



# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

**DELAWARE STATE BAR INSURANCE SERVICES, INC. UPDATE P. 16**

**HIGHLIGHTS FROM THE 2013 BENCH AND BAR CONFERENCE P. 20**

**NOMINATIONS SOUGHT FOR 2013 AWARDS P. 33**



# Would Your Clients Benefit from Health Care Reform Training?



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Do they realize the "Cadillac" tax can't be avoided by buying a foreign car?**

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- ◆ Radio Interviews
- ◆ Delaware Social Security Administration



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**If you are interested in having DSBIS and Willis be part of a presentation on Health Care Reform, please contact Aaron Mitchell at 302-397-0170 or [aaron.mitchell@willis.com](mailto:aaron.mitchell@willis.com)**

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Editor, DSBA Bar Journal  
Delaware State Bar Association  
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# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

## FEATURES

- 16 Delaware State Bar Insurance Services, Inc. Update  
*Health Insurance Reform by Aaron W. Mitchell*  
*Suits for Fees by Kurt E. Taylor*  
*Hurricane Season by Kimberly A. Matthews*
  - 20 Highlights from the 2013 Bench and Bar Conference
  - 33 Nominations Sought for 2013 Awards
- 

## COLUMNS

- 4 President's Corner
  - 10 Tips on Technology
  - 12 Ethically Speaking
  - 14 Access to Justice Spotlight
  - 22 DE-LAP Zone
  - 24 Book Review
  - 26 A Profile in Balance
  - 34 Judicial Palate
- 

## DEPARTMENTS

- 8 Calendar of Events
- 9 Section & Committee Meetings
- 28 In Memoriam
- 29 Bar News
- 29 Of Note
- 29 2014 Delaware Legal Directory Correction Form
- 31 Disciplinary Actions
- 32 Bulletin Board

ON THE COVER: Cape Henlopen lighthouse photographed from Cape Henlopen State Park  
in Lewes, Delaware. © istockphoto.com/mdgorris



## PRESIDENT'S CORNER

By Gregory B. Williams, Esquire

**G**reetings friends and colleagues in the Delaware State Bar Association (the “DSBA”). I am honored to become the 66th President of the DSBA and look forward to leading this organization during the 2013-2014 Bar year. I will strive to sustain the legacy of stellar leadership that has been an enduring characteristic of the DSBA from its first president, Josiah Marvel in 1923, through its 65th President, Theresa Brown-Edwards (“Terri”) in 2013.

### **Congratulations and Thank You to Our 65th President!**

As I begin my term as President, I congratulate and thank Terri for her stellar leadership and tireless efforts during the past year as President of the DSBA. I also congratulate and thank all of those other members of the DSBA that served on the DSBA Executive Committee, as Section Chairs, Committee Chairs, or in some other leadership capacity during Terri’s administration.

The highlights of Terri’s year as President include the following:

First, the establishment of the Joint Bar Committee to examine how the DSBA could work in partnership with the local ethnic bar associations — namely the Delaware Barristers’ Association, the Delaware Hispanic Bar Association, and the South Asian Bar Association of Delaware — to be a central united team bringing together a myriad of individual diversity efforts in our state. The Joint Bar Committee, which I had the privilege of serving as its Chair during Terri’s administration, is a vibrant committee that continues to examine how the DSBA and the various local ethnic bar associations

can work together on issues and topics of particular interest to their various members and help each other in reaching their respective goals.

Second, Terri established the Paralegal Committee to examine the role that paralegals play in Delaware law practices and how the DSBA could possibly become more inclusive of that resource pool in our state.

Third, Terri continued the work of the Lawyers with Disabilities Committee to examine and educate our members on issues related to lawyers with disabilities. Along with the able assistance of the Committee’s Chair, Santino Ceccotti,

*“My vision as President of the DSBA for the coming year is a vision for the Association of Service — Service to the Bar, Service to the Courts, and Service to the Community.”*

Terri advanced the important work of the committee and Terri’s leadership in those efforts has inspired me to do the same during my presidency.

Fourth, Terri led the DSBA through the completion phase of its move from the old Bar headquarters on Market Street to its new state-of-the-art bar headquarters in the Renaissance Center. Terri had the honor of welcoming the members of the DSBA to the new headquarters during the Open House in April and had the honor of being the first president to preside over the Association in its new headquarters. In addition to Terri, I want to recognize and thank past presidents, Matt Greenberg and Jim McGiffin, as well as Robert Krapf, Richard Forsten, and all of the

other members that worked on the DSBA headquarters relocation project during Matt, Jim, and/or Terri’s presidency for all of their hard work on the project on behalf of the DSBA.

It was my great honor to present Terri with her DSBA President’s ring during the Annual Meeting as a token of the Association’s appreciation and recognition of her leadership, sacrifice, and stellar service as the 65th President of the DSBA.

### **Another Successful Bench and Bar**

Consistent with Delaware tradition, the Annual Bench and Bar Program was held on June 5, 2013 at the Chase Center on the

Riverfront. The theme of the CLE program was centered around “Truth: Lawyers and the Law.” The CLE program included panel discussions and presentations from members of the Delaware judiciary, including the Honorable Mary M. Johnston and the Honorable Sam Glasscock III, Delaware’s Chief Disciplinary Counsel, Jennifer-Kate Aaronson, Esquire, Delaware practitioners, Charles Slanina, Esquire, and Matthew Boyer, Esquire, and award winning and best-selling novelist, Scott Turow.

During the Annual Meeting, Chief Justice Myron T. Steele gave his State of the Judiciary remarks to an audience of more than 400. Among other things, Chief Justice Steele discussed (1) the need for security enhancements in Delaware

courthouses while maintaining an open forum to ensure access for all; (2) the ever-increasing need for adequate court funding including, but not limited, the real need for raises in salaries for judges and other court employees and the adverse effect that inadequate funding is having on the system; and (3) the duty, responsibility and need for the DSBA to raise and debate the issues that confront inadequate court funding and to aggressively act in support of adequate court funding.

Another highlight of the Annual Meeting was the presentation of the First State Distinguished Service Award to former Judge Joshua W. Martin, III. The Distinguished Service Award is presented to a member of the Bench or Bar who has demonstrated the highest level of professionalism, service, and ethics commendable of a Delaware lawyer. Judge Martin certainly embodies all of the attributes of the award and it was personally rewarding to see him receive the award during the same program that I was being installed as President. On a personal note, Judge Martin (affectionately known as “Josh”)

has been a friend and trusted advisor for many years and I can think of no one more deserving of the award.

The Annual Meeting was followed by the dinner program hosted by the Delaware Supreme Court and the Delaware Judicial Conference. Justice Carolyn Berger welcomed the attendees followed by fellowship and dinner. During dinner, Scott Turow provided his keynote remarks on his journey to becoming a highly respected trial attorney and best-selling novelist. It was an enjoyable evening.

### **Casting Vision and Setting Agenda for this Bar Year**

In Proverbs 29:18, it states that “Where there is no vision, the people perish.” Well, my vision as President of the DSBA for the coming year is a vision for the Association of Service — Service to the Bar, Service to the Courts, and Service to the Community. Our theme for the year is “Collectively, We Can Do Great Things!”

In addition to continuing the successful initiatives and important work of

some of the existing DSBA committees, including but not limited to, the Joint Bar Committee and the Lawyers with Disabilities Committee to name but a couple, we will undertake and implement three new initiatives during this year.

First, a DSBA Mentoring Program that will have two components. The first component will be designed to match newly admitted Delaware attorneys and those Delaware attorneys who have been practicing for less than three years who choose to participate with more experienced members of the Delaware Bar in their substantive area of practice or some other area of interest where the requesting mentee desires mentoring.

Every year, on average, approximately 140 new attorneys are admitted to the Delaware Bar and become members of the DSBA. As new attorneys make the transition from the classroom into practice, the challenges and potential pit falls they face are vast. The first component of the DSBA Mentoring Program is designed to elevate the competence and professionalism of Delaware’s newly-admitted

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attorneys and thereby increase the probability of their long-term success.

The DSBA will be organizing a pool of experienced members of the Association — members with a minimum of five years of experience, who are interested in serving as mentors — and a pool of less experienced members who desire to be mentored in some fashion. The DSBA will develop the necessary forms and materials for participation in the mentoring program, establish some guidelines, allocate some funding, and schedule some events to help foster and strengthen the mentor/mentee relationships that are formed through this program. See page 9 for more information and to apply for the Mentoring Program.

The second component of the DSBA Mentoring Program will consist of a series of CLE programs designed to further educate Delaware lawyers on the Rules of Professional Conduct, effective law office management, best practices in running a law practice, how to avoid the most common complaints the Office of Disciplinary Counsel receives and other pertinent topics. The DSBA, through its Professional Guidance Committee, will work in partnership with the Office of Disciplinary Counsel and the Delaware Lawyers Assistance Project (DE-LAP) to develop the specific programming for the second component. The DSBA, the Office of Disciplinary Counsel, and DE-LAP believe there is a real need for this programming in Delaware and are committed to working together to organize it and make it available.

We recognize that, in addition to newly admitted attorneys, a significant percentage of Delaware lawyers practice as solo practitioners or in small firms where they may not have the infrastructure and administration in place that you find at large firms or have access to existing programs and/or resources on such topics as law office management or effectively running the business of a law practice. Thus, the second component of the DSBA Mentoring Program will be available for any member of the association that chooses to take advantage of it by registering for the programs.

I am happy to report that a few outstanding leaders of the DSBA, including

former Chief Justice Veasey, and former DSBA President Bill Johnston have already stepped up and volunteered to serve as mentors. We need other members to do the same as we prepare to match those new attorneys to be admitted to the Delaware Bar in December with mentors. Ultimately, the DSBA Mentoring Program is good for the Bar, the Courts, and the clients that we serve.

Second, we will impanel a DSBA Strategic Planning Committee charged with examining and developing recommendations on three important issues that are critical to the long-term well-being and strength of our association.

Issue #1: How can we more effectively advocate as an Association for the adequate funding of Delaware courts, including but not limited to, necessary security enhancements and increases in judicial compensation?

Issue #2: How do we increase participation by our colleagues practicing in Kent and Sussex counties in the DSBA?

Issue #3: How can we improve the Bar's coordination with our state and federal officials in Delaware in promoting the quality and efficacy of the state and federal courts of Delaware?

It is time to ask ourselves these questions and carefully analyze what is working well within our existing systems and in what ways can we improve to adapt to the growth and change in the population throughout our State and to effectively compete for legal services in existing and emerging markets globally.

Third, we will implement a DSBA Statewide Day of Service on Dr. Martin Luther King Day (“MLK Day”). This will be a DSBA organized day of reflection and service throughout the State. We will start in the morning with a breakfast program designed to bring all of our members and others together to reflect on Dr. King's vision, the noble characteristics of service and self-sacrifice, concern for our various communities, and our collective call to action to give back. We will disperse from the breakfast program into staffing legal clinics and other service projects

that will be organized throughout the State for DSBA members to participate as volunteers.

Instead of treating MLK Day as a day off from work, let's galvanize our efforts as a Bar Association and make MLK Day a “day on” for us to give back to our communities throughout the State.

## Other Activities

Now, in addition to continuing several existing initiatives and implementing the three new initiatives outlined above, we also have the privilege and responsibility as an Association of organizing and hosting the Mid-Atlantic Bar Conference in Delaware in October. The Mid-Atlantic Bar Conference is a part of the National Conference of Bar Presidents and is a conference where bar leaders from the Mid-Atlantic states get together to, among other things, discuss relevant issues and trends in their respective states and exchange ideas. We look forward to hosting the bar leaders from our sister states in the Mid-Atlantic Conference in October.

## We Need Your Membership and Support

With all of the work ahead of us this coming year as an Association, I want to assure you of one thing during my Presidency that I will not forget, the Executive Committee will not forget, and the DSBA staff will not forget — that is, the DSBA is a voluntary member organization. As President and as an Executive Committee, we can have the greatest ideas in the world, but you are the reason why the DSBA exists. We need your membership and participation in the DSBA. Please join us in the journey to bring this year's vision to fruition by renewing your membership and getting involved.

Enjoy your summer and thank you for the privilege of serving as your President. Remember, Collectively, We Can Do Great Things! 🌟

**Gregory B. Williams** is President of the Delaware State Bar Association and a Partner at Fox Rothschild LLP. He can be reached at [gwilliams@foxrothschild.com](mailto:gwilliams@foxrothschild.com).

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## 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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Psychiatrist - Dr. Carol Tavani

# CALENDAR OF EVENTS

## September 2013

### Tuesday, September 17, 2013

Social Security Retirement

3.0 hours CLE credit

Delaware State Bar Association, Wilmington

Webcast to Tunnell & Raysor, Georgetown

### Friday, September 27, 2013

Technology and the Seasoned Litigator

3.0 hours CLE credit

Delaware State Bar Association, Wilmington

Webcast to Tunnell & Raysor, Georgetown

## October 2013

### Tuesday, October 1, 2013

Your Law Practice: Staying on the Right Side of the Rules (Part I)

3.8 hours CLE credit

Delaware State Bar Association, Wilmington

Webcast to Tunnell & Raysor, Georgetown

### Thursday, October 3, 2013

Recent Developments in Confidentiality Agreements in M&A Transactions

2.0 hours CLE credit

Delaware State Bar Association, Wilmington

Webcast to Tunnell & Raysor, Georgetown

### Friday, October 25, 2013

Supreme Court Review 2013 – A Discussion at the Highest State and Federal Judicial Levels

3.0 hours CLE credit

Delaware State Bar Association, Wilmington

Webcast to Tunnell & Raysor, Georgetown

### Tuesday, October 29, 2013

Your Law Practice: Staying on the Right Side of the Rules (Part II)

3.5 hours CLE credit

Delaware State Bar Association, Wilmington

Webcast to Tunnell & Raysor, Georgetown

## November 2013

### Friday, November 22, 2013

Office and Trial Practice 2013

6.5 hours CLE credit

Chase Center on the Riverfront, Wilmington, DE

## December 2013

### Thursday, December 5, 2013

E-Discovery for the Mid-Size Case

3.0 hours CLE credit

Delaware State Bar Association, Wilmington

Webcast to Tunnell & Raysor, Georgetown

### Tuesday, December 10, 2013

Finance for Lawyers

6.0 hours CLE credit

Delaware State Bar Association, Wilmington

Webcast to Tunnell & Raysor, Georgetown

## SECTION & COMMITTEE MEETINGS

### August 2013

**Monday, August 5, 2013 • 12:30 p.m.**

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

### September 2013

**Monday, September 9, 2013 • 12:30 p.m.**

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

**Wednesday, September 11, 2013 • 12:00 p.m.**

Section Chair Meeting  
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington

**Thursday, September 12, 2013 • 4:30 p.m.**

Worker's Compensation Section Meeting and Happy Hour  
Young Conaway Stargatt & Taylor LLP, 1000 North King Street, Wilmington

**Tuesday, September 17, 2013 • 12:30 p.m.**

Labor & Employment Law Section Meeting  
Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington

**Thursday, September 19, 2013 • 12:00 p.m.**

Elder Law Section Meeting  
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington

**Thursday, September 19, 2013 • 3:00 p.m.**

Executive Committee Meeting and Dinner  
Buena Vista Conference Center, 661 South Dupont Highway, New Castle, DE 19720

## EXECUTIVE COMMITTEE

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## DSBA MENTORING PROGRAM

The DSBA Mentoring Program is designed to match newly admitted Delaware attorneys and those Delaware attorneys who have been practicing for less than three years who choose to participate with more experienced members of the Delaware Bar in their substantive area of practice or some other area of interest where the requesting mentee desires mentoring.

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To volunteer to become a mentor, you must:

- be an active member of the Delaware Bar.
- have a minimum of five years of experience.
- have read the Principles of Professionalism for Delaware Lawyers and The Delaware Lawyers' Rules of Professional Conduct and agree to promote and foster the ideals of Professional courtesy, conduct, and cooperation during your practice and encourage and remind your mentee to familiarize himself or herself with and adhere to the Principles of Professionalism for Delaware Lawyers and The Delaware Lawyers Rules of Professional Conduct.
- have not been subject to any disciplinary sanctions.

Click [here](#) for the volunteer form or visit [www.dsba.org](http://www.dsba.org).

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If you are a new or recently admitted attorney and you would like to apply for a mentor, click [here](#) or visit [www.dsba.org](http://www.dsba.org).

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If you have any questions, please contact Rina Marks at [rmarks@dsba.org](mailto:rmarks@dsba.org) or 302-658-5279.



By Kevin F. Brady, Esquire

# Enter Google Glass ... Exit Personal Privacy

**W**ith the national debate over surveillance, data privacy, and data security heating up, Google is about to significantly ramp up the discussion by launching one of the most innovative and controversial inventions in recent memory. In April 2012, Google announced “Project Glass,” a wearable computer which allows the user to access the internet, take pictures, shoot short videos, send and receive text messages, and even have a video conversation using only a pair of glasses. It is in a word — amazing. Users will have the ability to inconspicuously capture and record everything the user sees no matter where they are — restaurants, classrooms, court rooms, public rest rooms, movie theatres, driving down the street, sitting in the hospital, or gambling in Las Vegas.

Google Glass is basically a glasses frame with a small device sitting directly in front of one of the lenses. The device is connected through a small cable to an earpiece so the user can hear commands from the device or a conversation. To the uninformed public, Google Glass looks like a very stylish pair of glasses. However, from the user’s perspective, the small device appears to be a 25-inch high definition screen about eight feet away. Glass wearers operate the device using either voice commands, swiping their finger along the side of the glass frame or simply moving their head in a certain direction. It is rumored that soon the user will be able to take a picture simply with a wink of the eye. Given the rapid pace

of technological advancement, it will not be long before the device is so small that it will fit in the frame of an existing pair of glasses, a contact lens, or eventually a corneal implant.

Inevitably, it will be possible for the user to look at someone’s face and with facial recognition software, access personal information about that person including her address, employment, education, marital status, shopping habits, etc. Google, however, has promised that it will not add facial recognition features until it has strong privacy protections in place. I suspect that Google will implement an opt-out program, like the government’s “Do Not Call” Registry to add some protection to personal information.

Google recently announced that it has developed apps for the device that include CNN, Twitter, Facebook, and Tumblr to name a few. The device connects to the cloud so that means that all of the information that a user is capturing is being stored by a third party, which raises even more privacy and security issues. For instance, will data captured by Google Glass be discoverable in litigation?

Google recently started “beta testing” the device with about 2,000 pairs of Google Glass sent to users who paid \$1,500 each for the privilege of testing the product. While Google expects the device to be available to the public near the end of 2013 or the beginning of 2014, the uproar has already begun. Recently, a bar in Seattle took center stage when it banned for privacy reasons Google Glass users from entering the bar. That incident

also lead to the coining of a new phrase for individuals who improperly use the device — “Glassholes.”

Legislators in West Virginia are going to introduce legislation banning drivers from wearing Google Glass while driving. The New Jersey and Las Vegas Gaming Commissions are moving to ban the devices, and the New Jersey Division of Gaming Enforcement has moved to ban the device in 12 casinos in Atlantic City. In short, the devices have already created such an uproar that they are being banned before the are being sold. Even members of Congress are weighing in on the debate. Members of the Congressional Bi-Partisan Privacy Caucus sent a letter to the CEO of Google recently asking for answers about privacy concerns, as well as functionality even before Google announces what the device will do or what features it will have. Congress wants answers to questions such as: “How does Google plan to prevent Google Glass from unintentionally collecting information about the user or a non-user without consent? Will the device have the capacity to store any data on the device itself? And, will Google implement some sort of user authentication code to safeguard stored data and if not, why not? Stay tuned for Google’s answers. I will be particularly interested in hearing how Google is going to balance the user’s rights with an individual’s right to privacy. Will Google Glass redefine what is “public” and by extension the scope of an individual’s right of privacy? Who will set the Google Glass etiquette standard for what is appropriate to view?

“I will be particularly interested in hearing how Google is going to balance the user’s rights with an individual’s right to privacy.”

Although Google is defending its device saying that Google Glass has significant upsides including the potential to improve driving safety, Google has not said how Google Glass will make driving safer. It has announced a potential acquisition of Waze, the company that released one of my favorite iPhone or iPad apps. Waze is a free interactive social-powered navigation app. Waze is a combination of Mapquest and Facebook. Waze uses live reports from its users to report traffic jams, police activity, accidents, hazards, road closures, and even traffic cameras. This is an excellent app for travelers on familiar or unfamiliar routes.

Indeed, the possibilities (good and bad) are limited only by the imagination. For instance, if you want to go to Carnegie Hall and listen to a concert but at the same time your favorite professional

baseball team is in action, no worries, you can do both. The same is true if you want to keep an eye on your children or pets at your house while you are at work. Based upon the reviews of all of the beta testers of Google Glass, it will be an absolute “must-have” when it is finally offered to the public. ☺

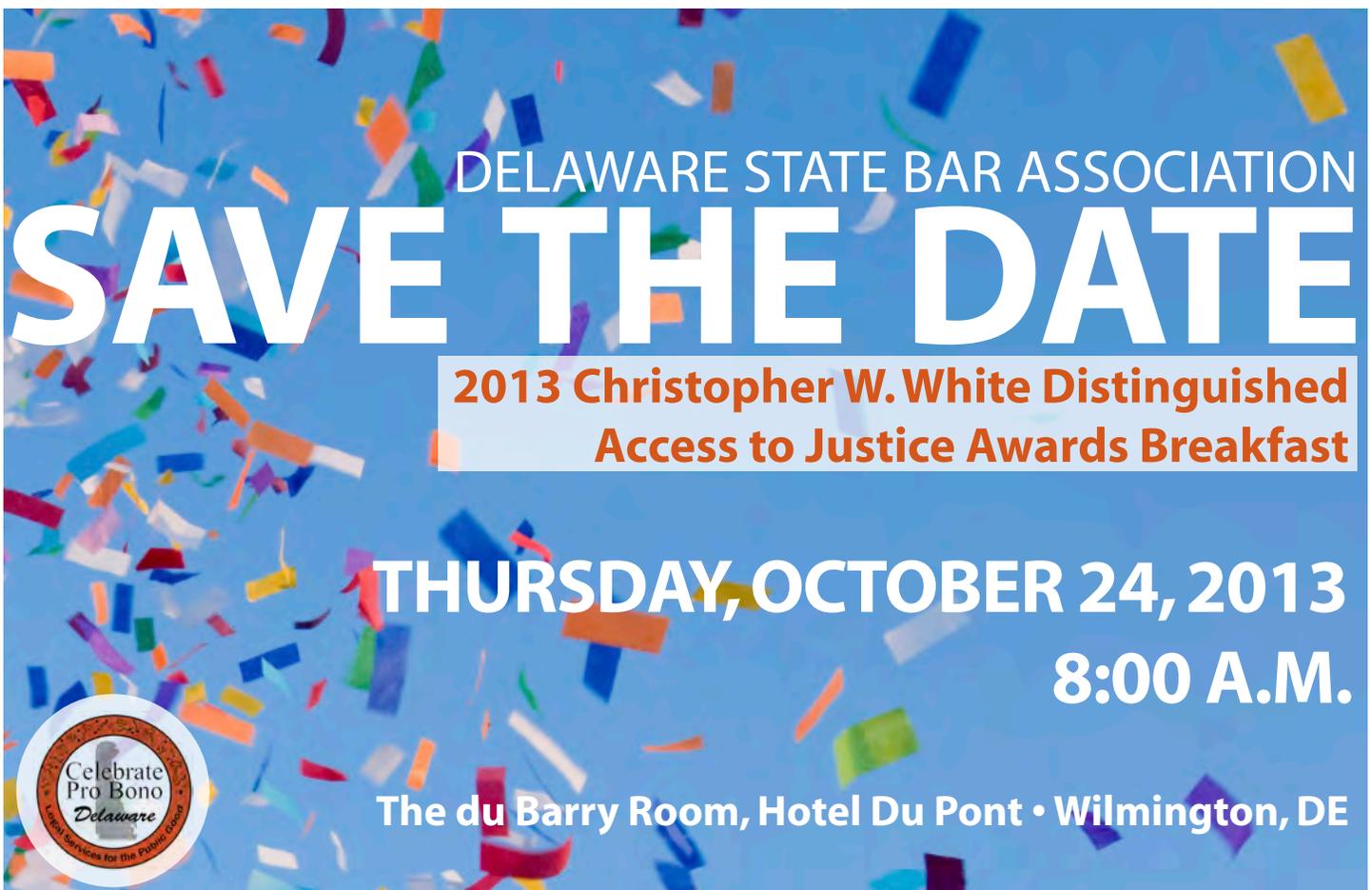
**Kevin F. Brady** is a litigation member at Eckert Seamans Cherin & Mellott, LLC and can be reached at [kbrady@eckertseamans.com](mailto:kbrady@eckertseamans.com).

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By Charles Slanina, Esquire

# Summer Reading

**I**n keeping with the “Ethically Speaking” summer tradition, I have a couple of recommendations of law-related reading — perfect for the sands of Rehoboth, Lewes, Dewey, or wherever your seasonal travels take you.

The first, in honor of Scott Turow’s recent appearance at the Bench and Bar, is *Innocent*, the sequel to *Presumed Innocent*. The protagonist, Rusty Sabich, returns as the now sixty-year-old Chief Judge of the Third District Appellate Court planning to run for the state Supreme Court. The timeline in *Innocent* shifts from before to after the events of *Presumed Innocent*. Sabich is involved in a new legal struggle when he is again charged with murder and faces his old nemesis, Tommy Molto, the unsuccessful prosecutor in Sabich’s first murder trial.

In the non-fiction category, “Ethically Speaking” offers the off-beat recommendation of the *2013 Journal of the Professional Lawyer* published by the American Bar Association Center for Professional Responsibility. The latest issue (past issues are available online) features one local and one formerly local contributor and includes articles that both update and expand on previous “Ethically Speaking” topics.

Former Delaware Deputy Disciplinary Counsel Michael McGinniss is now an Assistant Professor of Law at the University of North Dakota School of Law. He is the author of “Sending the Message: Using Technology to Support Traditional Reporting of Lawyer Misconduct to State Disciplinary Agencies.” In his article,

Mike opines that attorney misconduct in the course of litigation is too frequent and too serious to be handled on a relatively random basis by trial judges. He proposes a national system and standard whereby trial judges would assess the litigation-related misconduct (both errors of omission and commission) and then report the attorneys to a national data bank. That data base would be accessible and searchable by state disciplinary agencies. The reports could then be the bases, individually or collectively, for disciplinary prosecutions against the attorneys perhaps in addition to whatever sanction the trial court might have imposed.

In order to implement such a national reporting system, Mike proposes that lawyers be issued a national identification number. He concludes that since a judicial referral of information about a lawyer’s conduct is not a “sanction,” lawyers have no procedural due process claims under the Fifth and Fourteenth Amendments

triggering notice or an opportunity to be heard regarding a report to the data base. He posits that such a system would assist potential clients in their attorney selection decisions and improve the performance of the profession.

Louise Lark Hill, Distinguished Professor of Law at Widener University School of Law (Delaware campus), is the author of “Cloud Nine or Cloud Nein? Cloud Computing and Its Impact on Lawyers’ Ethical Obligations and Privileged Communications.” Her article discusses the ethical obligations and liabilities of attorneys employing cloud computing to store and communicate client information. She provides a survey of the jurisdictions to date that have addressed this issue in a much more expansive manner than the May 2013 “Ethically Speaking” column entitled “Ethics in the Cloud.”

Other topics covered in the latest *Journal* will also be familiar to “Ethically Speaking” readers. The ethical



issues of litigation loans to both litigants and litigators are explored in an article entitled “Litigation Finance Ethics: Paying Interest” by Jennifer Anglim Kreer and Benjamin A. Bauer. “Ethically Speaking” articles on this same topic include “Lawyer v. Banker: What Are the Permissible Limits of an Attorney’s Role in Financing Litigation?” (November 2004) and “Update of ‘Lawyer vs. Banker’” (October 2005).

The ethical implications of attorney ghostwriting — the practice of providing undisclosed assistance by attorneys to litigants — is explored in “Ghostwriting and the Erie Doctrine: Why Federalism Calls for Respecting States’ Ethical Treatment of Ghostwriting” by Jessie M. Brown. Past “Ethically Speaking” columns dealing with this issue include “Updates: Ghostwriting and Pretexting” (March 2008) and “Ghostwriting” (October 2010). The Erie Doctrine directs federal courts to apply “federal procedural” law, but state “substantive” law. The author notes that Rule 11 of the Federal Rules of Civil Procedure, while not

specifically prohibiting the practice, has been interpreted to prohibit ghost writing. On the other hand, an increasing number of states permit the practice. As a result, the article concludes that since the federal rule does not specifically prohibit ghostwriting, federal courts should defer to the state treatment of ghostwriting.

Another article covers the dangers of employing electronic means for attorney-client communication, “Technology’s Triple-Threat to the Attorney-Client Privilege” by Bruce A. Green. Topics include:

- What happens to the attorney-client privilege when the client shares an e-mail from the lawyer to a third party?
- What happens to the attorney-client privilege when the client uses an employer’s e-mail to communicate with counsel?
- What happens when there is inadvertent disclosure of privileged information by an attorney?

Some of these topics were previewed by “Ethically Speaking” in “Oops Opinion: Revisions to the Law of Inadvertent Disclosure of Confidential Materials” (January 2006); “Crouching Metadata, Hidden Disclosure” (July 2005); and “Ethics in the Cloud” (May 2013).

On the other hand, if you are looking for a break from the law, there is always George R. R. Martin’s *Game of Thrones* series for entertainment at the beach. Have a great summer!

*\*“Ethically Speaking” is available online. The columns from the past two years are available on [www.dsba.org](http://www.dsba.org).*

*\*\*“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. *

**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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By Susan Simmons

# A Pro Bono Summer

## Summer Associates

Every year, summer associates are given the opportunity to work on a wide-variety of *pro bono* matters throughout their time at his or her firm. In addition to working on ongoing matters, summer associates also have the opportunity to work on a variety of projects that are designed to be completed during their summer stay. Firms create a structured program for summer associates to devote a significant portion of their time to hands-on *pro bono* work. Generally, Summer Associates take on significant *pro bono* projects, under the direct supervision of firm attorneys, as part of their regular work with the firm.

We have also heard that Summer Associates sometimes forgo the traditional full, summer law firm experience by working alongside firm lawyers for the first half of the summer and in a full-time assignment with a nonprofit organization for the second half. Regardless of which option is selected, Summer Associates may often receive compensation for the entire program from the firm.

It is a great idea to give Summer Associates *pro bono* work to tackle. Perhaps a lawyer's greatest joy comes from knowing that he or she has helped a client who understands and appreciates the help. If the client expresses, in some palpable manner, a heart-felt thanks to the lawyer, it probably does not get any better than that. But lawyers most often experience the law's arguably greatest content later in their careers, once they have forged direct relationships with the people and organizations they choose to serve. For many, the fulfillment comes too late. Work with your summer associates to help them realize the importance of *pro*

“Each person chooses his or her own *pro bono* path. What cause do you want to support? What new skills do you want to gain? What injustice do you want to prevent? Do it this summer.”

*bono* in their careers so that they too may know the gratification it brings.

## A Good Summer Read

With a nod to Richard Forsten (our *Bar Journal* book reviewer) we ask: Are you perhaps looking for an access to justice-themed book to read this summer? (We know you are!) We suggest adding the best-selling *The Immortal Life of Henrietta Lacks* by Rebecca Skloot to your beach bag gear. Henrietta was a poor black tobacco farmer whose cells — taken without her knowledge in 1951 — became one of the most important tools in medicine, vital for developing the polio vaccine, cloning, gene mapping, in vitro fertilization, and more. Henrietta's cells have been bought and sold by the billions, yet she remains virtually unknown, and her family cannot even afford health insurance.

*The Immortal Life of Henrietta Lacks* tells a riveting story of the collision between ethics, race, and medicine. It's a story inextricably connected to the birth of bioethics, and the legal battles over whether we control the stuff of which we are made.

## Community Involvement

Among the Delaware State Bar Association's attorneys, you will find sports enthusiasts, politicians, arts advocates, and others engaged in the community.

Such civic participation is encouraged because, after all, well-rounded attorneys make the best attorneys. Our attorneys and staff are generous with charitable and community organizations, spending countless volunteer hours, serving on boards, and making significant financial contributions to organizations. Each person chooses his or her own *pro bono* path. What cause do you want to support? What new skills do you want to gain? What injustice do you want to prevent? Do it this summer.

## The Original Meaning of Labor Day

As the summer fades, we celebrate Labor Day. Since Labor Day became a national holiday in 1894, Americans have celebrated the vast achievements of our workers. Incredible progress has been made since the Industrial Revolution, which saw the average American working 12-hour days, seven days a week to earn a meager living, and children toiling away in hazardous conditions. Yet, there is still work to be done to secure fair wages, safe conditions, and equality in the workplace. *Pro bono* attorneys have contributed significantly to improving the lives of workers throughout the country and around the world. As we mark the end of summer and back-to-school season, we should pause to reflect on the impact our *pro bono* efforts can have.

Labor Day commemorates one of the great ethical victories of American society. Yes, Labor Day marks the end of summer, a time for retail store sales, and the last chance to get away to Disney World, but few of us think about the real meaning of the word "labor" in the name, and how it is meant to honor brave, dedicated men and women who fought, sometimes literally, the forces of greed, political influence, wealth, and privilege in this country to ensure a measure of safety, consideration, fairness, and justice for the hardest working among us.

Enjoy your summer! ☺

**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](mailto:ssimmons@dsba.org).

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# HEALTHCARE REFORM

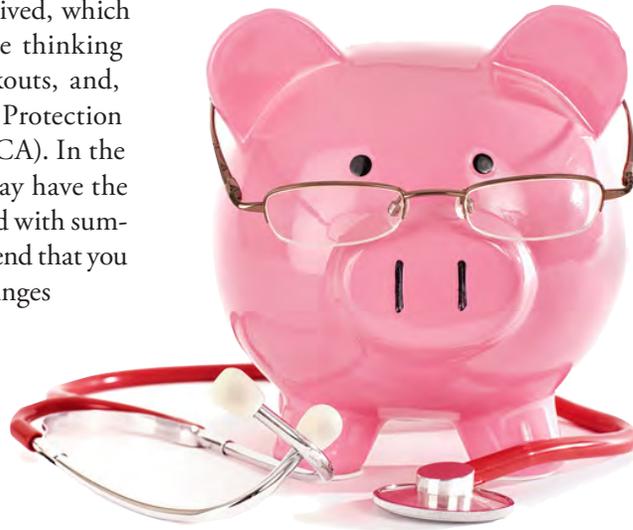
By Aaron W. Mitchell, REBC

Summer has finally arrived, which means it is time to be thinking about vacations, cookouts, and, of course, the Patient Protection and Affordable Care Act (PPACA). In the next few months, your firm may have the benefit of sharing your workload with summer associates. I would recommend that you not add “Outline the Firm’s Changes due to Healthcare Reform” on your to-do list. Healthcare Reform will have its biggest impact on employers in 2014 and it requires your attention.

Let’s focus on answering the most basic, but important, question. “Why are we providing group health insurance?” Your initial response is likely one of these:

1. Our health insurance helps to attract and retain top-notch employees and attorneys.
2. We want all of our employees to have access to the same plans, regardless of their health.
3. We must offer coverage to all employees if we want a plan for our owners/partners.
4. Healthcare Reform penalizes our firm if we do not provide coverage.

Let’s start by crossing off response #4. The penalty for not providing coverage is \$2,000 per employee per year and only applies to groups with over 50 employees. That works out to less than \$170 per month. Most firms have not seen a monthly employee rate of under \$300 in the better part of a decade. So if your only motivation to provide coverage is to avoid a \$2,000 penalty, let me save you the analysis: “it is probably cheaper to pay the penalty.”



Moving to #3, some firms provide group health insurance because it is the best way to ensure that the partners and their families can get the coverage they want. Group plans are routinely the most comprehensive types of medical coverage. However, you cannot write a group health plan that only covers partners, but denies coverage to full-time employees.

The State of Delaware will have a Marketplace, which is a place for individuals to purchase coverage (should your firm drop its group plan). All plans will have to cover 10 minimum essential benefits, so there will not be glaring gaps in coverage. However, the plan designs are yet to be released. If they mirror today’s individual plans, you can expect larger copays and deductibles than the best group health insurance programs. On a positive note, these plans will be offered guaranteed issue. Based on the rates in other states with guaranteed issue coverage, we can expect rates on individual plans to rise significantly and quickly. The rates and plan designs are required to be released in October 2013. Until that point, it will be difficult to compare individual vs. group health insurance for 2014.

Those who responded with answer #2 are usually driven by a sense of responsibility to protect their staff. If you did not offer a specific plan(s), would your employees have the knowledge to search out and purchase their own coverage? Even if you provided a stipend (say \$400 per month), would they weigh out the value of plans available and choose a plan based on their medical needs? If it were up to them to purchase coverage independently, would some employees keep the \$400

## Did you know the following facts about health insurance in 2014?

- Health insurance will no longer be medically underwritten. This means no medical history forms, pre-existing condition limitations, or premiums based on the health of your firm's employees.
- Tax Subsidies may be available for families making up to 400% of the federal poverty income level.
- Firms with greater than 50 employees will be required to pay a penalty if they do not provide coverage (meeting a minimum standard). Firms could also be penalized if the portion of the premiums paid by the employee exceed 9.5% of the employees earned income.
- Anyone over the age of 18 (with income) will be required to carry health insurance or pay a tax of the greater of \$95 per year or 1% of their income.
- Delaware will offer a portal called the "Marketplace" for individuals to buy insurance and a SHOP Exchange (partnership with the federal government) for employers with 50 employees or less.

per month and go uninsured? Are you aware of how your firm and your employees may be taxed if you offered that money, instead of paying for group health coverage?

Providing money to use for insurance is known as a defined contribution, while providing a group health plan is called a defined benefit. I am not striking down the idea of a defined contribution. I am just pointing out that there is research to be done on the advantages and disadvantages. Most importantly, you will still need a resource to help guide your employees through whatever choices are available to them.

The majority of employers who respond honestly will reply with answer #1: It is generally understood to be a requirement to employ the best qualified employees, attorneys, etc. For those of you in this category, I ask you to simply remain flexible. Understand that your group plan may remain the most cost-effective way to deliver a comprehensive benefit package. Be aware of the "Affordability Requirement" and the "Excise (Cadillac) Tax". However, if you find yourself doubting whether your benefits are making your firm competitive, then enlist assistance in examining creative alternatives. There is no single solution that fits all sizes (or even a single solution for all law firms).

If you have read this far, you are generally interested in doing the best thing for your firm and your employees. So, I have saved my most important piece of advice for last. Open up the lines of communication with your firm and your employees. Find out what your staff most values and with what they are the least concerned. Then find out what path is going to satisfy the majority and will stay within the firm's budget plans. Here are two examples in which employee communication played a role in the perceived value of the firm's plans:

1. Red, White & Blue, LLP has 150 employees. They provide two plan options to all employees. They have seen steady 7% increases each year. The employees are now paying 15% of the premium. At last year's renewal, the firm raised the deductible

and copays on its group plans to keep costs level. During a survey this year, it was reported that most employees would be willing to contribute more towards the premium if they could go back to the old plan designs.

2. Smith, Smith & Smith, P.A. has 25 employees. Their group health insurance premiums have been rising by 9% per year. They have made plan downgrades or shifted more premiums to the employees almost every year since 2005. They recently gave a healthcare reform presentation to their staff. During that presentation, the idea of eliminating the group health plan and giving an allocation of dollars to spend was discussed. It was communicated that all 2014 plans would be guaranteed issue, regardless of health, and 18-20 employees expressed an interest in having a set amount of dollars to spend, knowing they could choose any health insurance plan. They are awaiting rates in October. If the rates make sense, the firm will no longer be faced with an annual decision to downgrade benefits, increase their spending, or ask employees to contribute more.

If you are unsure why you provide group health insurance, now is the perfect time to answer that question. It is summer, so ponder your answer over a long weekend at the shore or a round of golf, but make sure you have an answer before you start your planning for 2014.

For questions or more information about healthcare reform and its impact on your firm, please contact Aaron W. Mitchell, REBC (Human Capital Consultant, DSBIS, Human Capital/Employee Benefits) at 302-397-0170 (direct), 570-847-1885 (mobile), or [aaron.mitchell@willis.com](mailto:aaron.mitchell@willis.com). 



# SUITS FOR FEES

By Kurt E. Taylor

**I**nevitably you will one day face a situation where you have provided your services to a client — only to have them default on the bill. You deserve to be paid for the professional services you provide to all of your clients. With that said, you need to think twice before suing clients for fees. Suits for legal fees almost inevitably draw counterclaims alleging some form of malpractice. Unfortunately, counterclaims can weigh heavily on your insurance premiums, but there are ways you can avoid these matters altogether.



- **Client Acceptance or Screening** – If you expect a potential client may be difficult, unrealistic, or have false expectations, pay attention to your basic instincts. Avoid clients whom you know to have had a poor history of payments.
- **Fee Arrangements** – A retainer should be obtained from all individual or first-time clients. Ensure that fee agreements are clearly stated at the outset of the engagement and confirmed in writing. Include an estimate for the total fee and indicate that additional costs may incur in the course of representation, as well as the firm policy and right to withdraw for nonpayment.
- **Bill Regularly** – Bill frequently and set payment deadlines in order to minimize large outstanding fees. Clients are most content to pay for services shortly after they have been provided.
- **Disengagement or Withdraw** – If payments are not made, it may be necessary to terminate or prudent to withdraw. If we require a retainer to be collected, a minimal loss to the firm can be expected. Notify the client in writing of the termination and give them a reasonable timeline to bring things current should they want to continue representation.

For questions or more information about strategies to mitigate your risk, please contact Kurt E. Taylor (Client Advocate, DSBIS, Property & Casualty) at 302-397-0332 (direct), 302-379-5135 (mobile), or [kurt.taylor@willis.com](mailto:kurt.taylor@willis.com). ☎

## HURRICANE SEASON

By Kimberly A. Matthews, CIC, CISR

**D**SBIS is powered by Willis, which provides many newsletters to our clients featuring topical articles. Our Private Client and Personal Insurance Practice puts out a monthly newsletter called “Wealthy & Wise”, and the May 2013 issue was all about weather hazards, such as flooding, hurricanes, and tornados. You can find it at <http://bit.ly/14lqCw3>.

For questions or more information about preparing for and recovering from these kinds of natural disaster situations, please contact Kimberly A. Matthews, CIC, CISR (Sr. Client Manager, DSBIS, Personal Lines) at 302-397-0185 (direct), 302.983.0122 (mobile), or [kimberly.matthews@willis.com](mailto:kimberly.matthews@willis.com). ☎



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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.

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# 2013

## Delaware State Bar Association Bench and Bar Conference



The CLE Program *Truth: Lawyers and the Law* with panelists The Hon. Mary M. Johnston, The Hon. Sam Glasscock III, Jennifer-Kate Aaronson, Esquire, and Charles Slanina, Esquire. The program concluded with a presentation by author and attorney, Scott Turow, titled *Legal Fictions: A Novelist's Reflections about the Law's Concept of the Truth*.



The Honorable Myron T. Steele, Chief Justice of the Supreme Court of Delaware, giving the State of the Judiciary Address.



(From left to right) First State Distinguished Service Award recipient Joshua W. Martin III, Esquire, with presenter E. Norman Veasey, Esquire, and DSBA President Theresa V. Brown-Edwards, Esquire.



Outgoing President Theresa V. Brown-Edwards, Esquire, passing the gavel to incoming President Gregory B. Williams, Esquire.



In his keynote address, Scott Turow reflected on his path to becoming a best-selling author, as well as a successful lawyer.



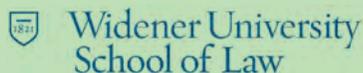
Keynote speaker Scott Turow, Theresa V. Brown-Edwards, Esquire, and Gregory B. Williams, Esquire.

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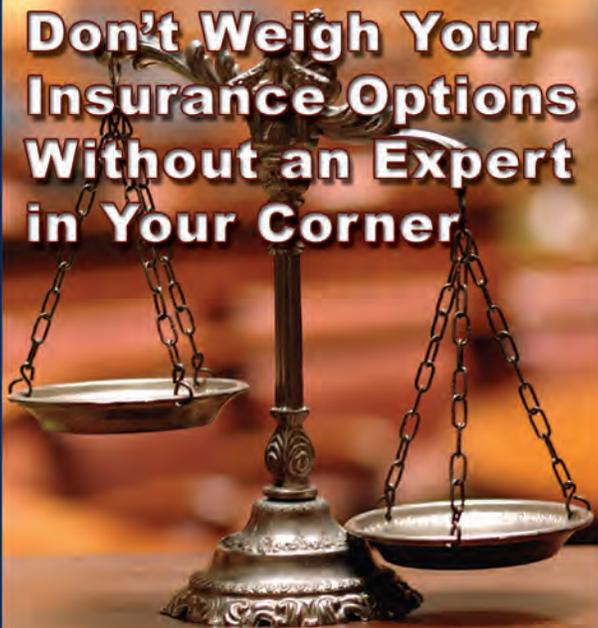
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## DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

# What Victims of Violence Would Like Their Attorney to Know

By Dr. Joseph Zingaro

**T**he Delaware Lawyers Assistance Program (DE-LAP) Zone is very pleased to announce Dr. Joseph Zingaro as our guest columnist this month. Dr. Zingaro is the Clinical Director of People's Place Counseling in Milford, Delaware. He is a Past-President of the Delaware Psychological Association. Furthermore, he is a member of the American Psychological Association, Delaware Psychological Association, American College of Forensic Psychology, Association of Family and Conciliation Courts, The Parenting Coordination Council of Delaware, and the Board of Examiners of Psychologists.

When I was a young boy, I was afraid of a dog that was owned by another family my family would often visit. I had three other siblings and the other family had three children. Seven children in all. I was the only child afraid of the dog. I was the only child the dog tried to bite. Often. The other children would tease me because I was so afraid and my reactions to the dog seemed out of proportion. I would run, climb on tables, beg the other children to keep the dog away. Maybe they thought I was exaggerating my fear or pretending to be afraid — because they thought it was funny. Picture this: I am standing on a picnic table, the other children and the dog on the ground. If I tried to get off the table, the dog would try to bite me. Maybe he knew I was afraid and could sense it. He actually never bit me. He just came close enough to really scare me.

Imagine you came upon such a scene. What might you be thinking? Would you

think I had mistreated the dog and deserved to be bitten in retaliation or self-defense? Would you be thinking this is a kid who makes mountains out of molehills and is just acting this way for attention? Would you grow tired of my anxiety because it seemed to be unusual, occurred at inconvenient times, and probably would not be believed by another adult (even if you started to believe the fear was justified)? If you believe my fear, you are in the minority. Most observers will attribute my fear to something I must have done, *i.e.*, I must have deserved this action by the dog. That would make sense.

Most of us prefer hard data to subjective experience. The Courts prefer hard data to subjective experience. Judges are the trier of fact, not opinion or feeling. Trauma victims — including victims of domestic violence, bullying, war, auto accidents, loss of function or independence — respond to the traumatic event in their own idiosyncratic way. There are, however, some commonalities. Trauma victims tend to respond in a bi-phasic manner: alternating between avoidance behaviors and approach behaviors. An avoidance behavior might be avoiding being in the same room as the alleged perpetrator or avoiding acknowledging our feelings of vulnerability and fear. An approach behavior might be making what could be considered confrontational statements towards someone who hurt us or being around someone that seems very much like the alleged perpetrator or being in a location that is similar to the location where the trauma occurred. Trauma

victims alternate between avoidance and approach behaviors in an attempt to understand the traumatic event. Imagine you talk to your client during a time when they are demonstrating avoidance behaviors and later, during another appointment, when they are demonstrating approach behaviors. Will you begin thinking your client is lying, being manipulative, acting to position themselves with you or opposing counsel for a legal advantage? Mental health providers who treat trauma victims see this approach/avoidance dichotomy all the time. They know what causes it and how to help the victim use more effective coping mechanisms to deal with the traumatic event. I suspect lawyers see such behaviors just as often, but may call it something else.

Trauma victims tend to be sensitive to the (often unspoken) thoughts and feelings of individuals in their environment. It makes sense if you were a victim of trauma to develop sensitivities to other potential perpetrators, environments, or scenarios that were the source of your trauma. You may be surprised by how upset and out of sorts your client is because they saw something on television or the Internet that was very upsetting to them. You saw the same thing and hardly gave it another thought. You may start to feel impatient with this client that seems hardly stable, often unpredictable in their mood or ability to keep things in perspective, and wanting a degree of protection or understanding from you that is baffling. They seem to be

making their own case harder to defend. They get too upset in front of the judge. They are asking for things that make representing them messy. They want a PFA. Their partner took their money because they did not listen to your advice to act on that inevitability sooner. They complain because their children are acting out. They have fears and anxieties about the alleged perpetrator that seem so disproportionate as to border on crazy. At the last hearing, they thought the judge said something that indicated disbelief in their story. You did not have the same impression, but might be sensing the judge is becoming less sympathetic. You get the feeling you just can not do enough to satisfy all of the needs of this person, let alone represent them in legal matters.

It seems quite probable that lawyers will be getting more cases where trauma

trauma or that they are being taken in by the perpetrator. Victims of domestic violence often attribute almost mythical powers of cunning and invulnerability to their abuser; believing the abuser can smooth talk the judge and any attorney who listens to them. An attorney who is not aware of this agenda may find himself trying to divide their energies into providing legal and emotional support, as well as defending the strategies they use. Would you want to hire an attorney to represent you who is giving less than 100% of their ability to solve your legal problem because they are also trying to solve your emotional problems?

As a lawyer, you may be reluctant to ask your client to see a mental health practitioner. You might have concerns that your client will think you think they are

*“By their behavior and attitude, clients may act as if they want their lawyer to take care of their legal and emotional needs. Or, they may believe that is what good attorneys do.”*

is an issue as we move forward in the coming years. Part of the reason for that is the growing awareness and scientific study of trauma and part of the reason is the growing number of individuals being traumatized, *i.e.*, veterans of our two latest wars, victims of sexual abuse and domestic violence. Individuals who have been traumatized and are still trying to cope with the unresolved issues are more likely to be a good partner with their attorney in presenting legal issues, when someone else is helping them with their emotional issues. By their behavior and attitude, clients may act as if they want their lawyer to take care of their legal and emotional needs. Or, they may believe that is what good attorneys do.

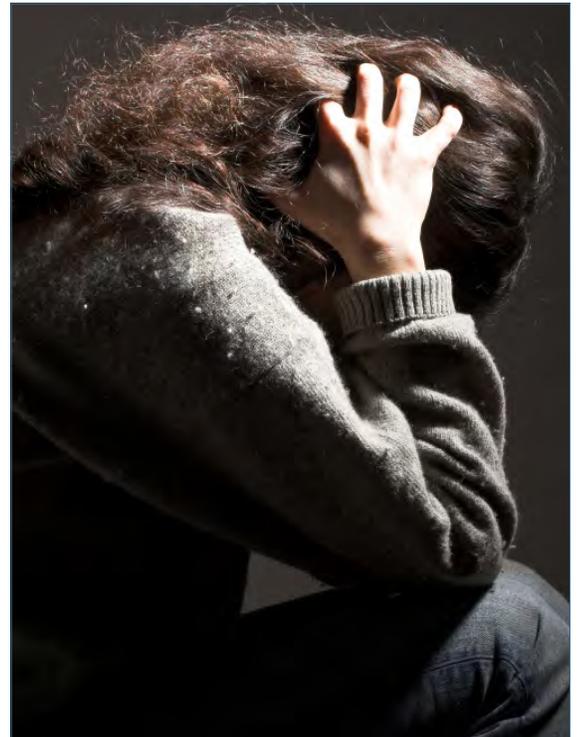
I have worked with many clients who feel it is necessary for their lawyer to understand their trauma and its effects on them. They want their attorney to be compassionate, nurturing, and sympathetic. Particularly in domestic violence cases, they do not want their attorney to say or do anything that might look like they are also intimidated by the perpetrator of the

crazy, are trying to get rid of them, or that you really agree with the other side that there is something flawed about your client. You may not trust the mental health profession. You may believe you will lose some control if your client is talking to a professional that may or may not be on the same page as you regarding your client's state of mind. You may have concerns the mental health professional will give legal advice.

If you decide to refer your client to a mental health therapist, how do you know if your client is seeing the right therapist? I would suggest you have specific therapists to refer your client to. Not all therapists are equally understanding of the legal system. Some therapists feel antagonistic towards the legal system. They have negative opinions about lawyers and the courts. You do not want any of your clients seeing these therapists. Some therapists, in their attempt to serve as an ombudsman for their client begin to (incorrectly) think they are the only person who really understands the client.

They begin to believe they need to testify on the client's behalf because their unique relationship and access to information the client has discussed put them in a better position to defend the client. In my 29 years of practice as a psychologist, hundreds of my clients were involved in some form of litigation while they were in therapy. I have testified for a client I was seeing in therapy twice at their attorney's insistence.

Clients may follow up on the recommendation to see a mental health person if the suggestion is presented in such a way that they agree it could help them help you



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better, *i.e.*, it can empower them to be a better partner with their lawyer. Clients may see me and say things like, “My attorney says he knows you and you have worked together before. He thinks you could help me: talk about some things that may be getting in the way of my own legal position/ deal with some stress that I am having because of my situation/ give me some ideas about working with my children during these legal proceedings/ etc.” I prefer attorneys to call me ahead of time when they are making a referral, so I will know and be prepared to help the client make sense of the referral.

The value of your client receiving mental health care is not that you may be able

DE-LAP ZONE (continued on page 27)



## BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

# Saving Graces:

## *Saving Justice, Watergate, the Saturday Night Massacre, and Other Adventures of a Solicitor General*

By Robert H. Bork (Encounter Books, 2013)

Rightly or wrongly, Robert H. Bork will be forever remembered first and foremost for his failed Supreme Court nomination. But even had he never been nominated to the Court, he would still be remembered as one of the most influential lawyers of the twentieth century. He was an important legal scholar in the area of anti-trust. He served as Solicitor General of the United States under Presidents Nixon and Ford, he served on the District of Columbia Court of Appeals, and he was instrumental in developing or redeveloping the doctrine of originalism as a theory of constitutional interpretation. But whatever one's views on his failed Supreme Court nomination, or his constitutional theory, his public service and career are nevertheless worthy of respect.

In *Saving Justice, Watergate, the Saturday Night Massacre, and Other Adventures of a Solicitor General*, written shortly before his death this past December, Bork recalls a number of vignettes from his time as Solicitor General in the last year or so of Nixon's presidency. The work is well-written, but short, and one wonders whether it might have been longer but for his death. What he completed, though, is not only well-written, but a fascinating behind the scenes set of stories with a very real "you are there" feeling. The events occurred nearly 40 years ago, but Bork conveys all of the uncertainty that existed at the time to-

gether with a writing style that, rather than dry legal history, reads more like a legal thriller that one cannot put down.

The old Chinese curse wishes that you may live in interesting times, and Bork certainly may have felt cursed serving as Solicitor General. After first arriving in Washington and assuming his post, Bork had to deal with such issues as Nixon's request that Bork resign his position and become Nixon's personal defense attorney in connection with Watergate; Supreme Court Justice William O. Douglas's order that the military stop bombing in Cambodia; the investigation into, and subsequent resignation of, Vice President Spiro T. Agnew for taking bribes while Governor of Maryland; and, most famously, the "Saturday night massacre," when Watergate Special Prosecutor Archibald Cox was fired, and the Attorney General and Deputy Attorney General both resigned, leaving Bork as the acting Attorney General.

Bork's insider perspectives on all these matters make for gripping reading, and none more so than his description of the events of October 20, 1973, the night the press quickly dubbed the "Saturday night massacre."

In his epilogue to the book, Bork reflects further on the law, his failed Supreme Court nomination, and the "Saturday night massacre." Rather than summarize Bork's thoughts, let him speak for himself. He concludes in his epilogue:

"The law is not a place for the artist or the poet,' Oliver Wendell Holmes, Jr., told a group of Harvard undergraduates. 'The law is the calling of thinkers.' Holmes and his colleagues would presumably be aghast at what the profession of law has turned into. Now it is more accurate to say that the law is a profession of feelers who judge everything related to the courts from a political point of view.

"There could be no better demonstration of the decline of law than the now farcical nature of Supreme Court confirmation hearings. During the confirmation hearings for Chief Justice John Roberts, one senator wanted to be reassured that Roberts would 'be on the side of the little guy.' Another senator, who had 'absolutely no doubt in [his] mind Judge Roberts is qualified to sit on the highest court of the land,' nevertheless refused to vote for him on a personal calculation that Roberts 'far more often used his formidable skills on behalf of the strong in opposition to the weak.' The same senator would later reaffirm, as president of the United States, that his nominees for the highest court in the land would possess the 'quality of empathy, of understanding and identifying with people's hopes and struggles as an essential ingredient for arriving at just decisions and outcomes.'

"These formulations of the 'quality of empathy' as an 'essential ingredient' and 'big guy versus little guy' are useless in terms of jurisprudence; they also call upon a judge to violate his oath:

I, (name) do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as \_\_\_\_\_ under the Constitution and laws of the United States. So help me God.

A fundamental misunderstanding of jurisprudence and the proper relationship between the law and those who swear to uphold it pervades Capitol Hill. It has for quite some time.

“Which brings me back to my own experience in front of the Senate Judiciary Committee as a Supreme Court nominee. Near the end of the hearings, Senator Alan Simpson asked me one final question: ‘Why do you want to be an associate justice of the United States Supreme Court?’

“It’s an odd question; ordinarily you would take it for granted that any judge wants to be elevated to the Supreme Court. Being asked that question — in that setting — is meant to mark a shift in the pageant from the talent portion to the personal interview.

“I am willing to concede that a more politically calculated account of the judicial duty would have been more appropriate to the tastes and capacities of the senators. It is still difficult to comprehend why my answer created such a stir:

Senator, I guess the answer to that is that I have spent my life in the intellectual pursuits in the law. And since I’ve been a judge, I particularly like the courtroom. I like the courtroom as an advocate and I like the courtroom as a judge. And I enjoy the give-and-take and the intellectual effort involved. It is just a life and that’s of course the Court that has the most interesting cases and issues and I think it would be an intellectual feast just to be there

and to read the briefs and discuss things with counsel and discuss things with my colleagues. That’s the first answer.

“It’s the bit about the job being an ‘intellectual feast’ that sent the chattering classes rushing to their fainting couches. They could not grasp that a philosophy of jurisprudence enhances a judge’s ability to navigate the thickets of the law.

“The intellectual feast language, however, did not stand alone. It was accompanied with a second answer, ignored then and forgotten now, which not only should have been more acceptable to the senators, but also captures a motivating force throughout my career, those hectic days in 1973 in particular:



The second answer is, I would like to leave a reputation as a judge who understood constitutional governance and contributed his bit to maintaining it in the ways I have described before this committee. Our constitutional structure is the most important thing this nation has and I would like to help maintain it and to be remembered for that.

“To be sure, the solicitor general is an advocate, not a judge, with a different role and different responsibilities toward the maintenance of our constitutional structure. And yet, I still hope to be remembered as someone who did his part in that effort.

“During the Saturday Night Massacre, I was called upon to step out of my role as solicitor general in order to fire Cox.

It was a duty to justice — to keeping the government running — that convinced me to follow the president’s order, and to remain long enough to hold together the Watergate investigation and the Justice Department as a whole. Without a soldier in the streets, we managed a transfer of power that would have shattered many nations.

“And yet, without a preexisting love for the ‘intellectual feast’ of law, I’m not sure I would have had the wherewithal to make the correct decision that October night. Whether in a role as judge or as advocate, my two answers to the Senate Judiciary Committee are flip sides of the same coin. A life in the law requires a sense of both inquiry and duty. Without inquiry, duty slips into idolatry; without duty, inquiry descends into navel-gazing.”

Whether one agrees with Judge Bork’s constitutional theories or not, his observations concerning inquiry and duty are insightful, timeless, and remind one that Judge Bork was a thoughtful man and more than the caricature his opponents painted him to be. His tales from his time as Solicitor General evidence the same insight and thoughtfulness, and should be read by

those not only interested in the behind the scenes history of the Watergate era, but by those who care about inquiry and duty as part of the practice of law and our system of government. ☪

**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).



## A PROFILE IN BALANCE

By James G. McGiffin, Jr., Esquire

# Poetry in Action: Matthew F. Boyer

By James G. McGiffin, Jr., Esquire and Lauren McDuffy

**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 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

• • •

His mild manner does not give away much, but Matt Boyer is passionate about finding his place and making it work. Because of his active pursuit of a meaningful life and his good fortune at meeting helpful people along the way, this usually quiet lawyer has a big impact at home and out in the community. Maybe it started with his love of Chaucer, Shakespeare, and the poets of the Romantic Era. But, great literature did not provide an escape for Matt. It provided inspiration to look outside of himself and make a difference.

A Delaware native, Matt is the middle child of five and attended Newark High School. Upon graduating, Matt traveled to Boston and Harvard University. His third grade teacher, who described Matt as her “worst student ever,” was probably quite surprised. Matt enjoyed everything about life in Boston, especially the opportunities for social interaction and for music — he had a chance to play jazz trumpet with the legendary Dizzy Gillespie. But, he could not stay there forever. Matt graduated from Harvard with *Cum Laude* honors

in English and American Literature and Language. After receiving his degree, Matt traveled to Washington, D.C. to sample a career in government and politics. Matt found a job at the National Institutes of Health as a legislative liaison. This experience helped him discern that he wanted to play a role in the issues that affected people’s lives. He decided law school would help him realize that goal. NIH helped decide his path in another way too, as it was there, at the copy machine, that he met his wife, Mary.

Matt enrolled in the University of Virginia School of Law and he graduated in 1986. He returned to Delaware as a law clerk for Chief Justice Andrew Christie of the Delaware Supreme Court. Matt certainly learned a great deal about the law from the Chief Justice, but he also learned about the importance of his community and his obligation to serve. After his clerkship, Matt worked with Skadden, Arps, Slate, Meagher and Flom, primarily writing briefs for corporate litigation. After six years, he accepted a position with the Office of Disciplinary Counsel to round out his litigation skills while working in public service.

Matt’s work at ODC allowed him the opportunity to meet several leading members of the Bar who serve on the Board on Professional Responsibility. One such member was Arthur G. Connolly, Jr. That connection resulted in Matt’s employment with Connolly Bove Lodge and Hutz, where he started the firm’s employment law practice. It is an area of the law that is for and about people, and that



Photo by Dick Dubroff of Final Focus



Matt with Dizzy Gillespie circa 1978.

works for Matt. When the firm divided last year, Matt became a part of the newly formed Connolly Gallagher LLP.

In recent years, Matt has served as a Special Master for non-dispositive motions in the long-running asbestos litigation in the Superior Court, having been appointed by Judge Mary Johnston and having served for Judges Ableman and Parkins, as well.

“It was the poet John Keats, and Keats’s maturing admiration for persons active in addressing the struggles of the world, that prodded Matt to search out a service-oriented path.”

Work is only part of the plan for Matt. He and Mary are parents of three boys: Patrick, Chris, and Matthew. Patrick, the oldest, is currently a judicial law clerk for the Family Court and has just become a member of the Delaware Bar. Chris, the middle child and star of his high school soccer team, attended Fairfield University and now lives in Delaware. Matthew, the youngest, attends Immaculata University in Pennsylvania and enjoys playing the guitar. Because the boys played competitive sports growing up, the family spent most of their free time traveling to and attending tournaments. Although Matt enjoys sharing his home with all of his children, he is excited about becoming an empty nester in the near future. To get a head start on that phase of life, Matt and Mary occasionally escape together to Longwood Gardens for peace and tranquility.

Matt is involved with the Delaware State Bar Association as a member of the Labor and Employment Law Section, and draws on his experience at ODC to participate in CLE’s on professional responsibility and occasionally represent respondents in disciplinary matters. But, his support of law-related community activity often takes a more melodious form. A musician since his youth (like son, like father), Matt holds the trumpet chair in the Bar’s theatrical pit band, Mary and the Adolescents. His horn was heard in the productions of *Moby Dick: The Maritime Musicale* and *An American Tragedy*:

*A Comedy*. He notes that rehearsal has begun for the new show slated to play this November, again penned by the Honorable Robert B. Young, *Madame Bovary: Ho, Ho, Ho*. Covering bases from the profane to the sacred, Matt also plays the trumpet occasionally at St. Ann’s in Wilmington, where he is an active parishioner.

Besides spending time with his family and his church, Matt’s two favorite

ways of relaxing are running and reading. Matt has run in eight marathons, including two Boston Marathons. To keep himself in shape, Matt runs about three or four days a week. When he is not running, Matt likes to read books of a variety of genres, especially history and philosophy. Although he has not fulfilled his childhood dream of becoming the next F. Scott Fitzgerald, he did publish an article in the *Delaware Law Review* on his experience as part of the legal team that represented the State of Delaware in its 2008 victory over New Jersey in the States’ third boundary dispute in the U.S. Supreme Court arising from William Penn’s Twelve-Mile Circle.

In college, Matt’s study of 19th Century literature inspired him to look outward in the hope of making a difference. He explains that it was the poet John Keats, and Keats’s maturing admiration for persons active in addressing the struggles of the world, that prodded Matt to search out a service-oriented path. He strives to balance interesting work, the love of learning instilled by his parents, the joys and challenges of family life, a commitment to spiritual growth, and a devotion to service — putting poetry into action. ☪

**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).

to use the mental health person as a witness. The value is that the mental health person may be able to provide treatment to your client so that your client does a better job helping you help them. Therapists who are savvy about the legal process can help reduce distortions clients often have about the courts, the law, behavior of their attorney, and opposing counsel. These therapists can also help the attorney understand the client’s behaviors, attitudes, and needs so the attorney does not personalize the reactions of their client and develop negative thoughts and feelings that could compromise a good working alliance.

Lawyers are not immune to being traumatized. Secondary traumatization occurs when a helper becomes traumatized in helping. Listening to your client’s stories can be traumatizing. In addition, you may have been a victim of a trauma yourself. If you have not received treatment and resolved the trauma, you are at risk for misunderstanding your trauma victim-client; over- or under-reacting to their needs; have difficulty separating your trauma based issues with your client’s; and/or holding distortions about the other party in the litigation. Consulting with a colleague is a good way to find out if your reactions and ideas about your client or the opposing party are accurate or not.

If you or someone you know needs more information about this subject or other issues that may be affecting their quality of personal and/or professional life call The Delaware Lawyers Assistance Program (DE-LAP) at (302) 777-0124 or e-mail [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org). Your call is confidential. ☪

**Joseph C. Zingaro, Ph.D.** is a licensed psychologist and the Clinical Director of People’s Place Counseling, Milford, DE. He can be reached at 302-422-8026 x116 or [jzingaro@peoplesplace2.com](mailto:jzingaro@peoplesplace2.com).

**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).

# James F. Kipp, Esquire

1937-2013

By Francis J. Trzuskowski, Esquire

James F. Kipp, a member of the Delaware Bar for almost 50 years, died on April 6, 2013. Jim started his law career in 1963 with Raymond L. Becker. Then, in 1974, Jim and I started a partnership with a handshake. The firm name was decided by a flip of a coin, while on the telephone, as we discussed our decision. Based on that and several other telephone conversations, we, together, enjoyed a general practice for more than 30 years. In 2006, Trzuskowski, Kipp, Kelleher and Pearce, P.A. was invited to merge with Elzefon Austin Reardon Tarlov and Mondell, P.A. — a relationship which was to transition the two of us to retirement status in two years. It continued for more than six years.

It was recently written by Terry Jay-work that when Jim and I started in the Bar, it was a time when lawyers were known as individuals and when cases were able to be settled with a few telephone calls. We were, and enjoyed being, a part of that era. It was at that time that James F. Kelleher was appointed as Delaware's First Public Defender for the State. There were, I recall, six Deputy Attorney Generals serving the State and three, part-time, Assistant Public Defenders — Carl Schnee, Jim Kipp, and me. It is reported that during its first year, 1964, the Office handled 875 cases. Each of us were in various courts handling multiple cases daily. During that tenure the idea of a partnership had its start, but it did not come to fruition until August 1974. As the years progressed our practice grew, and Jim transitioned from handling cases by telephone to the present day Lexis Nexis filings. A check of Westlaw will find that Jim was counsel in more than 200 reported decisions and his number of jury trials far exceeds that number. Jim was proud to be a Delaware lawyer and he was a low key, quiet and effective litigator; and, a moving force in the Delaware Trial Lawyers and ABOTA. Over the years younger members of the Bar would ask him to review cases, suggest tactics and critique possible settlements. Not surprisingly, many of the present Bar consider Jim to have been their mentor.



Many of these fellow lawyers as well as judges, government officials, and friends repeated the same thought, as they paid their respects and condolences to Elvira, his wife of 50 years. With his death, the Delaware Bar lost “one of the good guys.”

Jim was, also, a proud graduate of Salesianum High School, St. Joseph's College, and the Villanova School of Law, and was active in the alumni of each.

Jim loved to travel, and travel he did. It is because of Jim's penchant to do so that Elvira, Tom and Rita Sweeney and Ann and I experienced travel throughout the world. Once on a plane from Nairobi to Cairo, Jim leaned over to tell me that our next trip was going to be to Russia, because a fellow passenger had been telling him of being in Red Square, and seeing the Kremlin and

Saint Basil's Cathedral. My reaction was an expletive which I followed with — “Jim, we haven't even landed in Cairo.”

The following year, our group visited Moscow, Warsaw, and Copenhagen.

Jim was diagnosed with pancreatic cancer in January 2012. But, this diagnosis did not quell his plans to travel. The entire family went to Italy in June and he and Elvira with friends, went on a cruise to Alaska in August. His last trip was with our group to New York to enjoy, once again, the “best” restaurant in the City.

Jim faced his ever declining health as he lived his life — with faith, equanimity, and a keen sense of humor.

The impact of his life and his service to many, over the span of his career, was witnessed by an overflow congregation at St. Anthony of Padua Church in Wilmington where a Mass of Christian Burial was celebrated by, his friend, Bishop W. Francis Malooly and several priest friends of the Oblate of St. Francis de Sales.

When Jim left us on April 6th, I lost a partner and friend, but the Delaware Bar lost a gentleman and an outstanding example of civility in the trial court. ☪

## BAR NEWS

### Delaware Law Review Welcomes New Editor-in-Chief

Alisa E. Moen will serve as the new Editor-in-Chief of the *Delaware Law Review*. Moen is replacing Danielle Gibbs, Esquire, who completed her term as Editor-in-Chief with the last issue of the publication.

Moen is a partner at Blank Rome LLP and currently serves as the firm's Corporate Litigation Vice Practice Group Leader. Ms. Moen focuses her practice in the areas of complex commercial, corporate, business and fiduciary disputes. Moen regularly advises clients with respect to transactional matters involving corporate governance, formation of special purpose entities, and complex commercial transactions. Moen has successfully tried corporate and commercial cases to conclusion in both federal and state courts, and has focused her practice on matters pending before the Delaware Court of Chancery.

## OF NOTE

Condolences to the family of **Raymond J. Hancock, Esquire**, who died on May 3, 2013.

**The Legal Help Link  
has a new  
toll-free number:  
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**The State Law Library in Kent County has moved into the newly renovated Old Kent County Courthouse.**

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In order to have the correct information published in the 2014 Delaware Legal Directory, corrections must be received no later than **September 6, 2013** – no exceptions!

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*Thank you to all my friends and colleagues who answered the call  
and helped raise over \$4,000 for breast cancer research at the*

*Helen F. Graham Cancer Center at Christian Care.*

*Joseph A. Gabay*

**PRIVATE PROBATION****Effective Date: May 20, 2013****Board Case No. 2013-0026-B**

An attorney received an eighteen (18) month private probation for a violation of the Delaware Lawyers' Rules of Professional Conduct ("Rules"). A Panel of the Preliminary Review Committee ("PRC") offered the sanction of an eighteen (18) month private probation to which the attorney consented.

The attorney was retained to represent a client in connection with a criminal matter. A letter was sent to the client's mother confirming the amount of the "flat fee" for representation. The client's mother made three payments. The attorney failed to provide a written statement that the fee was refundable if not earned, failed to provide a written statement explaining the basis under which the fee is considered to have been earned (in whole or in part) and failed to retain the fee in his escrow account until such time the funds were earned in violation of Rule 1.5(f).

**PRIVATE ADMONITION****Effective Date: June 21, 2013****ODC File No. 2011-0171-B**

An attorney received a private admonition with conditions for violation of Rule 1.5(b) of the Delaware Lawyers' Rules of Professional Conduct ("Rules"). A Panel of the Preliminary Review Committee offered the sanction of a private admonition to which the attorney consented.

The attorney was retained to represent a client in connection with a discrimination claim. The matter initially proceeded through the Equal Employment Opportunity Commission ("EEOC"). The attorney never provided the client a fee agreement for representation in connection with the discrimination claim.

The attorney subsequently filed a complaint on behalf of the same client in the Superior Court seeking to recover lost wages. The attorney never provided

the client a fee agreement in connection with the claim for lost wages.

Rule 1.5(b) states: "the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation." By entering an appearance on behalf of the client, representing the client in the EEOC matter and filing a complaint in the Superior Court on the client's behalf, without communicating the terms pursuant to which the attorney would charge the client, the attorney violated Rule 1.5(b).

As conditions of the private admonition, the attorney must: (1) enter into a signed retainer agreement with each and every existing and future client setting forth: (a) the specific terms pursuant to which the attorney will charge fees and/or collect a contingency fee; and (b) the nature of the work the attorney will perform without charging a fee, if any; (2) enter into a new signed retainer agreement meeting the above requirements for the representation of every client before a different tribunal, whether judicial or administration; and (3) pay the costs of ODC's investigation.

**PRIVATE ADMONITION****Effective Date: June 26, 2013****ODC File No. 2011-0081-B**

An attorney received a private admonition and probation with conditions for violation of Rules 8.4(b) ("[i]t is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other aspects") and 8.4(d) ("[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice") of the Delaware Lawyers' Rules of Professional Conduct ("Rules"). A Panel of the Preliminary Review Committee offered the sanction of a private admonition to which the attorney consented.

The attorney was charged with DUI (second offense), refusal to submit to DUI test, failure to remain at accident scene, careless driving, following too closely and improper lane change. The attorney entered a plea of *nolo contendere* to reckless driving (lesser included offense of DUI) and leaving the scene of an accident involving damage to a vehicle or property.

In determining a private admonition and probation with conditions was an appropriate sanction for the attorney's professional misconduct, the Preliminary Review Committee considered aggravating and mitigating factors. In aggravation, the attorney: (1) had substantial experience in the practice of law; and (2) was previously convicted of a DUI offense. In mitigation, the attorney: (1) has no prior disciplinary record; (2) was experiencing personal problems involving substance abuse for which the attorney sought treatment; and (3) cooperated with ODC in the investigation of this matter.

The private admonition is subject to the following conditions: (1) one year probation; (2) satisfy any outstanding Court costs relating to the criminal prosecution; (3) pay ODC's costs in this disciplinary matter pursuant to Procedural Rule 27 within 30 days; and (4) enter into a monitoring agreement with the Delaware Lawyers Assistance Program. 

## POSITIONS AVAILABLE

**ATTORNEY:** Small, established Dover practice seeks to replace a retiring partner. Experience with plaintiff's personal injury litigation is a plus. Delaware Bar membership is required. Fax inquiries with resume to 302-678-3544 or e-mail to [Bookkeeper@Gradyhampton.com](mailto:Bookkeeper@Gradyhampton.com).

**DORSEY & WHITNEY LLP** is seeking an associate attorney to join the Finance & Restructuring Department in its Wilmington office. This associate will have the opportunity to work on both bankruptcy and commercial litigation matters. One to four years of litigation or bankruptcy experience and Delaware bar admission required. Apply online at [www.dorsey.com/careers/attorneys/openings](http://www.dorsey.com/careers/attorneys/openings).

**TARABICOS GROSSO, LLP** seeks a high caliber attorney with 1-3 years' experience. We are a Delaware commercial real estate law firm with dynamic, challenging, sophisticated, and rewarding practice areas and clients. A great match for a bright, hard-working, thoughtful, and enthusiastic attorney looking for a unique opportunity to join and help build our growing, exceptional law firm. More information available at [www.tarabicosgrosso.com](http://www.tarabicosgrosso.com).

**WEBER GALLAGHER SIMPSON STAPLETON FIRES & NEWBY LLP**, a mid-sized multi-state law firm, seeks an associate and/or a senior level attorney with 3-5 years experience in general litigation and liability for our Dover, DE office. Candidate with portable business a plus. Qualified candidate must possess excellent analytical abilities and strong communication skills. Full or part time candidates will be considered. Must be admitted to practice in Delaware and have completed the required clerkship. Weber Gallagher Simpson Stapleton Fires & Newby LLP offers a friendly office environment, competitive salary and excellent benefits package, including 401(k) and medical for Full Time employees. Please visit our website: [www.wglaw.com](http://www.wglaw.com). Please submit a resume and cover letter to: [Jobs@wglaw.com](mailto:Jobs@wglaw.com).

**DUANE MORRIS LLP** seeks a litigation associate with two – three years' experience in corporate/complex commercial litigation and Chancery Court practice to join its Wilmington, Delaware office. Candidate must have strong writing skills and ability to work independently, possess a strong positive presence and advocacy ability. Stellar academics and research skills along with entrepreneurial drive and initiative are preferred. Competitive salary and benefits. EOE/AA/M/F/D/V. Delaware Bar admission required. Candidates should submit a copy of their resume and transcript through our online application found here: [http://www.duanemorris.com/site/careers\\_currentopportunities.html](http://www.duanemorris.com/site/careers_currentopportunities.html).

**MORRIS JAMES LLP'S** Professional Liability Litigation Group (Medical Malpractice Defense) seeks an associate attorney with 2–4 years' experience. Associate must possess strong desire to do jury trial work. Send résumé to Carol Folt, HR Manager, Morris James LLP, PO Box 2306, Wilmington, DE 19899-2306. E-mail: [cfolt@morrisjames.com](mailto:cfolt@morrisjames.com)

**AVAILABLE OPPORTUNITIES:** Junior corp./comm. litigation associate; corporate transactional partner; junior litigation/bankruptcy associate. Please contact [kgattuso@klglegalconsulting.com](mailto:kgattuso@klglegalconsulting.com) for more information. All inquiries are confidential.

## OFFICE SPACE

**DOWNTOWN WILMINGTON:** Appr. 2000 sq. ft. office space on 2nd floor in an elevator building. 2 blocks from court houses. Parking available on premises. Call (302) 656-5445.

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## OFFICE SPACE AVAILABLE:

Office sublet available on the third floor of the Conectiv Building, 800 N. King St. in Wilmington with Don Gouge and John Deckers. Space consists of one windowed lawyer's office and one assistant/paralegal office. It also includes a file/copy room. Services include copier, conference room, runner etc. Space available immediately. For more information, please contact Linda Martin at (302) 658-1800 or [lmartin@gougelaw.com](mailto:lmartin@gougelaw.com).

## POSITIONS WANTED

**EXPERIENCED CORPORATE AND COMMERCIAL** litigation attorney looking for project-based/contract attorney position. For more information, please contact [kgattuso@klglegalconsulting.com](mailto:kgattuso@klglegalconsulting.com). ☎

## NOMINATIONS SOUGHT FOR 2013 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.

### 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.*

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## 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 30, 2013 to Rina Marks, Executive Director, e-mail [rmarks@dsba.org](mailto:rmarks@dsba.org) or fax to (302) 658-5212.**

## Summer at Sbraga

**T**he Avenue of the Arts in Philadelphia will be a destination this summer for concerts at the Kimmel Center, musicals at the Academy of Music and performances at the Merriam Theatre. You may not know it, but there is another notable venue for talented artists on Broad Street — Sbraga — where the art is not on stage, but on your fork or spoon.

The beauty of Sbraga's menu lies in the fact that it is seasonal. The menu changes frequently yet retains some favorites, such as the decadent foie gras soup. The beauty of Sbraga's food lies in its flavors, colors and textures. Every ingredient is deliberate, down to the jalapeño slice garnishing the crab salad. The beauty of the restaurant itself lies in the sleek design, the copper pots hanging above the open kitchen and the people who inhabit the space — the chefs, the servers and the best restaurant manager in Philly, Ben Fileccia.

A note on Ben...he does not stand at the front door on the periphery of the action. He circulates throughout the restaurant, talking with his pleasant and knowledgeable staff and contented diners. During your visit this summer, Ben may bring you your glass of Champagne or outline the ingredients in the foie gras soup. When you see Ben, be sure to wish him a happy birthday — it is on August 15th.

Sbraga, owned by Top Chef Kevin Sbraga, offers a four course prix fixe for \$49. Another option for a Monday through Thursday at 6:00 p.m. is the \$75 six course tasting at the Chef's Counter. At this special seating, one can sample dishes that the chefs are testing or enjoy themed meals for special occasions, such as Mardi Gras. The four course prix fixe has six options per course, a much larger selection than most prix fixe menus at a fraction of the prix. In addition, the wine list contains a variety of whites, rosés and reds from around the world — France, Italy, Spain, Argentina, California, South Africa.

My husband, Vincent, and I most recently dined at Sbraga at the end of May. The descriptions of some of the dishes we enjoyed will be somewhat of a tease as most items will have changed by the time you visit this summer. That's the nature of seasonal dining!

The steak tartare was the most unique we have had at any restaurant. The finely chopped steak had a mystery component which appeared to be glistening round seeds. Upon closer look, I realized that these seeds were quinoa. What an interesting way to add a distinctive texture to a tartare. The flat square of vibrant pink was topped with pea shoots and thin slices of hearts of palm. To incorporate the traditional onion element, the chefs placed a schmear of French onion sauce on the colorful, delicious plate.

The crab salad was another stunning dish of summer colors — white, pink and a single disc of vivid green. The delicate crab salad was served alongside a slice of prosciutto and topped with long thin slices of white asparagus that could only be achieved on a mandolin.

The final element, a very thin slice of jalapeño, allowed for the perfect forkful of flavor — a bite of salad, a piece of prosciutto, a slice of asparagus and a morsel of jalapeño. A slice just a millimeter thicker would have been too much heat.

The second course options feature fish, some of which you will not likely find in other local restaurants. During our last visit, we ordered the fluke, tomato confit and artichoke described as a "poule au pot." This dish was "chicken in a pot" with a significant twist. No poached chicken was to be found in this bowl; rather, a lovely piece of fluke with char marks floated on a bed of foam concealing the tomato confit and quarters of artichoke. The tastes in this course brought more comfort than the traditional French "chicken in a pot."

Our favorite second course had to be the English pea risotto with pancetta and frog leg tempura. Out of a wide rimmed bowl of pale green risotto surfaced two tempura frog legs. Emerald green peas and pea shoots topped the risotto, along with rectangular slices of pancetta, which provided just the right amount of saltiness to balance the sweetness of the peas. This dish was creamy and sweet and the color of summer.

The third course options are meat dishes and typically one meatless dish. A variation on the meatloaf never leaves this portion of the menu. On our recent visit, the meatloaf was served with aligot potatoes and fresh garbanzos. The aligot potatoes, mashed with butter, cream and cheese, were a rich, velvety accompaniment to the precise round of meatloaf. The pale green garbanzos supplied a fresh crunch to the dish.

The unexpected star of the evening was the meatless dish, the pappardelle, potatoes, fava beans and jalapeño. In the pasta bowl, homemade pappardelle were folded with small wedges of potatoes and fresh favas. Fine, fresh bread crumbs topped the pasta and vegetables. Do not let the trio of starches fool you — this dish was light and fresh, and the pepper provided just enough of a kick to make you take the time to savor this second to last course.

Although I left room for dessert at Sbraga, I am afraid that I did not leave enough room for dessert here. What I can fit is that we shared a cheese board (always a dessert option) featuring two artisanal cheeses with a fruit strudel bread. Also, the juxtaposition of a rich chocolate pot de crème with a refreshing pineapple granita was a perfect finale.

I leave you with your summer assignment — choose Sbraga for a pre-theatre dinner or as the main act. It will be an enriching experience. 🍷

**Susan E. Poppiti**, is a mathematics teacher at Ursuline 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).

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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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e-mail: [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org)

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NOTICE  
COURT OF COMMON PLEAS  
DAUPHIN COUNTY, PA - CIVIL DIVISION - LAW  
No. 2011-CV-9088-MF  
MORTGAGE FORECLOSURE

SOVEREIGN BANK, N.A., formerly known as Sovereign Bank  
Plaintiff

vs.

KERRI FOX, as Mortgagor and Real Owner and ATA ZANDIEH, as  
Reputed Owner,

Defendants

TO: KERRI FOX

BY ORDER DATED MAY 31, 2013, THE COURT OF COMMON PLEAS ENTERED AN ORDER AUTHORIZING SOVEREIGN BANK, TO SERVE ITS WRIT OF EXECUTION, NOTICE OF SALE AND PROPERTY DESCRIPTION UPON YOU BY PUBLICATION.

You are hereby notified that on **September 5, 2013**, at 10:00 A.M., in the Dauphin County Administration Building, 2<sup>nd</sup> & Market Streets, Commissioner's Hearing Room, 4<sup>th</sup> Floor, Harrisburg, PA, your real estate located at 6495 Huntsmen Drive, Harrisburg, Dauphin County, Pennsylvania is scheduled to be sold at a Sheriff's Sale based upon a Writ of Execution issued on behalf of Sovereign Bank, N.A., formerly known as Sovereign Bank to No. 2011-CV-9088. The executing creditor holds a mortgage on the property. A schedule of distribution will be filed by the Sheriff on or about October 5, 2013, and distributions will be made in accordance with the schedule unless exceptions are filed thereto within ten (10) days from the date of filing. A description of the property being sold is set forth below as follows:

ALL THAT CERTAIN piece or parcel of land situate in Lower Paxton Township, Dauphin County, Pennsylvania, more particularly bounded and described as follows, to wit:

BEGINNING at a point on the southern side of Huntsmen Drive at the dividing line between Lots Nos. 3 and 21, as shown on the hereinafter mentioned Plan of Lots; thence North 61 degrees 00 minutes 00 seconds East, 53.27 feet to a point; thence by a curve to the right, having a radius of 200 feet, an arc length of 168.11 feet to a point; thence South 70 degrees 50 minutes 22 seconds East, 22.03 feet to a point; thence by a curve to the right, having a radius of 25 feet, an arc length of 36.14 feet to a point on the western side of Willoughby Road; thence by a curve to the right, having a radius of 375 feet, an arc length of 23.76 feet to a point; thence continuing along same, South 08 degrees 20 minutes 58 seconds West, 169.81 feet to a point; thence by a curve to the left, having a radius of 350 feet, an arc length of 39.13 feet to a point; thence continuing along same, South 14 degrees 45 minutes 20 seconds West, 20.58 feet to a point at the dividing line between Lots Nos. 2 and 3, on said Plan; thence along said dividing line, North 81 degrees 42 minutes 17 seconds West, 237.66 feet to a point at line of Lot No. 21; thence along the dividing line between Lots Nos. 21 and 3, North 08 degrees 17 minutes 43 seconds East, 213.77 feet to a point on the southern side of Huntsmen Drive, being the point and place of BEGINNING.

UNDER AND SUBJECT to Declaration of Restrictions recorded in Record Book 912, page 5. UNDER AND SUBJECT, NEVERTHELESS, to easements, restrictions, reservations, conditions and rights-of-way of record.

HAVING THEREON ERECTED a dwelling house known and numbered as 6495 Huntsmen Drive, Harrisburg, Pennsylvania. BEING TAX MAP NO. 35-072-124

BEING THE SAME PREMISES WHICH Jeffrey A. Dillow and Angela C. Dillow by Deed dated January 27, 2006 and recorded on January 30, 2006 in the Office of the Recorder of Deeds in and for the County of Dauphin in Instrument #20060003457, granted and conveyed unto Kerri Fox, married woman, the within mortgagor, her heirs and assigns.

NOTICE OF OWNER'S RIGHTS YOU MAY BE ABLE TO PREVENT THIS SALE

To prevent this Sheriff's Sale, you must take immediate action:

1. The sale will be cancelled if you pay to Sovereign Bank and/or its attorney, Thomas A. Capehart, Esquire, the entire judgment amount, accrued interest, costs and reasonable attorney's fees due. To find out how much you must pay, you may call (610) 820-5450.

2. You may be able to stop the sale by filing a Petition asking the Court to strike or open the judgment if the judgment was improperly entered. You may also ask the Court to postpone the sale for good cause.

3. You may also be able to stop the sale through other legal proceedings.

You may need an attorney to assert your rights. The sooner you contact one, the more chance you will have of stopping the sale. (See Notice below on how to obtain an attorney).

YOU MAY STILL BE ABLE TO SAVE YOUR PROPERTY AND YOU HAVE OTHER RIGHTS EVEN IF THE SHERIFF'S SALE DOES TAKE PLACE

1. If the Sheriff's Sale is not stopped, your property will be sold to the highest bidder. You may find out the price bid by calling (610) 820-5450.

2. You may be able to petition the Court to set aside the sale if the bid price was grossly inadequate compared to the value of your property.

3. The sale will go through only if the buyer pays the Sheriff the full amount due in the sale. To find out if this has happened, you may call (610) 820-5450.

4. If the amount due from the buyer is not paid to the Sheriff, you will remain the owner of the property as if the sale never happened.

5. You have a right to remain in the property until the full amount due is paid to the Sheriff and the Sheriff gives a deed to the buyer. At that time, the buyer will bring legal proceedings to evict you.

6. You may be entitled to a share of the money which was paid for your real estate. A schedule of distribution of the money bid for your real estate will be filed by the Sheriff within thirty (30) days of the sale. This schedule will state who will be receiving the money. The money will be paid out in accordance with this schedule unless exceptions are filed with the Sheriff within ten (10) days after the posting of the schedule of distribution.

You may also have other rights and defenses or ways of getting your real estate back if you act immediately after the sale.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE LISTED BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE  
213 N. FRONT ST.  
HARRISBURG, PA 17101  
(717) 232-7536

Thomas A. Capehart, Esquire  
GROSS MCGINLEY LLP  
Attorney for Plaintiff, I. D. No. 57440  
33 South 7<sup>th</sup> Street, PO Box 4060  
Allentown, PA 18105-4060  
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Morris James LLP

#### Wilmington

- Delaware Avenue
- Broom Street

#### Contact Us

T 302.888.6800  
F 302.571.1750

#### Newark

#### Dover

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[www.morrisjames.com](http://www.morrisjames.com)