief respite from the frenetic pace in which we live our lives, allowing us to engage in familiar traditions and customs with our loved ones.”*

lies on the day we became members of this extraordinary Bar. The emphasis at this event is to celebrate the significant achievement of all our newest lawyers and remind them of their responsibilities to maintain the wonderful traditions of this Bar as they become acclimated to their practices here. On behalf of the DSBA, it will be my honor this year to welcome them to our legal community.

Another December Bar event (and certainly one of my favorites!) that celebrates the exceptional accomplishments of our members is the annual DSBA Awards Luncheon where we recognize those individuals who embody the Delaware way in their advancement of our professional community. Please join me in congratulating this year’s recipients for the following awards:

**Dale R. Dube, Esquire**, as the recipient of the Distinguished Mentoring Award. Established in 1999, this award is given 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.

**Michael Houghton, Esquire**, as the recipient of the Outstanding Service to the Courts and Bar Award. This award

is not necessarily given every year, yet it has been given to some of the profession’s most respected judges and lawyers. First presented in 1999, it is bestowed upon 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.

**Daniel M. Kristol, Esquire**, as the recipient of the Daniel L. Herrmann Professional Conduct Award. Established in 1992, this award is presented annually 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.

**Lawrance Spiller Kimmel, Esquire**, as the recipient of the Young Lawyers Distinguished Service Award. First presented in 1981, this award is bestowed upon a member of the Delaware Bar who, by exemplary leadership and service dedicated to the cause of good citizenship in civic and humanitarian service over a period of less than ten years has maintained the integrity and honored recognition of the legal profession in community affairs and who, as an outstanding Delawarean, has unceasingly advanced the ideals of citizen participation and community ac-

complishment, thus reflecting high honor on both country and profession.

The Honorable Kim E. Ayvazian, as the recipient of the Women's Leadership Award. Established in 1996, this award has been presented to 18 of Delaware's most well-respected female judges and lawyers and is given annually to a member of the Delaware Bar whose character, strength, personality, achievement, and activities in matters affecting women lawyers and who has served as an inspiration to and a model for women lawyers in their professional careers.

Congratulations to all of this year's honorees! I wish you a happy, safe holiday season with peace and prosperity for 2015, good health to you and yours, and great spirit and fortitude to pursue your hopes and dreams! ☯

**Yvonne Takvorian Saville** is the current President of the Delaware State Bar Association, President Elect of the Delaware Trial Lawyers Association, and a director with the law firm Weiss & Saville, P.A. She can be reached at [ytsaville@mweissesq.com](mailto:ytsaville@mweissesq.com).

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By David W. deBruin, Esquire

# Being There

I do not mean to come across as the ghost of Jacob Marley, but it is the holiday season. In that spirit, I do not want anyone reading this article (myself included) to wake up 5, 10, or 20 years from now and wonder how they lost their family and most everything they were working for along the pathway of life. This is actually one time of year when many families do make an effort to gather together. My intent with this column is not to try to convince anyone to spend time with their family this holiday season, but rather, to stress the importance of our participation in the day-to-day activities of our family's life year-round.

I believe that it is vitally important for us to make a real and consistent effort to place our family and loved ones at the top of our list of priorities. As lawyers, we are forced to become quite adept at managing and prioritizing our time. If we are unable to do this, our supervising attorney or managing partner will be glad to assist. Of course, if she/he is given this opportunity, do not be surprised if your list of priorities looks something like this:

1. Billable Work
2. Possibly Billable Work
3. Business Development
4. *Pro Bono* Work
5. Family

Okay, I am mostly kidding. However, what we all need to remember is that it is more than likely that no one else at your place of employment is going to genuinely encourage you to take more time away from your job and devote it to your fam-

ily. The foregoing statement is true unless you have a very ambitious co-worker with an eye on your office/support staff. People like that usually encourage other people to take lots of time off.

It is honestly hard for me to remember what my life was like before my wife and I were blessed with four amazing children.<sup>1</sup> I do remember that it included a lot of 200+ billable hour months. During that time period, I gained a ton of useful experience and learned a great deal about what it means to be a practicing attorney. I also made a vow to myself back then that I would continue to work as long and hard as I reasonably can, but that I would try my best not to let my job overtake the significance of my family.

We only get one shot at being the best parent that we can be to our kids. Certainly there are instances when we have a time-sensitive pleading, project, or trial. Those truly important work items jump, by necessity, to the top of the list. That is when our prior and continuing participation in day-to-day life buy us a deserving "out" for the time it takes to fully complete our work. If we have laid the proper foundation, our family will understand.

The problem most often arises when attorneys jump from one imperative job to the next. Unfortunately, it is far too easy to fall into the habit of work, work, work and then heading home late at night, only to kiss the heads of everyone while they are asleep and collapse into your bed just in time to wake up and do it all over again. I think it is fair to say that "providing for our family" means doing a lot more than just working hard to improve everyone's life financially. It means taking on part of the load by driving them to and picking them up from school, football, basketball, swimming, lacrosse, piano, guitar, play practice, ballet (it is *Nutcracker* season for some of us) and whatever other activities they have going on in their lives.

A big part of being in a family is participation. If we are not there, it is awfully hard to participate. If separated from our family by time and/or space, any parent



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1. I recognize that everyone thinks that their children are exceptionally smart, beautiful and talented. Now that I have firmly established that I am no better than any of you (but my kids are), I will move on.

of teenagers can tell you, phone conversations can help sustain and even grow relationships. If we are truly interested in what our kids are doing, they will actually share things with us (although, if they are teenagers this will almost never happen after the first time we ask). Of course, there may be times when we wish we had not really heard what they just said to us. But, if we continue to make the effort, our conversations can turn into the highlight of their day and ours.

I must admit that there are some chaotic times when I would rather be getting a root canal without Novocain than enduring a loud argument or when they “take a shot at the title,” by directly challenging me. It is usually some time later, long after we have resolved the argument (hopefully without bloodshed), that I am overcome by a feeling of nirvana. Not because I think I am now or will ever be the “best” parent in the world, but simply because I was able to be there. Just being present for the argument allows us the opportunity to be a part of the solution. In my opinion, that is what family life is truly all about.

Let’s face it, when we die, our families probably will not spend a lot of time telling stories about our winning arguments in court. They will likely repeat the heartwarming stories about the time we fell from the ladder while cleaning leaves out of the gutters, hit the side of the garage while hurriedly backing out, and/or started a small, well-contained (it really was not that bad) fire in the house from putting too many strings of lights on a tree ... all of which invariably end with the line, “you had to be there.”

Happy Holidays to you and your family!

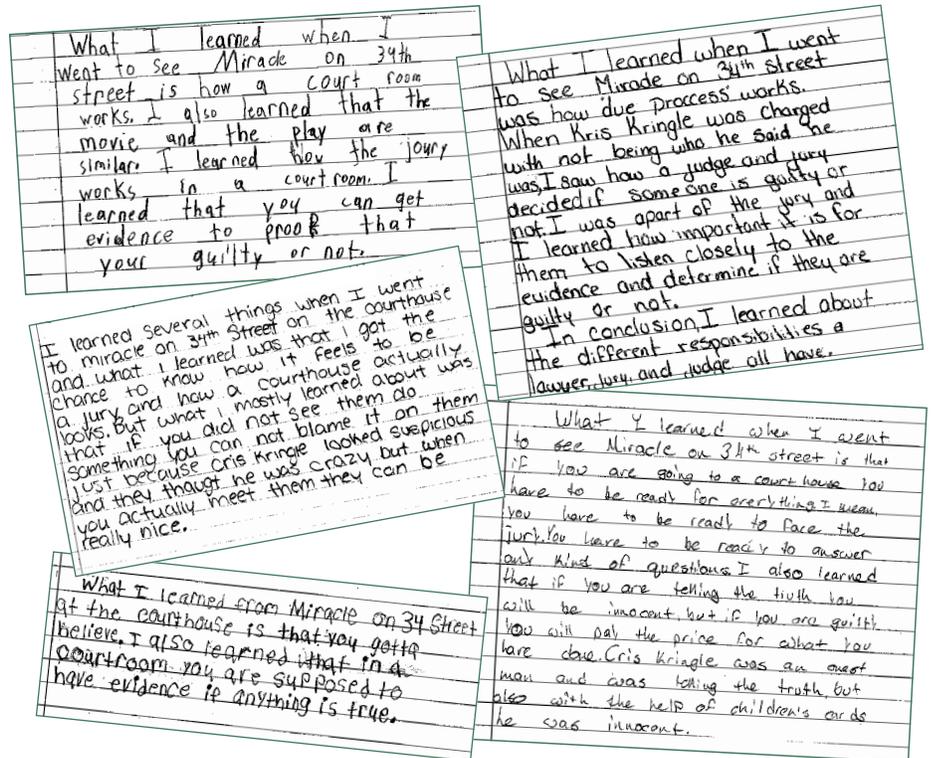
*This Editor’s Perspective column is based on one that ran in the December 2008 publication of The Journal of The Delaware State Bar Association.* 

*Bar Journal* Editor **David deBruin** is the founder of The deBruin Firm and his practice is dedicated to representing victims of mesothelioma, dangerous drug and medical devices, and select complex litigation. He can be reached at [ddebruin@thedebuinfirm.com](mailto:ddebruin@thedebuinfirm.com).

## And the Miracle Continues

By Richard K. Herrmann, Esquire

**O**n December 9, 2014, Kris Kringle will begin his series of 12 competency hearings in the Superior Court throughout the State. For nine years, the Miracle Team has been recreating the Courtroom scene from *Miracle on 34th Street* for thousands of school children. Justice Henry duPont Ridgely, Judge James T. Vaughn, Jr., and Judge M. Jane Brady participate. This is a rare opportunity for 3rd, 4th, and 5th graders throughout the State to experience the real courtroom in a very positive way. More than 16,000 children have participated in the hearings. We thought we would share with you a few of the comments. 



## WILLS FOR SENIORS



Pro bono volunteers and clients at the fifth DSBA Wills for Seniors Event on October 18, 2014 at the New Castle County Library Kirkwood Highway facility.



## Professional Guidance Committee

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

Remember that CLE Videos are shown for CLE credit five days a week at the DSBA in Wilmington! Call (302) 658-5279 to make an appointment.

### December 2014

#### Thursday, December 11, 2014

Awards Luncheon  
Hotel du Pont, Wilmington, DE

#### Friday, December 12, 2014

Family Law Update 2014  
6.3 hours CLE credit  
Christiana Hilton, Newark, DE

### January 2015

#### Monday, January 19, 2015

Dr. Martin Luther King, Jr., Breakfast and Statewide Day of Service  
Chase Center on the Riverfront, Wilmington, DE

#### Wednesday, January 21, 2015

The John F. Kirk Workers' Compensation Breakfast Seminar  
3.3 hours CLE credit  
Chase Center on the Riverfront, Wilmington, DE

#### Tuesday, January 27, 2015

Ethics in Litigation 2015  
1.0 hour CLE credit  
Delaware State Bar Association, Wilmington, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

#### Thursday, January 29, 2015

Understanding Delaware's Fiduciary Access to Digital Assets and Digital Accounts Act: Practical Implications for Fiduciaries and Their Advisors  
1.5 hours CLE credit  
Delaware State Bar Association, Wilmington, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

### February 2015

#### Tuesday, February 3, 2015

Corporate Governance for Nonprofit Organizations  
2.0 hours CLE credit  
Delaware State Bar Association, Wilmington, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

#### Friday, February 6, 2015

Rubenstein-Walsh Seminar on Professionalism and Ethics  
6.0 hours CLE credit  
Chase Center on the Riverfront, Wilmington, DE

#### Tuesday, February 10, 2015

Fundamentals of Real Estate  
6.0 hours CLE credit  
Delaware State Bar Association, Wilmington, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

### March 2015

#### Friday, March 6 and Saturday, March 7, 2015

Women and the Law Retreat  
7.0 hours CLE credit  
Atlantic Sands Hotel and Conference Center, Rehoboth Beach, DE

# SECTION & COMMITTEE MEETINGS

## December 2014

**Wednesday, December 10, 2014 • 12:00 p.m.**

ADR Section Meeting  
Marshall Dennehey Warner Coleman & Goggin, 1007 North Orange Street,  
Suite 600, Wilmington, DE

**Thursday, December 18, 2014 • 12:00 p.m.**

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

**Thursday, December 18, 2014 • 4:00 p.m.**

Elder Law Section Meeting  
Reger Rizzo & Darnall LLP, 1523 Concord Pike, Suite 200, Wilmington, DE

**Thursday, December 18, 2014 • 4:00 p.m.**

Family Law Section Meeting  
Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE

## January 2015

**Monday, January 5, 2015 • 12:30 p.m.**

Senior Lawyers Committee Monthly Luncheon Meeting  
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

**Tuesday, January 6, 2015 • 3:30 p.m.**

Estates & Trusts Section Meeting  
Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, DE

**Wednesday, January 7, 2015 • 12:00 p.m.**

ADR Section Meeting  
Marshall Dennehey Warner Coleman & Goggin, 1007 North Orange Street,  
Suite 600, Wilmington, DE

**Wednesday, January 7, 2015 • 12:30 p.m.**

Women and the Law Section Meeting  
Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE

**Thursday, January 8, 2015 • 3:30 p.m.**

Real & Personal Property Section Meeting  
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

**Thursday, January 8, 2015 • 5:30 p.m.**

Young Lawyers Section Happy Hour  
TBD

**Thursday, January 15, 2015 • 12:00 p.m.**

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

Please contact Janice Myrick at [jmyrick@dsba.org](mailto: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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## TIPS ON TECHNOLOGY

By Kevin F. Brady, Esquire

# Top Technology Predictions for 2015

**A**fter last year's security breach at the North Pole when St. Nick's email servers were hacked and a video of the elves post-holiday bash was leaked to *TMZ*, Santa Claus announced that in 2014 he would be investing millions in a new technology to completely revamp his operations. It is rumored that Santa Claus now has a state-of-the-art technology with super-secret encrypted email, a personal cloud, and NSA-level spying software which allows for hourly updates to the "naughty or nice" list. In order to reduce work-related rooftop/chimney injuries, enhance a healthier diet (no more binging on milk and cookies) and to eliminate reindeer travel costs, NASA has built Santa a bomb-proof command center. Santa will use satellite tracking to monitor thousands of drones dispersed from the North Pole carrying holiday packages, embedded with computer chips, to young and old who have downloaded Santa's "Iwantalotofstuff" app for \$0.99 and have confirmed a snapshot of Google Earth with their location.

In this part of the world, 2014 has been a great year in terms of technology for consumers and businesses, and if the end-of-the-year race to launch new products is any indication, 2015 will be another banner year. Here are some of the top predictions and trends for technology in 2015!

### Security and Privacy

Security breaches and loss of privacy will continue to be the most talked-about

topics in 2015. The number and scope of reported breaches of personal information is staggering. Unfortunately for consumers, it seems like no matter how safe you are with your credit card information, the data is exposed or stolen. Target, Home Depot, and Michaels are but a few recent examples. There is new technology for credit cards that can reduce (not eliminate) the chances that your data is stolen. Traditional credit cards have a magnetic strip and require the customer to sign in order to complete the transaction. The problem is that the information embedded in the stripe can be easily cloned, and signatures (which are required less and less) can be forged. New technology (referred to as "chip and pin" credit cards) will have two levels of protection — an embedded microchip and a personal numeric code to authorize payment transactions. The microchip has proven harder to duplicate and your pin will have to be entered for every transaction. While not perfect, it is a step more consumers should take in 2015.

### Wearable Technology

The number of mobile devices will continue to grow and "staying connected everywhere" will continue to be a theme in 2015. Wearable technology will become more wearable and even more personal. Expect to see more developments about Google Glass, smartwatches, fitness bands, Apple Watch, and Apple Pay. Also on the horizon is a wearable wireless digital payment system that is not tethered to any device. There is a wristband with software technology that can read the overall shape of the user's heartwave to verify the identity of the owner/user who is wearing it. Like Apple Pay, you can use it as an electronic method of payment. If fingerprint scanning and iris/facial recognition are on their way out, can embedded chips in your contact lenses or under your skin be far away?

### BYOD vs. COPE

With the proliferation of portable communication devices and mobile computing devices, there is a debate brewing about whether employees should be permitted to select a communication device, smartphone, or tablet to connect to the company's network server (so called BYOD or "Bring Your Own Device") or whether the company should select the device that the employee can connect to the company's server (so called COPE or "Corporate Owned, Personally Enabled"). Based on privacy, security, cost, and supportability issues, employees should expect to see more COPE and fewer BYOD policies in 2015.

### Changes to Federal Rules of Civil Procedure

In September 2014, proposed amendments to the Federal Rules of Civil Procedure were announced. If the amendments are adopted and submitted to Congress prior to May 1, 2015, they will become effective on December 1, 2015. In terms of discovery

of electronic information, there will be important changes to Rules 26 and 37. In particular, Rule 26 will require the parties to consider proportionality in assessing the scope of discovery, factoring in “the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action and the importance of the discovery in resolving the issues.” Rule 37(e), which will emphasize reasonableness and proportionality in preservation, will limit sever sanctions (i.e., dismissal, default judgment, or an adverse inference instruction) to situations where the requesting party has shown that the producing party acted with “intent to deprive” another party of the information in the litigation.

### 3D Printing

Last but not least, is my favorite new technology — 3D printers. For fans of *The Jetsons* cartoon show, who have been waiting for the time when you could get whatever you want by pushing a button (like little Elroy did when he wanted something to eat and Rosie the Robot would not get it for him), the wait is over. 3D printing or additive printing — where successive layers of materials are added to make just about anything you can think of — is finally here. The possibilities are endless. If you need a wrench on the Space Station, a replica of a vintage car, a working gun, or even a functioning body part, just print one. Like the early days of computers, current 3D printers are large and relatively expensive, but expect the technology, design, and cost to improve dramatically very soon.

The year 2015 should be a very exciting time for technology and I cannot wait for my flying car!

Happy holidays and best wishes for 2015. 

**Kevin F. Brady** is Of Counsel at Redgrave LLP in Washington D.C. and can be reached at [kbrady@redgravellp.com](mailto:kbrady@redgravellp.com).

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



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# 10 Simple Steps for Securing Your Mobile Device

By Steven L. Butler, Esquire

In today's world, it has become normal to find most attorneys attached to mobile devices like smartphones, tablets, and laptops whenever they are outside of their office. These devices have basically become necessities for most lawyers, regardless of the type of practice in which they are engaged. Since mobile devices are relied upon so heavily, it is important that simple security precautions are taken to secure the data stored on the devices.

*“Even though a mobile device is normally in closer proximity to an individual than a desktop computer, this does not make it more secure.”*

## 1. Password protect.

Yes, entering a password takes time, but without a password there is no protection between data on the mobile device and a potential intruder. Even a weak password is better than no password at all. In addition to the simple numeric PINs found on most smartphones, all major vendors also offer much more secure alphanumeric passwords. With technologies like Apple's TouchID, even fingerprints can be used to authenticate identity.

## 2. Auto-lock device after period of inactivity.

Whether it is a laptop, tablet, or smartphone, there is a likely an option to automatically lock the mobile device

and require a password after a period of inactivity. By enabling this option, an unattended device will be locked with no action required by the user. It is best to select a relatively brief period before auto-lock is invoked. With the emergence of smartwatches, some devices can even auto-lock when a smartwatch is a certain distance from the device.

## 3. Be careful entering passwords in public.

A password is only good if it is not easily discovered by others. In addition to staying away from easily guessed passwords (like a birthday), be aware when entering passwords in front of others. If anyone standing around can watch the password being entered into the device, the password is not serving an effective purpose.

## 4. Do not share devices with others.

It is becoming less common for individuals to have a separate work device and personal device. Although it is nice to no longer have to carry two separate smartphones, this means that mobile devices with confidential client data are being used around family members, roommates, and friends on a much more frequent basis. If client data cannot be sequestered under a separate password or user profile, mobile devices should only be used by the lawyer.

## 5. Do not save app passwords.

Many apps installed on mobile devices require a separate login and password before information can be accessed. These apps often provide an option of saving the login and password information to allow quicker access in

the future. Instead of retaining the login credentials, enter the login and password on every use. Use a different password for the apps than what is used to login into the device. This way, even if the device's primary password is obtained, data in third-party apps cannot necessarily be accessed.

## 6. Encrypt data stored on mobile devices.

In addition to password protection, most mobile devices allow encryption of data. Although passwords will prevent someone from easily accessing the contents of the mobile device, without encryption, some information can still be pulled off of a password protected device. With Apple phones and tablets, data is encrypted whenever a password is used. With Android and Windows devices, encryption normally needs to be enabled in settings.

## 7. Only store necessary client data on mobile devices.

Data should only be stored on mobile devices while it is actively being used. If a client file was closed two years ago, there is no reason to still have it on the mobile device. Remove documents with confidential information immediately after the matter is completed. Know what information is being stored on the device, and use a schedule to purge data from the mobile device.

## 8. Update mobile devices with newest security patches.

Even if steps are taken to secure a mobile device, new vulnerabilities are discovered frequently. Apply software and firmware updates on mobile devices as soon as possible to protect from the

vulnerabilities. Do not install software from untrusted sources, and only install apps and services that are needed.

### 9. Refrain from using public WiFi networks.

Public WiFi networks can be used to intercept data that is being transmitted using mobile devices. Since these networks are often available to use without any login or password credentials, it is hard to determine if they have been established by a malicious user. Any unencrypted data that is being transmitted over a public WiFi network can potentially be intercepted by a malicious third-party. If public WiFi access cannot be avoided, it is best to use a VPN connection on the mobile device.

### 10. Use remote wipe and remote location tracking service.

Android, Microsoft, and Apple mobile devices all have free remote wipe and remote location tracking services available. With these services, a free account is established with the software publisher, and then the mobile devices can be located

on a map by using a website or app. If the device is still communicating with the internet, a message can be displayed, a tone can be played, or a command can be sent to remote wipe the device. Remote wipe will remove all data from the mobile device.

### Bonus: 11. Use common sense.

If an activity does not feel safe and secure, it probably is not. Even though a mobile device is normally in closer proximity to an individual than a desktop computer, this does not make it more secure. Putting on a seat belt or making children sit in the backseat of a car did not always feel natural to many people, but as habits are formed, initial inconveniences quickly feel normal. ⚖️

**Steven L. Butler** is a partner with Linarducci & Butler, PA. His practice is limited to Social Security Disability. Mr. Butler is a member of the Delaware Supreme Court Commission of Law and Technology and is a blogger at <http://iPlugDelaware.com>, <http://Mobile4Law.com>, and <http://DelawareDisability.com/Blog>.

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By Charles Slanina, Esquire

# Digest of Previous Ethically Speaking Columns

“**E**thically Speaking” closes out the year with a holiday gift of digests of previous columns for the past few years. As a reminder, copies of the full texts are available on the Delaware State Bar Association website at [www.dsba.org](http://www.dsba.org).

### 2014

*The Use, Selection and Compensation of Experts from an Expert’s Perspective: Part 2* (January 2014) Guest columnist Brett Margolin, Ph.D., an economist and testifying expert, presents anecdotes of common, but questionable, expert selection and management practices.

*Bona Fide Office Requirement Update* (February 2014) From traditional to cyber to virtual, how jurisdictions, including Delaware, define a bona fide office in the changing landscape of technology and the practice of law.

*Musings* (April 2014) A contemplation of the role of the attorney as “Advisor” as inspired by former Delaware Disciplinary Counsel Mike McGinniss’ Texas A&M Law Review article, “Virtue and Advice: Socratic Perspectives on Lawyer Independence and Moral Counseling of Clients.”

*Liability for Non-Lawyer Ads* (June 2014) A discussion of attorney liability for the conduct and claims of third-party marketing services using television, the internet and social media.

*Can I Get a Witness?: The Propriety of Calling Opposing Counsel as a Witness* (July/August 2014) The use and

misuse of subpoenas to create a conflict of interest for opposing counsel.

*Ethics Medley* (September 2014) A collection of ethics, professional responsibility and disciplinary news items including the pitfalls of social media, deposition misconduct and an answer to the question, “Does a complaint create a conflict?”

*What is a Proper Law Suit? A Retrospective of Attorney Attire* (October 2014) If not wearing socks is wrong, I don’t want to be right. Can attorneys be disciplined (or kept out of court) for what they wear — and what they don’t.

*Ethics and Professional Responsibility in the News* (November 2014) Searching the globe to bring you the freshest and finest examples of ethics in the news.

### 2013

*Virtual Law Offices* (January 2013) A discussion of how some states are changing bona fide office requirements to accommodate new technologies and modes of practice.

*New Professional Conduct Rules!* (February 2013) A January 15, 2013 order of the Delaware Supreme Court put into effect changes to the rules relating to technology, confidentiality, prospective clients, advertising, outsourcing, co-counsel, conflicts, and disclosure.

*The Bona Fide Office is CLOSED (In New Jersey)* (March 2013) New Jersey had a brick and mortar *bone fide* office requirement much like Delaware’s. A January 2013 New Jersey Supreme Court rule change permits virtual offices.

*Disciplinary Believe It or Not* (April 2013) Disciplinary decisions from across the country provide a mixture of humor and cautionary tales.

*Ethics in the Cloud* (May 2013) Changes to Rule 1.1 of the Delaware Lawyers’ Rules of Professional Conduct require a lawyer to keep abreast of changes in the law including the benefits and risks associated with emerging technology. Cloud computing or storage of data by outside vendors is discussed.

*Delaware Supreme Court Resolves an Important Disciplinary Issue* (June 2013) The highly litigated issue of the scope of what constitutes disciplinary conduct as a result of criminal conduct occurring outside the practice of law was significantly narrowed in a case involving a rare loss by the Office of Disciplinary Counsel.

*Summer Reading* (July/August 2013) Fiction and non-fiction summer readings were suggested.

*Conflict by Association* (September 2013) The risks and extent of imputation of conflicts under Rule 1.10 including conflicts arising from the retention of experts is discussed.

*Or Else: The Propriety of Threatening Criminal Charges to Leverage a Civil Settlement* (October 2013) “Ethically Speaking” returns to a familiar topic for its readers.

*The Use, Selection and Compensation of Experts from an Expert’s Perspective: Part 1* (November 2013) Guest columnist Brett Margolin, Ph.D., an economist

and testifying expert in State and Federal jurisdictions in Delaware shares the issues and problems experts face when retained by attorneys.

## 2012

*The Partnership Between Prosecutors and Debt Collectors* (November 2012) “Ethically Speaking” explores the definition of “simony” and a national (but apparently not local) practice of prosecutors allowing private debt collectors to send out dunning notices on the prosecutors’ letterhead.

*Annual Lawyers (and Others) Behaving Badly Roundup* (October 2012) The title says it all. More cautionary tales from around the country. Examples include a Cuban cigar-smuggling Illinois attorney and two Texas attorneys caught peeking at texts on a judge’s cell phone.

*Deposition Dangers Redux* (September 2012) and *Deposition Dangers* (July/August 2012) Both columns deal with the potential for attorney liability for attorney conduct and misconduct in the context of depositions. Topics include witness coaching, witness preparation, payments to deposition witnesses and the propriety of contacting adverse expert witnesses.

*Changes Coming to the ABA Model Rules on Professional Conduct?* (June 2012) Under consideration before the ABA are changes to the rules dealing with technology, outsourcing, practice pending admission, admission by motion and conflicts screening.

*Ethics in the News* (May 2012) “Ethically Speaking” once again discusses the antics of Maricopa County Sheriff Joe Arpaio as well as attorney liens and internet scams on attorneys.

*Pardon Me, Do You Have Any Lawyer Goupons?* (April 2012) The propriety of group discount offers by attorneys for marketing and advertisement is analyzed.

*Attorney Liens in Delaware: An Update to the Update* (March 2012) A recent Delaware Supreme Court opinion reaffirmed the existence of an attorney’s right to assert a charging lien in Delaware.

*Brief Misconduct* (February 2012) In which recent examples of attorneys being disciplined or fined for the content of their pleadings is explored.

## 2011

*The “No Contact” Rule and Misconduct by Proxy: Does Rule 4.2 Prohibit Attorney Assistance in Communication Between Parties to a Legal Matter?* (December 2011) The split authority as to whether or not an attorney can advise or assist a client in direct contacts with a represented opposing party which would be prohibited for the attorney is analyzed.

*Withdrawing As Counsel: How “Noisy” Do the Professional Conduct Rules Permit You to Be?* (November 2011) A discussion of mandatory and permissive withdrawals from representation and how much an attorney is permitted to tell the Court in order to obtain permission for the withdrawal.

*Attorney Liens in Delaware: An Update* (October 2011) The May 1995 guest column authored by Matthew F. Boyer and William R. Denny is updated with a discussion of the Chancery Court decision in *Judy v. Preferred Communications Systems, Inc.*

*Can You Trust Your Trust Account?* (September 2011) An examination of threats to your trust accounts from various sources including bank charges, credit card charges and scams.

*Duty to Report Misconduct: Do the Limitations Contained in Rule 8.3 Exceed the Requirements?* (July/August 2011) An update of the 1996 column “Is There Really a Duty to Report Misconduct?” Exceptions to the reporting requirement condoned by ABA Formal Opinions are reviewed.

*Are You Still Too Smart To Be Scammed?* (June 2011) New threats from internet scams to attorney trust accounts. Cautionary tales of attorneys swindled by increasingly elaborate bad check schemes.

*Civility in Practice* (May 2011) A humorous and informative example of a top-down lesson in civility from the Kansas District Court including the full text of the Court’s remonstrative ruling

on a motion for a continuance in which an attorney refused to consent to a continuance so that his opponent could attend the birth of his child.

*Help Your Practice Outlive You* (April 2011) The “designation of a lawyer in the event of incapacity” question contained in the Annual Registration Statement is discussed as a springboard for the need and advisability of attorney planning to protect the attorney’s clients, practice, and heirs.

*Ethics Online* (March 2011) “Ethically Speaking” returned to the ethics resources available online with a digest of favorite websites that every attorney should bookmark.

*More Lawyers and Others Behaving Badly* (February 2011) The title says it all. More cautionary tales from around the country. The list of shame includes a New Jersey attorney stealing from a blind refreshment stand operator and a judge who keyed his neighbor’s car.

Happy Holidays!

*“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 two years are available on [www.dsba.org](http://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](http://www.delawgroup.com).

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# COMMON AND COSTLY EMPLOYEE BENEFITS AND HR MISTAKES: PART 4

## *Brought to you by your DSBIS Human Capital Team*

By Aaron W. Mitchell, REBC

**M**istakes in employee benefits and human resources can be quite costly to employers, in the form of extra benefits, complaints, lawsuits, government-assessed fines and penalties, and attorney fees, to name a few. Do not learn the hard way what these mistakes are. Part 1 appeared in the May 2014 issue, part 2 in the July/August 2014 issue, and part 3 in the October 2014 issue.

### 13. Independent contractor/temporary employee issues.

Some employers make the mistake of including independent contractors in health plan coverage and/or excluding temporary employees from benefit plan coverage. If an employer allows independent contractors to participate in its health plan, its health plan is technically a “multiple employer” plan, and an IRS Form M-1 needs to be filed annually. Failure to do so can cause the DOL to levy penalties. If the employer has wrongfully excluded “common law employees” from its benefit plans, those “employees” can seek retroactive reinstatement to the employer’s benefit plans, potentially causing large damages to the employer.

**Solution:** Do not allow independent contractors to participate in your health plan or you should file an annual Form M-1. Ask your attorney or financial advisor to assist you if you have never filed a Form M-1 before. To preclude unintentional inclusion of “common law” employees, craft your benefit plan language to specifically exclude individuals not on your payroll.

### 14. Misclassifying an individual as an independent contractor.

Many employers misclassify individuals as independent contractors when they do not qualify under the law as an independent contractor for unemployment and worker’s compensation purposes. By making such a mistake, employers could owe thousands of dollars in back premiums for worker’s compensation insurance, as well as premiums for unemployment insurance. Worse yet, the employer could be responsible for actual medical costs for an individual not properly covered under your worker’s compensation policy. The employer may also owe income taxes and social security taxes.

**Solution:** Review your independent contractor relationships to ensure consistency with state and federal standards. Make sure your independent contractors have an FEIN and are incorporated. Ask them to form an LLC if they are not. Ask yourself whether they are doing similar work for other companies in the same industry. If the answer is “no,” they may not be treated as an independent contractor in the eyes of the law.

### 15. Update your restrictive covenants.

Employers spend a lot of time and resources drafting enforceable restrictive covenants. Because the law changes from time to time due to various court decisions, covenants can become outdated and unenforceable. In some states, the law states that if any portion of a restrictive covenant is overbroad, then the entire agreement is unenforceable. For example, a no-hire clause in your agreement could invalidate your entire non-compete as overbroad. If your restrictive covenants are unenforceable, you may not be able to protect your customer base, continuing revenues, and/or confidential information if a key employee leaves.

**Solution:** Have your restrictive covenant agreements reviewed annually to make sure that they are consistent with the ever-changing law. Legal counsel experienced in this area should be able to review your restrictive covenants in a cost-efficient manner to determine their enforceability.

### 16. Misuse of performance evaluations.

Some managers and supervisors make the mistake of not being honest and straightforward when evaluating employees. This mistake often makes it difficult to defend against claims of discrimination and wrongful discharge when managers are less than honest and direct on performance evaluations.

**Solution:** Do not “sugarcoat” criticisms of employee performance. Not only will you not give the troubled employee an opportunity to correct his or her performance problems and become more productive, but you will also not have an appropriate record of performance deficiencies in the event it becomes necessary to defend a termination or disciplinary action.

*This is part 4 of a series on this subject from the Employee Benefits Team at Delaware State Bar Insurance Services (DSBIS), which is a wholly owned insurance brokerage subsidiary of the Delaware State Bar Association and powered by USI Insurance Services. DSBIS was formed by Delaware attorneys for Delaware attorneys and serves all insurance needs for attorneys, their firms, their families, and their clients.*

*Aaron Mitchell is DSBIS's lead Employee Benefits Consultant, coordinating all lines of insurance. He specializes in group benefits and life insurance. Contact Aaron directly at 302-397-0170 or amitchell@dsbis.com to find out how DSBIS can assist you with your insurance needs.*



# Building a Better Seminar

At the last Office and Trial Practice Seminar on Wednesday, October 29, those attending were asked, as they have been asked at seminars in the past, to complete an evaluation form on both the program and the facility and to offer suggested improvements. The important purpose it serves is to guide those preparing the seminars on ways to make them better. We would like to thank those who took the time and trouble to respond.

We have heard what you have to say, and we will make an effort to comply. We also appreciate your comments identifying those speakers you found satisfying on the subjects presented and on those particular subjects you would like to have included in future programs. We will try to accommodate you in that regard, as well.

The Bar Association appreciates the support that you have given to our seminars in the past. We hope that you will continue to favor us with your presence at all future seminars sponsored in part or in whole by the Bar Association.



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**Aaron Mitchell - Employee Benefits**

302.397.0170 / 570.847.1885 (c) / aaron.mitchell@usi.biz

**Kurt Taylor - Professional / Property & Casualty**

302.397.0332 / 302.379.5135 (c) / kurt.taylor@usi.biz

**Kimberly Matthews - Personal Lines**

302.397.0185 / 302.983.0122 (c) / kimberly.matthews@usi.biz

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By Susan Simmons

## Is Agreeing To Do *Pro Bono* Work Risky?

**Y**ou may have already asked or thought of asking this question. Perhaps, because of this, you are hesitant to ever agree to do *pro bono* work based upon a belief that the answer is always going to be “yes.” Truth be told, the correct answer to this one is actually “not really.”

To understand why, start by trying not to buy into the view that *pro bono* work is somehow different than work done for paying clients. It is not. A client is a client regardless of whether money is changing hands. I share all this to underscore that the risks of doing *pro bono* work are going to be the same as the risks that come with any other legal work that you do. The answer “not really” now makes a little more sense because the associated risks are in your control.

Some will encourage lawyers to embrace *pro bono* work as a way to expand horizons, a way to learn a new practice area. I am one of the “some” and I have no problem with our readers wanting to learn a new practice area as long as you are being responsible in how you go about it. Just as a lawyer should never experiment in an unfamiliar practice area with a paying client, so too should it never happen with a *pro bono* client. When navigating in unfamiliar waters, have a map. Seek guidance. Get educated. Steps such as consulting with or shadowing a trusted colleague or mentor, researching the law or attending a CLE seminar in the practice area, are smart and probably necessary. If you are not up to the task, take a pass and look to provide assistance to someone who needs help in the areas in which you are comfortable practicing.

Think about it this way: The Rules of Professional Conduct make no distinction between paying and nonpaying clients, so understand that trying to argue that the standard of care should be lower because the work is being done for free does not fly in the world of attorney discipline. The money issue simply is not going to be a factor when it comes to professional accountability.

Not only should the basics of representation be maintained, but all your regular office practices and procedures should be followed when providing *pro bono* services. Do not bypass these effective and necessary procedures with potential *pro bono* clients. While we acknowledge that sometimes paying clients can turn out to be problem

clients, do not fail to recognize that the same is going to be true with certain non-paying clients. Stay with your tried and true procedures.

Finally, there are those who avoid taking on any *pro bono* matters fearing that their malpractice insurance will not cover that work. While a legitimate concern, this fear can be addressed and alleviated. Lawyers are covered for the work they do on behalf of clients of the named insured, which is their firm or an agency like DVLS. These entities will actually have a policy in place that covers the volunteer attorneys for the work they do on behalf of that entity’s clients.

You can also modify or reduce your risk of legal malpractice by employing basic risk management techniques:

- Review each situation for possible conflicts of interest. You do not want to disqualify yourself or your firm from ongoing representation of other clients.
- Open a file for each *pro bono* client. Enter important dates in your firm’s calendar and tickler system.
- Write letters of engagement. Document the scope of your representation, any special circumstances, and your and the client’s expectations.
- Communicate regularly with clients, even when there is no news to report. Return phone calls promptly.
- Manage your time wisely. Allow yourself adequate time to meet deadlines.
- Know when to ask for help. Lawyers who dabble in unfamiliar areas of

*“Nothing in life is risk free; but risk can be managed. So, the next time you are asked to help out on a pro bono matter, perhaps what has been shared here will help you feel more comfortable saying, ‘Sure, I’d be happy to.’”*

practice are far more likely to receive a malpractice claim. Volunteer work may be an opportunity for you to broaden your repertoire, but your *pro bono* clients should not be harmed by your inexperience.

- Acknowledge that *pro bono* clients, like paying clients, do not always follow your advice. Write a letter documenting your recommendations and, if appropriate, graciously excuse yourself from future representation.

(American Bar Association Volume 20, Number 3 April/May 2003 "No Good Deed Goes Unpunished: Rewards and Risks of *Pro Bono*" By Ann Massie Nelson)

It is not my intention with this article to present a pro or con position on the aspiration of providing services *pro bono*. I simply wish to shed a little light on the excuses that sometimes get in the way of allowing attorneys to give back professionally. Nothing in life is risk free; but risk can be managed. So, the next time you are asked to help out on a *pro bono* matter, perhaps what has been shared here will help you feel more comfortable saying, "Sure, I'd be happy to." After all, you are a lawyer being asked to do what you are always being asked to do, which is practice law. Go ahead and have at it, please!

If you or your firm are interested or already participates in *pro bono*, or if you have a comment on this article, please share.

Susan Simmons  
 Director of Development  
 & Access to Justice Coordination  
 Delaware State Bar Association  
 405 North King Street  
 Wilmington, DE 19801  
 ssimmons@dsba.org  
 302-658-5279 ext. 101 

**Susan Simmons** is the Director of Development & Access to Justice Coordination at the Delaware State Bar Association and can be reached at ssimmons@dsba.org.

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Legal background in professional liability (including medical, legal, accounting and engineering negligence), personal injury, corporate, trade secrets, construction, real estate and environmental cases.

Pre legal background in engineering and construction: Engineering undergraduate degree and three years of field experience as a chemical engineer for DuPont and as a construction engineer for the U.S. Army Corps of Engineers.

jelzufon@elzufon.com  
 302-504-3221



## DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

# The Traditional End of Year Self-Audit: *Great Expectations vs. Realistic Expectations*

**A**s a practicing attorney, what better time than now to reflect on the past year, both professionally and personally, as to where you have been, where you are presently, and where you plan to be in 2015. In fact, this end of year audit has become a DE-LAP tradition.

Lawyers are referred to as great problem-solvers. It is important, however, for the lawyer to realize that even when they are highly successful in treating a client's dilemma, it is often difficult for them to address their own concerns, goals, plans, wellness, and stamina. I refer to this as the shoemaker syndrome, recalling the tale of the shoemaker who had time to fix everyone else's shoes but his own. The day-to-day pressures and deadlines of practicing law, coupled with the ongoing responsibilities of life often cause a lack of time for lawyers to take time for themselves.

We know that being a lawyer is a tough gig. Subsequently, it is imperative that we pencil ourselves in and take the time to realize that success in our life takes foresight, patience, courage, excellent legal skills, personal wellness, and stamina. Equally as important, is planning, implementation, and management to realize the benefits of success.

### Professionally

Sit down now and ask yourself these master questions:

- Do I have realistic short-term, as well as, long-term plans for my law office and/or career?

*“Implementation is action and action converts your business and personal visions.”*

- Do I have a written budget and accounting practices in place for the coming year?

- Am I in compliance with The Professional Rules of Conduct and my CLEs?

- Do I monitor the types of cases that are most and least profitable? Is my billing up-to-date?

- Do I have an updated checklist for Lawyers Planning to Protect Client's Interest in the event of my death, disability, impairment, or incapacity? If not, I should take the time to go to [www.de-lap.org](http://www.de-lap.org) and click on Law Office Management and Transition.

### Short-Term and Long Term Planning for Your Professional Life

A lawyer, like other business people, should write a business plan that includes, short- and long-term goals. This written plan allows for focus on what you need to do today, next week, and next month in order to position yourself so you and your business are traveling in the right direction and do not end up somewhere else. Similarly, a lawyer needs to have a personal wellness plan.

Then, once you have the written plan, you should implement it. Implementation is action and action converts your

business and personal visions. Call this implementation “action” or “baby” steps. Equally as important is management. Through both business and personal management, you build the foundation and framework that unifies purpose and meaning, while maintaining balance in your personal life. Bottom line, it allows you to be aware of great expectations vs. realistic expectations.

**Business:** All firms, small or large, new or old, need a written budget — especially in today's economic climate. This budget should be implemented and reviewed regularly. Ideally, you should work with an accountant familiar with law firms of your size. Your budget should include all fixed expenses for the coming year on a month-to-month basis. This allows you to keep an eye on spending, billing, etc. If you are a solo or small firm lawyer, your financial advisor or accountant should be someone who works with solo and small firm lawyers.

**Monitor Your Cases:** Monitor the types of cases that are most and least profitable. Stop doing work that is not profitable (This does not include your *pro bono* work.) It does include, however, those cases that take a lot of your time and the clients either do not pay, will not pay, or the case is just a bow-wow. Many hard-working, honest lawyers find that their expectations about getting paid are

not shared by their clients. The result is stress, frustration, and problematic cash flow. Therefore, weed them out.

**Checklist for Lawyers Planning to Protect Client's Interest in Event of Death, Disability, Impairment, or Incapacity:** Remember, life events happen. Most individuals (lawyers included) will deal with loss, trauma, and change at some point in their lives. It is part of being human. Although for many lawyers, it is a frequent trait to ignore unpleasant thoughts such as disaster, unexpected illness, misfortune, or even death. By ignoring these events, we fail to prepare for the day unexpected illness, disaster, or even death may prevent us from executing our responsibilities as lawyers, including the law office, the clients, the existing deadlines, and the staff. Therefore, fill out and update a checklist for Lawyers Planning to Protect Clients' Interest in the event of your death, disability, impairment, or incapacity. And, have an updated checklist for closing your office (Go to [www.de-lap.org](http://www.de-lap.org) and click on the Law Office Management and Transition page for boilerplate forms.)

## Other Habits to Consider During Your Self-Audit

### *The Golden Rules*

*(Or How Not To Be a Difficult Attorney)*

1. Behave yourself.
2. Answer the phone.
3. Return your phone calls.
4. Keep your hands off your clients' money.
5. Tell the truth.
6. Admit ignorance.
7. Be honorable.
8. Show civility.
9. Defend the honor of your fellow attorneys.
10. Be gracious and thoughtful.
11. Value the time of your fellow attorneys.
12. Give straight answers.
13. Think first.
14. Define your goals: Remember you are first a professional, then a

businessperson. If you seek riches, become a businessperson, then hire an attorney.

15. Tell your clients how to behave — if they can not, they do not deserve you as their attorney.
16. Solve problems — do not become one.
17. Have ideals you believe in.
18. Do not do anything that you would not be proud to tell your mother about!
19. If you need help, get it.
20. If you need someone to talk to, make that confidential call to the Delaware Lawyers Assistance Program (DE-LAP).

(In Part from The 20 Golden Rules/Florida Lawyer's Assistance Program)

## Personally

Fortunately, most lawyers are passionate about being a lawyer. Unfortunately, some lawyers may not devote enough time to their personal well-being. For that reason, it is not too late to review some simple personal procedures that can contribute to time, money and the establishment of habits that can enhance your professional and personal life.

Do you feel that you work too many hours? If so, design a blueprint for change that will allow you to add more balance to your life and learn to implement it. Ask yourself during this audit: "Do I have a personal wellness plan to maintain my stamina and fitness?"

If not, focus on attending one or all of the classes offered by DE-LAP/DSBA on mind/body fitness and designing a blueprint for change. (Go to [www.de-lap.org](http://www.de-lap.org) and click on Wellness.)

### *Habits and Behavior Tips from the Happy Attorney*

- Take time to eat right.
- Take time to sleep.
- Take time to play.
- Take time to pray.
- Take time to love.
- Take time to give.
- Take time to laugh.

No matter what, prioritize your personal wellness — if there are changes you should (or want to) make — take small realistic steps in achieving those changes.

Many of us love being a legal professional. Generally, the profession has met our great expectations upon entering law school. Most lawyers take great pleasure and pride in their work. However, it is the planning, implementation, management and annual self-audit that may be the difference between success and failure.

For more information on the topics discussed above and for free check-lists call The Delaware Lawyers Assistance Program (DE-LAP) at (302) 777-0124, email [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org), or go to [www.de-lap.org](http://www.de-lap.org). Remember too, if you, or someone you know, is having problems that are affecting your/their ability to practice law of quality of life, contact DE-LAP. 

**Carol P. Waldhauser** is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org).

## Getting help does not sabotage your career... but *not* getting help can.

The Delaware Lawyers Assistance Program (DE-LAP) was created to confidentially help Judges and Lawyers with substance abuse/dependence and/or mental and physical health problems.

### *Carol P. Waldhauser Executive Director*

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Reviewed by Richard A. Forsten, Esquire

## Stranger Than Fiction:

### *Blood Royal*

By Eric Jager (Little, Brown and Co., 2014)

### *The Norman Conquest*

By Marc Morris (Pegasus Books, 2013)

It is often said that truth is stranger than fiction, and history provides no end of examples proving this point. In *Blood Royal, A True Tale of Crime and Detection in Medieval Paris*, Professor Eric Jager recounts the largely unknown story of the 1407 midnight murder of Louis of Orleans, brother of the French king, struck down in the dimly lit streets of Paris — a murder mystery which nearly plunged France into collapse. Meanwhile, in *The Norman Conquest, The Battle of Hastings and the Fall of Anglo-Saxon England*, historian Marc Morris recounts the events of the year 1066, as well as the political intrigues which led to the great battle and its short- and long-term after effects. The complex family genealogies and political maneuvering which led to the battle make HBO's TV series *Game of Thrones* look positively simplistic. But, such is history. More often than not, stranger than fiction.

Louis of Orleans was arguably the most powerful man in 1407 France. His brother, the king, suffered bouts of insanity and Louis effectively ruled in his place. Louis was also a rampant womanizer, seducing numerous women at court, including the wives of counts and barons, and, many believed, the queen herself.

Late in the evening of November 23, 1407, Louis and a small retinue were returning to his Paris residence from the queen's palace when they were set upon by

a band of assassins. Louis was killed, and the attackers galloped off down the dark Parisian streets. The city (and country) was plunged into turmoil. Who had committed the crime? A jealous husband? A foreign power? Perhaps the king himself.

And, so it fell to Guillaume de Tignonville, the Provost of Paris (the chief law enforcement officer for the city) to solve the crime. He moved swiftly. The gates of the city were sealed. Residents in the vicinity were interviewed. The crime scene was examined. Professor Jager is able to



provide a richly-detailed account of the investigation because some 250 years after the crime, a 30-foot long parchment was discovered constituting Guillaume's official police report. The case was ultimately solved, but its solution would have political implications for France for years to come. As part of the fallout, Guillaume would lose his position as Provost, and, in 1415, at the Battle of Agincourt, he would lay down his life for his country.

Agincourt was part of the Hundred Years War, a period when the English

monarchy sought the French crown — claims harking back to the 1066 Norman conquest of England, when William the Conqueror successfully invaded England from Normandy, France. In *The Norman Conquest*, historian Marc Morris does a wonderful job in describing not only the battle itself, but the years leading up to the battle as well as its momentous aftermath.

One of the problems, though, with any book describing events from almost 1000 years ago, is that of sources. There are few, although among them is the famous Bayeux Tapestry (in reality, an embroidery) that tells the story of the conquest in pictures and runs 70 meters in length. Still, even with so much that is not known, there is still much that is, and it is quite a tale.

The succession to the English throne was an open and disputed question. It seems as though half the royal houses of Europe could lay some claim to the title. William the Bastard (his more famous nickname would come after his death) was the bastard son of the Duke of Normandy. He father having died when William was only seven, the future conqueror faced an uncertain and perilous future. Yet he not only survived it all, but prospered.

Ultimately, the Norman conquest hinged on the Battle of Hastings itself. The English were at the top of a long hill,

the invaders at the foot. The impetus was on the invaders, for they were on foreign soil, with limited supplies, and, of course, the English position was strong. The Normans attacked and the battle went on all day. Different accounts of the battle survive, but towards the end, whether real or feigned, the Normans fell back in retreat. The English pursued, losing the strength of their uphill position as a result, and the Normans wheeled about (or regained their composure, which one cannot be known for sure) and counterattacked. At some point, the English King, Harold Godwinson, was killed. Legend and the Bayeux Tapestry indicate that Harold was killed by an arrow through the eye, although whether that is true or not will never be known with certainty. At the end of the day, the English army was routed, the English king was dead, and William the Bastard would go on to take control of the country.

The Norman Conquest was a pivotal moment in English history, and, indeed, European history. It would wed England to continental Europe, rather than Scandinavia, as might otherwise have been the case. The English language was changed, and became one of the richest and most expressive languages in the world. And, the conquest led to, among other things, the Hundred Years War and the Battle of Agincourt, where the former Provost of Paris, along with scores of other French nobility, would be slaughtered.

*Blood Royal* and *The Norman Conquest* each tell amazing tales — tales that also happen to be true. Guillaume de Tignonville employed investigative techniques that we would recognize today as he unraveled an insidious plot. William the Conqueror engaged in a bold and daring plan that succeeded, but could just as easily have failed. Both tales are well told by their respective authors and both prove that truth can indeed be stranger than fiction. ☞

**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](mailto:rforsten@saul.com).



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## A PROFILE IN BALANCE

By James G. McGiffin, Jr., Esquire

# Jim Dalle Pазze: It's the Relationship That's the Thing

**I**f I aspire to be the best lawyer I can be, I must first try to be the best person I can be. I am fortunate to know many lawyers who have succeeded in their work, in part, because they are excellent people. This column in The Bar Journal will feature an article on one such lawyer. Each featured lawyer will exemplify the art of balance in life. I have learned much from these people. Perhaps readers will also benefit.

- Jim McGiffin

• • •



Jim in Indonesia on the Dewi Nusantara, a 180 foot, 750 ton three-masted Scuba vessel.

Centreville lawyer Jim Dalle Pазze is a happy person. A few short minutes of conversation leads one to that conclusion. A little more conversation allows the listener to figure out why he is happy. He has built his life and his career around his relationships with people, and he has some very good relationships.

Jim was born and raised in Princeton, New Jersey. His father and grandfather were in the publishing business with Princeton University Press. His extended family was very close, physically and emotionally, and very important to him. For example, he learned woodworking and furniture making from his grandfather. For college, Jim ventured out, briefly, to Georgia Tech. That may have been too far away and too soon, so he returned to Rider University in Lawrenceville, New Jersey, for a more gradual emancipation.

By his junior year, Jim was ready to expand his horizons, so he spent a year in London, England, at the University of Surrey. His timing was perfect, because another American student there, the beautiful and talented Janice Albro from Skidmore College, was in the same exchange program. Jan has been Jim's true love ever since.

The Delaware Law School provided the next phase of Jim's education. From there he went to Washington, D.C. to work for the law firm of Purcell & Nelson and to continue his education at Georgetown University in the Master of Laws program. Jan signed on with the DuPont Company in Delaware (after working for a few years with Art Connolly, Jr.) and had hoped to follow Jim to the Nation's Capital; alas, Jan's rapid promotions kept her at the DuPont Company headquarters in Wilmington. Jim quickly lost interest in making the District of Columbia his home, and, being a numbers person, added up these factors:

1. He had met some fascinating and exceptional Delaware lawyers when he was Editor-in-Chief of the Law Review, many of whom worked with Prickett Jones Elliott Kristol & Schnee;

2. Prickett Jones had an opening that appealed to him;

3. New Castle County had a very attractive first-time home buyers program for which he was eligible; and,

4. Jan was staying in Wilmington.

The sum of this equation was a move to Prickett Jones.

Jim associated with the firm and gravitated toward the business department where he was quite happy with transaction work and estate planning for about 15 years. After trying on for size a firm with a larger tax and estate planning department, Jim went in the other direction and formed a boutique estate planning and business succession planning firm with John Herdeg and Will du Pont in 1999. To please themselves and their clients, they moved a bit off the well beaten path and out to Centreville in 2008, to a bucolic setting in what was once a client's home.

Many lawyers struggle to avoid feeling as if they are under water, but for Jim it is a welcomed sensation. In Jim's case, we use the term in the literal sense. He began scuba diving with a cousin at age 11. His interest continued into adulthood. When he was still a newly-minted lawyer, he seized an opportunity to participate in a live-aboard scuba trip in the Cayman

Islands. The trip was lead by a man who is one of the world's leading underwater photographers, Paul Humann. Paul, the first client Jim landed as a first year associate at the DC law firm, remains a client and has been a friend and diving buddy for 35 years. Jim, Paul, and a third diver, Ned DeLoach (also now a client and a friend), have dived and photographed for nearly four decades in most of the world's top dive locations. Over this time and with legal and (some) photographic assistance from Jim, Paul and Ned have developed a series of over 20 universally-used guidebooks with stunning photographs that help divers identify fish and other creatures. Two of Jim's photos are featured in the books.

In 1989, Jim and his two diving friends founded a nonprofit now numbering over 35,000 divers that surveys fish populations, monitors reef conditions, and provides conservation education for governments and environmental organizations all over the world, including the U.S. National Oceanic and Atmospheric Administration and The Nature Conservancy.

The most important relationships in Jim's life are those with his wife and children. Jim and Jan have been married more than 33 years and raised two children (both of whom are divers) into successful adulthood. Jan has her Masters and is a family and child counselor. Laura is living and working in New York as the highly skilled chief operating officer of a medical research nonprofit, and Mark is a lawyer and an associate with Cooch & Taylor in Wilmington. The family places a high value on spending time together, especially vacation time at a place on the waterfront of Townsend's Inlet in Avalon, New Jersey (just north of Cape May). But, Jim is also happy just working in the garden with Jan.

The secret to leading a well-balanced life has never been a secret to this lawyer. His relationships with family and friends are what keeps him smiling. ☺

**James G. McGiffin, Jr.**, is a Senior Staff Attorney with Community Legal Aid Society, Inc. and a former President of the Delaware State Bar Association. He can be reached at [jmcgiffin@declasi.org](mailto:jmcgiffin@declasi.org).

# SUCCESS SECRETS

## THE ART OF TIME MANAGEMENT

By Paramjit Mahli

**T**ime management, or more specifically, managing the time needed to develop business, is an area of concern for my clients that comes up time and time again. Each person has to find a system for time management that works for them. It also helps to remember that business development is not about reinventing the wheel. Below are five tips that my clients have found useful in their time management endeavors:

1. **Acknowledge Your Limitations.** First and foremost, we are fallible human beings, not machines. As a result, things will never be 100% perfect. If you are a perfectionist, you are setting yourself up for a huge disappointment. Be content with getting done 80% of what you set out to do. Trust me. Hit the 80% number consistently and you will be surprised with the results.

2. **Beware of the Drain of Social Media.** Social media can be a time suck and does not further your goal of getting work done quickly and efficiently. If you are on Twitter, LinkedIn, or Facebook for work purposes, as with email, create a systematic time and place for checking in on those sites (at most four times a day). Then TRY to forget about them until evening or the following day. I know that is easier said than done.

3. **Take Breaks.** The mind needs a break to think clearly. Nobody does great work with a foggy head. Take time for lunch. Go outside and take a break. If you can take a longer break, go to the gym. It will do wonders for your stamina. Make it a habit.

4. **Disconnect to Work Efficiently.** If the desire is to be connected 24/7, how is that working for you? Are you really available 24/7 and completely present? I'm sure you are not. For a change, get disconnected for periods of time and you'll see that you are actually working more efficiently. Try some combination of the following:

- Turn your cell phone off until you are ready to make outbound calls.
- Check your voice mails only four times a day.
- Keep the cell phone off when you are driving. (That one is common sense.)
- Turn the email alert off on your computer.
- Try waiting until after you get your priority work done before checking emails.
- Do your planned work first (this one will require discipline).
- Designate limited, specific times throughout the day to check email.
- Reward yourself for self-discipline with personal treats.

5. **Keep Your Eyes Above the Flames.** Much of our day may be spent putting out fires. It is difficult not to lose sight of your daily task list, let alone your larger goals for the year. Despite the fires that come, always make an appointment on your calendar to take some action that moves you toward your larger business development goals. A follow-up call to a new contact, a note to a client, or an invitation to a prospective client are all small things that can be done even on the busiest of days. If you do not make yourself do this, you will just put out daily fires and get little else accomplished.

These tips may seem like common sense, but common sense is often in short supply when it comes to time management and business development. We tend to overcomplicate things unnecessarily. Start with baby steps and build on your progress. More importantly, act consistently in order to see results.

Paramjit Mahli is the Principal of The Rainmakers Roundtable and can be reached at [ceo@rainmakersroundtable.com](mailto:ceo@rainmakersroundtable.com).

*"Success Secrets" is curated by Emilie R. Ninan, Esquire. If you have a success secret to share, please contact her at [ninane@ballardspahr.com](mailto:ninane@ballardspahr.com).* ☺

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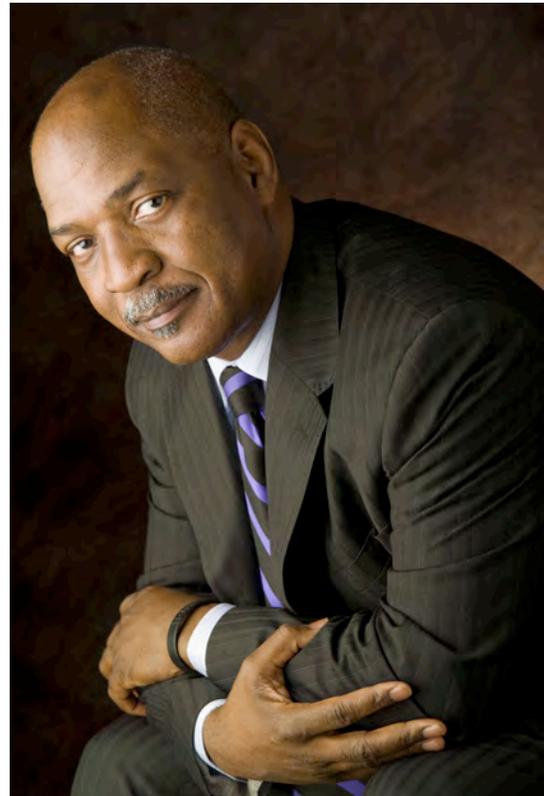
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**PUBLIC REPRIMAND****Board Case No. 111845-B****Effective Date: October 22, 2014**

By Order dated October 22, 2014, the Delaware Supreme Court publicly reprimanded Alex J. Brown, Esquire, a member of the Maryland Bar who was admitted *pro hac vice* by the Court of Chancery, for violation of Rules 3.4(c)(knowingly violate a court order) and 8.4(d)(engaged in conduct prejudicial to the administration of justice) of the Delaware Lawyers' Rules of Professional Conduct.

Respondent represented several parties before the Court of Chancery where the Court entered a Seizure and Injunction Order placing an insurance company under control of the Delaware Insurance Commissioner. The Court enjoined the filing of litigation against the insurance company in any other forum. Respondent acted in contempt of the Seizure and Injunction Order by filing suit in Maryland State Court against the insurance company after the injunction had been entered.

Respondent admitted he knowingly violated the Seizure and Injunction Order thereby engaging in conduct prejudicial to the administration of justice.

The Delaware Supreme Court approved a Board Report and Recommendation of Sanction submitted by a Panel of the Board on Professional Responsibility. In recommending a public reprimand, the Board considered the following aggravating factors: (1) dishonest or selfish motive; and (2) substantial experience in the practice of law. In mitigation, the Board considered the following factors: (1) absence of a prior disciplinary record; (2) timely good faith effort to rectify the consequences of his misconduct; (3) full cooperation with the disciplinary proceedings; (4) good moral character and reputation; (5) the Court of Chancery imposed a monetary sanction for Respondent's contumacious conduct; and (6) remorse.

**PRIVATE ADMONITION****Board Case No. 111979-B****Effective Date: November 6, 2014**

A Panel of the Preliminary Review Committee ("PRC") on the Board on Professional Responsibility authorized the Office of Disciplinary Counsel ("ODC") to offer Respondent the sanction of a private admonition, with conditions, for violation of Rule 8.4(d). This matter came to the attention of ODC following Respondent's self report of a failure to pay personal income tax due to the Internal Revenue Service and the Delaware Division of Revenue for tax years 2012 and 2013.

Rule 8.4(d) states it is professional misconduct to "engage in conduct prejudicial to the administration of justice." By failing to pay on a timely basis all 2012 and 2013 personal income taxes, Respondent violated Rule 8.4(d).

Respondent acknowledged violating Rule 8.4(d) and consented to the imposition of the private admonition, subject to the following conditions:

1. Two year probation;
2. Respondent must continue to diligently pursue resolution of his tax arrears with the Delaware Division of Revenue and the Internal Revenue Service and make payments to those authorities of any and all delinquent taxes to the satisfaction of those authorities; and
3. Respondent must provide ODC with a status report detailing the payments made to Federal and State taxing authorities and the outstanding balance remaining on or before the following dates: April 1, 2015, October 1, 2015, May 1, 2016 and October 15, 2016.

The PRC considered the following mitigating factors: (1) Respondent has no prior disciplinary record [ABA Standard 9.32(a)]; (2) Respondent did not act with a dishonest or selfish motive [ABA Standard 9.32(b)]; (3) Respondent was experiencing personal problems during the relevant time period [ABA Standard 9.32(c)]; (4) Respondent made substantial steps to

address the outstanding tax obligations [ABA Standard 9.32(d)]; and (5) Respondent fully cooperated with ODC in the investigation of the matter, including self reporting the matter and providing timely responses to all inquiries in the course of the investigation. [ABA Standard 9.32(e)]. In aggravation, the PRC considered Respondent's substantial experience in the practice of law.

**DISABILITY INACTIVE****Timothy Cairns, Esquire****Supreme Court No. 623, 2014****Effective Date: November 12, 2014**

By Order dated November 12, 2014, the Delaware Supreme Court transferred Timothy Cairns to disability inactive status, pursuant to Rule 19(b) of the Delaware Lawyers' Rules of Disciplinary Procedure. Mr. Cairns is prohibited from practicing law in Delaware until such time as he is reinstated to active status. Ⓢ

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## Holiday Supreme

This is sure to be the most “judicial” of Judicial Palates as I feature two of Chief Justice Leo E. Strine, Jr.’s favorite holiday recipes. While many readers look forward to a traditional menu year after year – roasted beef tenderloin, or, for a gamier palate, roasted pheasant – Chief Justice Strine’s holiday tradition is “for each year to be a bit different, with some things that folks love reemerging at times.”

When describing his holiday fare, the Chief Justice said: “The tradition is that I spend about a month every year figuring out what to do. We have had everything from goose to crown roast of pork to a New Orleans seafood fest to Italian-themed meals to Mid-Atlantic seafood to ducks to lamb, and even, one year when my beloved aunt had to spend Thanksgiving in the hospital, a massive Turkey fest.”

One of Chief Justice Strine’s dishes that is in demand every few years is “Crab Maison” – an appetizer served at Galatoire’s restaurant in New Orleans.<sup>1</sup>

### Crab Maison

#### Ingredients (recipe serves 4)

- 1/2 cup mayonnaise
- 2 tbsp. high quality olive oil
- 2 tsp. white wine vinegar
- 1 tsp. Creole or Dijon mustard
- 1 tsp. small capers, rinsed, drained, and finely chopped
- 1/2 tsp. finely chopped flat-leaf parsley
- 1/2 tsp. kosher salt
- 1/8 tsp. freshly ground white pepper
- 3 green onions, finely chopped
- 1 lb. jumbo lump crab meat
- 12 large leaves butter lettuce
- 4 slices tomato, halved

Whisk together mayonnaise, oil, vinegar, mustard, capers, parsley, salt, pepper, and scallions; add crab meat and fold gently to combine. Place three leaves lettuce each on four salad plates. Divide crab mixture evenly among plates and garnish with two half slices tomato.

Another of Chief Justice Strine’s traditions comes at the end of Christmas dinner when he and his dad enjoy a traditional egg nog. The Chief Justice recommends Alton Brown’s recipe and suggests that a good rum, brandy, or rye can be used just as well as bourbon.<sup>2</sup> “Although it may not be good

for the waistline, it’s good for the soul,” says the Chief Justice of the egg nog.

### Egg Nog

#### Ingredients

- 4 egg yolks
- 1/3 cup sugar, plus 1 tablespoon
- 1 pint whole milk
- 1 cup heavy cream
- 3 ounces bourbon
- 1 teaspoon freshly grated nutmeg
- 4 egg whites

In the bowl of a stand mixer, beat the egg yolks until they lighten in color. Gradually add the 1/3 cup sugar and continue to beat until it is completely dissolved. Add the milk, cream, bourbon, and nutmeg and stir to combine.

Place the egg whites in the bowl of a stand mixer and beat to soft peaks. With the mixer still running gradually add the 1 tablespoon of sugar and beat until stiff peaks form. Whisk the egg whites into the mixture. Chill and serve. (For the cooked version, see the recipe in its entirety on foodnetwork.com.)

Although holiday meals involve much planning and forethought, the Chief Justice summarized his cooking philosophy as I would: “...half of what I cook doesn’t involve much of a set recipe...I’ve cooked so long (I am the cook in the house) that what comes out is some result of my scan of the pantry, the vegetables and proteins on hand, etc. As you know, if you have white wine, olive oil, and butter around, and pasta and fresh herbs and some vegetables, you’re basically good to go.”

So, whatever dresses your table for this season of special holidays, some olive oil, butter, and good wine is always a place to start. Thanks, Chief, for sharing your time and traditions!

#### Recipe References:

1. “Crab Maison.” Recipe. [saveur.com](http://saveur.com). Apr. 4, 2013.
2. Brown, Alton. “Eggnog.” Recipe. [foodnetwork.com](http://foodnetwork.com). 2005. 



**Susan E. Poppiti** is a mathematics teacher 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](mailto:spoppiti@hotmail.com). Other recipes and cooking tips are available on Susan’s new food blog at [www.cucinadipopppiti.com](http://www.cucinadipopppiti.com).



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