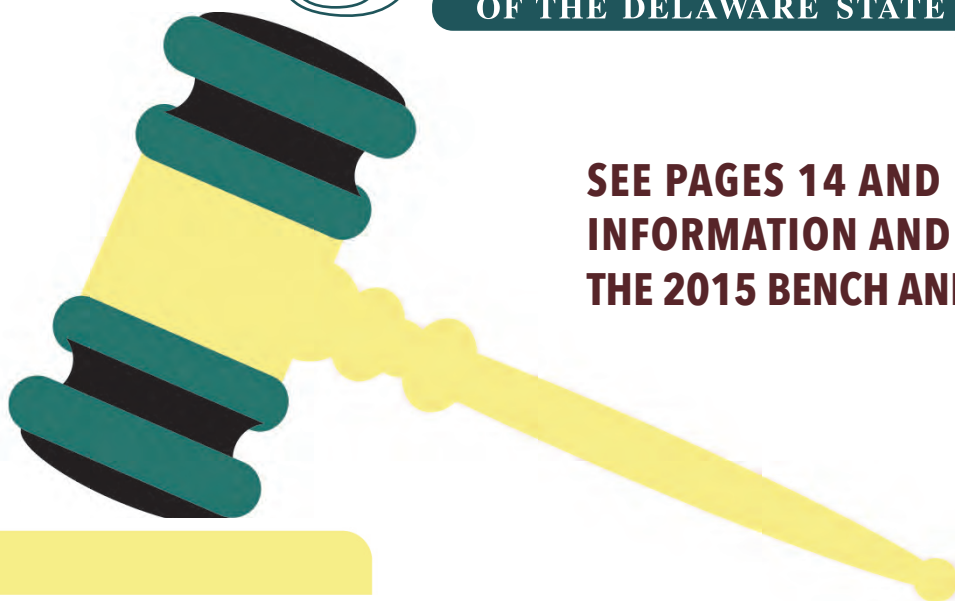




THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION



**SEE PAGES 14 AND 15 FOR MORE
INFORMATION AND TO REGISTER FOR
THE 2015 BENCH AND BAR CONFERENCE.**

BENCH AND BAR CONFERENCE

Friday, May 15, 2015 | Chase Center on the Riverfront | Wilmington, DE

The Delaware State Bar Association gratefully recognizes Delaware State Bar Insurance Services, Inc. (DSBIS) as the Sponsor of the 2015 Bench and Bar Conference on May 15, 2015.

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Nominations Sought for 2015 Awards

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

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

These and other awards will be presented in a special Awards Luncheon in December 2015 at the Hotel du Pont.

Awards Description

Daniel L. Herrmann Professional Conduct Award

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

Outstanding Service to the Courts and Bar Award

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

Distinguished Mentoring Award

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

Government Service Award

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

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

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

Delaware State Bar Association Awards Nomination Form

Name of Candidate: _____

Title/Occupation of Candidate: _____

Award: _____

Date: _____

Nominator: _____

Phone: _____ Fax: _____ E-Mail: _____

Firm: _____

Address: _____

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

Nominations should be submitted to Rina Marks, Executive Director, e-mail rmarks@dsba.org or fax to (302) 658-5212.

DSBA BAR JOURNAL

MAY 2015 | VOLUME 38 • NUMBER 10

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

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Letters to the Editor should pertain to recent articles, columns, or other letters. Unsigned letters are not published. All letters are subject to editing. Send letters to the address above, Attention: Editor, Bar Journal.



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

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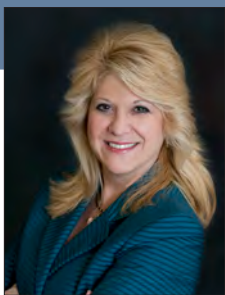
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PRESIDENT'S CORNER

By Yvonne Takvorian Saville, Esquire

This month's issue of *The Journal* introduces you to a new member of the Delaware State Bar Association team. We welcome Mr. Chris Mourse as the new Director of Law Office Management for the Delaware Bar. One of the action plans for this year's Executive Committee was to evaluate whether services to certain segments of the Bar could be enhanced. This position was created in an effort to supplement the services the Bar Association is providing to the members of the Small Firm & Solo Practitioners Section.

The DSBA researched successful programs in our sister states, including Maryland and Pennsylvania, and based upon the information we received, we have created what we hope will be an effective and helpful program for our members. Many of you are familiar with Mr. Mourse, as he has been active with the Bar Association through his work as an Executive Director of the Richard K. Hermann Technology Inn of Court, a member and officer of the Delaware Supreme Court Commission on Law and Technology, and as an adjunct professor at Widener University School of Law, teaching e-Discovery, Ethics and Technology, as well as Legal Technology classes. He also has experience in managing non-profit organizations, educating lawyers and law students, and implementing process improvement systems.

As this effort is getting off the ground, we anticipate offering the new services to assist members of the Delaware Bar, specifically Delaware solo practitioners and small firm attorneys, with law practice management issues including:

“The DSBA researched successful programs in our sister states, including Maryland and Pennsylvania, and based upon the information we received, we have created what we hope will be an effective and helpful program for our members.”

- Developing and providing educational materials on various topics of interest to small firms and solo practitioners (such as technology and practice management, including creating a clearinghouse of resources, vendors, and information on these topics);

- Maintaining a small library of reviews and articles regarding various software packages, information on accounting, informational packets, resource networks, mentoring information, and ABA publications;

- Sharing informational packets ranging on a variety of topics, including how to start a solo practice, selecting the correct entity for your practice (LLC, P.C., P.A.), client development, accepting credit cards, financial management, document retention, avoiding problems including legal malpractice, of-counsel relationships, working with consultants, firm transition and succession planning, firm resolution, closing a practice, and disaster planning;

- Keeping up with trends and developments within the legal profession, and developing educational programs at convenient times and locations for members of the Delaware Bar relating to law practice management and technology; and

- Acting as liaison with sections and committees of the Delaware State Bar Association, with the objective of im-

proving the skills of its members, which would include answering general questions about technology and law practice management, and referring lawyers to other sources for further assistance.

Mr. Mourse will also be penning a monthly column for *The Journal* on topics of interest to solo and small firm practitioners. These materials will also be available on the DSBA website, including “Practice Tips” and suggestions on managing the small law office.

Mr. Mourse is excited for the opportunity to work with the Delaware Bar in this capacity. Please join me in welcoming him!

Law Day

The DSBA Law Day luncheon was held on April 21, 2015 at the Hotel du Pont with our featured speaker, Attorney General Matt Denn. Attorney General Denn addressed the audience as to the progress being made by his office in his first 100 days, including their efforts in reducing violent crime in Delaware. We also celebrated with an awards presentation to the following recipients:

- The Liberty Bell Award, which is awarded to an individual who is not a judge or a lawyer, who has rendered outstanding service to his/her community, was presented to Ron Copeland, a court bailiff in the Kent County Court of

Common Pleas. This award is designed to promote a better understanding of government, a greater respect for the rule of law or a deeper sense of individual responsibility which contribute to the effective functioning of our governmental institutions;

- The Community Service Award, formerly the Public Service Award, this award is granted to an individual for rendering meaningful service to the community, contributing significant time and effort to the greater Delaware community and demonstrating a commitment to leadership and service in activities that enrich and strengthen our community over a substantial period of time. This year, the individual recognized for such service was Thomas A. Pedersen, Esquire.

- Myrna L. Rubenstein Professional Support Recognition Award, which is presented to a support staff person, for long and dedicated service to the Bench and Bar of the State of Delaware, to the Bar Association, and to the members thereof, which has contributed in a

significant way to them and to the high ideals of the legal profession, was presented to Mary Jane De Matteis.

We congratulate all of the recipients on this honor. 

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



Tax Issues Facing Small Businesses

Wednesday, May 27, 2015

3.0 hours CLE credit

Delaware State Bar Association,
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Webcast to Tunnell & Raysor,
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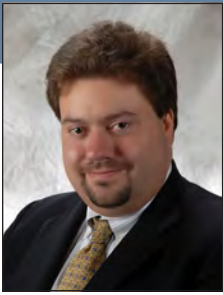
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EDITOR'S PERSPECTIVE

By Michael L. Sensor, Esquire

Raindrops Keep Fallin'

As I write this article, I am drying off from a major soaking I encountered when walking from Surburban Station to my employer's main office at Seven Penn Center on Market Street in Philadelphia. It was only a block's walk, but seemed to take forever as I quickly became soaked from head to toe — jacket, briefcase, Dunkin' Donuts iced coffee (now somewhat watery), and all. Naturally, I had forgotten to pack an umbrella this morning as I headed out to the train. I suppose it was my internal logic since it was not raining at home when I left!

Particularly galling to me about this incident was that I am not a neophyte when it comes to knowing what's around the corner with the weather. I have multiple weather apps installed on my phone, which tell me everything from if a tornado is headed my way to seeing every NEXRAD radar station in the United States (and even some in Canada). Humidity? Check. Heating degree days? Got it. Nautical twilight? In hand. But, I did not use my common sense before I headed out for the day. I recall waking up sometime in the middle of the night to the sound of rain — so it should have stood to reason an umbrella would be appropriate.

Mark Twain is widely credited with saying "Everyone talks about the weather, but nobody does anything about it." Whether or not Mr. Clemens actually said that is beyond the point; the fact of the matter is that if you put two strangers or even friends in a room together, sooner or later they will start talking about the

weather, comparing temperatures, rain- or snowfall totals, and overall experiences as if they were talking about last night's ballgame. So, please allow me to indulge myself in discussing some of my more significant weather experiences.

If you did not get the idea already, weather fascinates me — it always has, ever since I was a young child. I grew up in Erie, Pennsylvania, very close to Lake Erie, the shores of which see their share of wild weather — not on the scale of "Tornado Alley" in the Midwest, but still enough to keep things exciting.

I recall, for example, the Blizzard of 1977, where my parents measured the snowfall using yardsticks, not regular rulers. That was not the only serious snowstorm we experienced in Erie, given our proximity to Lake Erie and the infamous "lake effect" snowstorms which occurred on a regular basis in the early months of winter, while the lake was still warm.¹

And in 1985, the Erie area was rocked by a massive tornado outbreak which stretched from southern Ontario southeast to the Pittsburgh area and beyond. A small town in Erie County named Albion was almost destroyed by an F4 tornado ("F" denotes the Fujita scale of measuring tornado strength; the most destructive tornado at that time was an

1. For Great Lakes residents, this needs no explanation, but for those of us used to significant accumulations of snow only by means of nor'easters, "[l]ake-effect snow is produced during cooler atmospheric conditions when a cold air mass moves across long expanses of warmer lake water, warming the lower layer of air which picks up water vapor from the lake, rises up through the colder air above, freezes and is deposited on the leeward (downwind) shores." See http://en.wikipedia.org/wiki/Lake-effect_snow (visited April 19, 2015).

F5) which ripped through it, killing nine and injuring more. I recall seeing aerial photos of the utter devastation from this tornado, and my grandfather going out to Albion with his church's mens' group to render what aid could be given under the circumstances. I, at fourteen, was eager to go along, but my offer was rebuffed because of the danger presented by the circumstances — wires down, gas leaks, splintered wood and trees. In retrospect, I am glad that I didn't go, because that was no place for a kid to be.

Along the lines of weather reminiscences, I remember dealing with a major ice and snow event² when I was an undergraduate at Temple University which actually closed the University and city offices for two days. I was living on the edges of Center City at the time; the accretions of snow/ice/snow/more ice were so bad that not only could I find no parking for my decrepit 1977 Toyota Celica, I could not even move it from the spot it had been, causing me to incur parking fines. In a sense, although nothing else was functioning due to the severity of the storm, it was reassuring that at least the city's revenue enhancement unit known as the Philadelphia Parking Authority was still operational.

Closer to home in Delaware, who can forget the "Snowmageddon" (or pick your funny noun) of the winter of 1999-2000? Recent winters have seen more total snowfall, but that winter took the cake for the largest single-day accumulations of

2. A tradeoff for Easterners who do not have to deal with lake effect snow.

snow I can recall in a long while, even approaching Erie-levels of snow. These were court-closing, office-closing, pajama-day storms of unparalleled quality. A single look at the Weather Channel (before its current reality-TV phase) each morning of the storms made it clear that nothing was going to happen that day, the radar showing a massive vortex of low pressure creeping up the Atlantic Coast, leaving rain, ice, and snow in a radius of hundreds of miles around its center.

There — that is enough jawboning about my weather experiences. In the time it took me to finish this article, my clothes and hair dried and I look less like a wet poodle and more like a lawyer. Before I head home, I'll be sure to check to make sure I am not going to get soaked again! ☔

Bar Journal Editor **Michael L. Sensor** is an attorney in the Delaware office of Lundy Law. He is a graduate of Duquesne University Law School and received his B.A. in German languages and literatures from Temple University. He may be reached at (302) 351-0770 or at msensor@lundy.com.

Corporate Governance for Nonprofit Organizations



Monday, May 11, 2015
3.0 hours CLE credit

**Delaware State Bar Association,
Wilmington, DE**

**Webcast to Tunnell & Raysor,
Georgetown, DE**

Visit www.dsba.org for
registration information.

Small Firms and Solo Practitioners in Delaware

By Chris Mourse

A new position has been created at the Delaware State Bar Association...its purpose is to help the Small Firms & Solo Practitioners Section members in law practice management skills. This is a result of the DSBA Executive leadership team's commitment to providing exceptional service to their members and the recognition that Small Firms & Solos make up almost half of the members.

I am pleased to fill this position which is titled the DSBA Law Office Management Advisor. My primary responsibility will be to develop programs and create resources to meet the needs of small firms and solo practitioners. I believe my experience as a legal educator and legal technology consultant, and as a small and large businessperson will be beneficial to you.

I am not coming to this position with any preconceived notions as to what you require to improve your law practice. My plan is to meet with your Section leaders and you to identify needs and establish priorities. We will then develop programs that will build and manage the momentum for your success. I believe that to succeed as a small firm or solo you need, in addition to your law training, a few fundamental business skills, an attitude and belief that you find your work satisfying and interesting, as well as some determination to improve.

I believe we have a lot to learn from each other and will need an open and strong partnership to succeed. I plan, by listening and working with you, to create that roadmap for your success.

So, let's start with defining law practice management. It is not what you learned in law school. It is the business side of your law practice. The operation of your law office, your accounting and financial bookkeeping requirements, your use of technology

and your marketing efforts are all under the umbrella of law practice management. An excellent attorney can create pitfalls for themselves if they do not have adequate law practice management skills or resources.

There has not been a better time for you to focus on the business side of your practice. There are many tools available to you that should meet your needs regardless of your skill levels in accounting, operations, or finance and these tools are not expensive. I expect we will find options and resources that meet your respective needs. I like technology, but believe it will only facilitate you to perform some tasks more efficiently. It will not replace your legal knowledge and experience. It can, however, help you deliver your legal services easier. And, maybe, give you some time to give back to the community as well as spending more time with your family.

I intend to develop practical programs and deliver them at locations and times that are suitable to you. And, I do not intend to make them complicated or burdensome. My objective will be to help you define what you need ... the essential tools that meet your needs and align them with your legal skills. No more, no less! ☔

Chris Mourse serves on the Supreme Court Commission on Law & Technology, is the Executive Director of the Richard K. Herrmann Technology Inn of Court, and teaches at the Widener Law Delaware. He has significant experience in managing legal technology projects and law practice management tools and can be reached at cmourse@dsba.org.



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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*Certified Practice Monitor

CALENDAR OF EVENTS

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

May 2015

Monday, May 11, 2015

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

Tuesday, May 12, 2015

Confidentiality in the Age of Cyber (In)Security
1.5 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Friday, May 15, 2015

Bench and Bar Conference and CLE
View from the Bench
1.5 hours CLE credit
View from the Bar
1.5 hours CLE credit
Chase Center on the Riverfront, Wilmington, DE

Tuesday, May 19, 2015

Magna Carta with Associate Justice Antonin Scalia, U. S. Supreme Court
1.0 hour CLE credit
Hotel duPont, Wilmington, DE

Thursday, May 21, 2015

Ethics in Social Media
at The Judge Haile L. Alford Memorial Breakfast
1.0 hour CLE credit
DuPont Country Club, Wilmington, DE

Wednesday, May 27, 2015

Tax Issues Facing Small Businesses
3.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, May 28, 2015

Recent Developments In Delaware Corporate Law
4.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

June 2015

Wednesday, June 3, 2015

Ethical Issues in Alternative Dispute Resolution
1.5 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, June 9, 2015

Ethical Considerations of Cloud Computing in Your Law Practice
1.5 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, June 11, 2015

Human Trafficking and Sex Trade
1.5 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

SECTION & COMMITTEE MEETINGS

May 2015

Thursday, May 7, 2015 • 3:30 p.m.

Real & Personal Property Section Meeting

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

Thursday, May 14, 2015 • 5:30 p.m.

Young Lawyers Section Happy Hour

TBD

Monday, May 18, 2015 • 4:00 p.m.

Taxation Section Meeting

Gordon Fournaris & Mammarella, P.A., 1925 Lovering Avenue, Wilmington, DE

Wednesday, May 20, 2015 • 12:30 p.m.

Labor & Employment Law Section Meeting

Drinker Biddle & Reath LLP, 222 Delaware Avenue, Suite 1600, Wilmington, DE

Thursday, May 21, 2015 • 12:00 p.m.

Executive Committee Meeting

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

Thursday, May 21, 2015 • 12:15 p.m.

Elder Law Section Meeting

TBD

Thursday, May 28, 2015 • 4:00 p.m.

Family Law Section Meeting

Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE

June 2015

Monday, June 1, 2015 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

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

Tuesday, June 2, 2015 • 3:30 p.m.

Estates & Trusts Section Meeting

Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, DE

Thursday, June 4, 2015 • 3:30 p.m.

Real & Personal Property Section Meeting

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

Wednesday, June 10, 2015 • 12:00 p.m.

ADR Section Meeting

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

Thursday, June 18, 2015 • 12:00 p.m.

Executive Committee Meeting

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

Thursday, June 18, 2015 • 4:00 p.m.

Elder Law Section Meeting

Reger Rizzo & Darnall LLP, 1523 Concord Pike, Suite 200, Wilmington, DE

Thursday, June 25, 2015 • 4:00 p.m.

Family Law Section Meeting

Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE

July 2015

Monday, July 6, 2015 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

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

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

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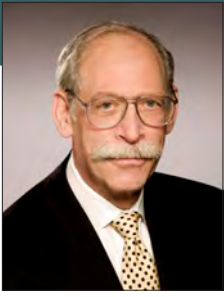
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TIPS ON TECHNOLOGY

By Richard K. Herrmann, Esquire

Courtroom Technology in the Delaware District Court: A Job Well Done

Courtroom Technology has changed very little during the last 20 years. The equipment is basically the same and the ability of the lawyers to build presentation materials into their trials and arguments has grown at a snail's pace. This lack of development is certainly not because trial lawyers believe graphic presentation fails to add a needed dynamic to the trial. For sure, it does. Jury psychologists, educators and jurists will all tell you, a set of facts will be retained longer when more of the senses are involved. If you hear a witness read a key paragraph in a contract and see the document on the screen, you are more likely to remember it than if you only hear the testimony. Notwithstanding all of this, the evolution of technology and graphic evidence in the courtroom has been slow, at least in the state court system.

In the Delaware District Court, things are a bit different. In the patent cases, trial presentation devices are the norm in trial and in argument. Maybe it is the nature of the content — complex concepts and inventions. I do not think so. The District of Delaware traditionally has encouraged the use of technology in the courtroom, even though for many years the parties needed to provide their own. However, recently the Court has upgraded its courtrooms. The redesign includes technology that is intuitive and very user friendly.

The key to a successful design of technology in the courtroom is to lock down the system so that lawyers cannot change or cannibalize it. The computer, projector, and components must be locked away so things cannot be changed. Everything in the District Court design is locked down. The courtroom podium

contains a touch screen similar to one found in the dashboard of a new car. The screen provides clear, limited choices to follow. A lawyer can select the document camera, which is built into the podium and is hidden in a drawer until needed, or a computer connection. If the lawyer selects the computer, he/she can choose the podium connection, or each of the counsel tables. That is it. It is simple and it is complete. The design provides a choice of VGA or HDMI connectors for the computers.

The District Court's projector is built into the ceiling and can be hidden away when not in use. It automatically turns on when a computer or document camera choice is made at the podium. All of the components and their wiring are locked away in the podium, thus making them tamper proof. Monitors are distributed at counsel table, witness stand and the Bench. A large screen extends from the ceiling for the jury to view. All wires have been carefully hidden and there are no tripping hazards. It is a design of elegant simplicity.

Of course, even though the District Court's system is intuitive, lawyers exposed to it for the first time are faced with questions. The courtroom staff know the answers and approach the questions in a helpful, almost proud fashion.

Of course, there are still issues and it is up to those presenting to anticipate them in advance. For example, many of the laptop computers today do not accept the standard projector cables without an adaptor. Any laptop which may be used in a courtroom should have a VGA and an HDMI adaptor. These are the two standard projector interfaces. The adaptors should always stay in the computer case and should not be shared among laptops. They are inexpensive (typically \$30 each). Without the adaptor, the computer might as well remain in the office. Sound should be part of any courtroom design, but it is not always the case. The computer bag should contain a small set of speakers and a cable to connect them to the computer. Portable speakers are very good these days and can fill a courtroom with sound (Example: Jawbone Mini Jambox). Finally, a remote control for PowerPoint presentations is a must. They,


“The District of Delaware traditionally has encouraged the use of technology in the courtroom, even though for many years the parties needed to provide their own.”

too, are not expensive and should be in every laptop presentation case (Example: Tagus Wireless Presenter).

We can debate the issue of whether the best courtroom design should have small monitors for each of the jurors or just one large screen for all to see. But, not today. Today, let's stop with this simple message. Unless the courtroom technology is user-friendly and works consistently all of the time, it will not be used at all. Congratulations to you at the Delaware District Court. Well done. ☺


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

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







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The Potential Risks of Social Media During Litigation

By Molly DiBianca, Esquire

Let's set the scene. Lawyer is considering representing an individual in a personal-injury suit resulting from an auto accident. The potential client sustained significant physical injuries in the accident and is seeking to recover monetary damages to compensate for the harm.

Lawyer is savvy about the potential risks of social-media use by clients during litigation, so he addresses the subject during their initial meeting. Client says that, yes, she does have a Facebook page and that, yes, she does post to it fairly regularly. Client also says that her Facebook profile is public.

Lawyer takes a look at the page and sees recent photos of the client at dinner with friends, at a local museum, and hugging her niece and nephew. None of the photos appear to contradict the client's claims regarding her physical injuries. Nevertheless, Lawyer is concerned that his adversary will make more out of the photos and attempt to use them against the client.

So what is the lawyer to do? And, more important, what must the lawyer do to comply with his ethical obligations in accordance with the Delaware Lawyers' Rules of Professional Conduct (the "Rules")? As with most interesting legal issues, the answer is, "it depends."

1. Can the lawyer advise the client to change her profile settings from "public" to "private"?

Yes. There is no ethical obligation to advertise the client's online activities to the world at large. In the analog world, there is no obligation to publish the docu-

ments in your client's filing cabinet in the local newspaper.

2. Can the lawyer advise the client to deactivate her profile until the conclusion of the litigation?

Yes . . . but with a word of caution. Deactivating a Facebook account is the equivalent of shutting and locking the door to the room where the filing cabinet is stored. When others search for the account, it is as if it does not exist. However, when the user (client) is ready to reactivate the account, all she needs to do is unlock the door. The filing cabinet and all of the documents contained therein are still there, just as she left them.

Now for the word of caution. Deactivating the account does not mean that the account has magically disappeared. If relevant evidence exists in the account, they must be disclosed during discovery in the same way you would be obligated to disclose the relevant documents stored in the filing cabinet in the locked room.

3. Can the lawyer advise the client to remove photos from the account?

Here is where the answers get more complicated. The safest answer to ensure compliance with Rule 3.4(a), of course, is that a lawyer should never advise a client to delete evidence. Indeed, Delaware lawyers have an ethical duty to ensure that clients preserve potentially relevant evidence. But, do these two principles, when combined, actually answer the question? Not necessarily.

A recent proposed advisory opinion from the Professional Ethics Committee of the Florida Bar offers some guidance. (Prop. Op. 14-1, Jan. 23, 2015). In the

proposed opinion, the Committee suggests that a lawyer may advise or assist a client to remove even potentially relevant evidence from a social-media account provided that the evidence has already been preserved. In other words, if there are multiple copies of the documents in the filing cabinets and the lawyer has ensured that he is in possession of a complete set of the documents, there is likely no need to keep all of the duplicate copies.

Assuming that's true, how can the lawyer ensure that the Facebook evidence is preserved before it is removed or deleted? Facebook has a tool for this, called "Download Your Information." The client can log into her account right from the lawyer's office. She clicks "Download Your Information" and the contents of the account, as well as significant amounts of metadata are downloaded as a zip file. The lawyer can save the zip file on his system to ensure that a copy of the potentially relevant evidence has been preserved and complying with his ethical duties in doing so.

Now, that said, deleting potentially relevant evidence should not be done without serious thought. For example, what if the download did not work? The simple step of checking the file after it has been downloaded to confirm it was successful is critical, but often overlooked. Even with a back-up copy preserved, lawyers should give serious consideration to the potential risks involved and always act to prevent spoliation of evidence. ⚖️

Molly DiBianca is an attorney with Young Conaway Stargatt & Taylor, LLP, and writes the award-winning Delaware Employment Law Blog.



The Delaware State Bar Association LAW DAY LUNCHEON

Tuesday, April 21, 2015 • 12:00 noon
Gold Ballroom • Hotel du Pont • Wilmington, Delaware



DSBA President Yvonne Takvorian Saville, Esquire, welcoming guests to the 2015 Law Day Luncheon.



Delaware Attorney General Matt Denn delivering the keynote address.



Liberty Bell Award award presenter The Honorable Charles W. Welch III with award recipient Ron Copeland.



Community Service Award presenter Michael R. Abram, Esquire, and award recipient Thomas A. Pedersen, Esquire.



Myrna L. Rubenstein Professional Support Recognition Award recipient Mary Jane De Matteis and award presenter The Honorable Henry duPont Ridgely.



Attorney General Matt Denn and Yvonne Takvorian Saville, Esquire.

BENCH AND BAR CONFERENCE

Friday, May 15, 2015 | Chase Center on the Riverfront | Wilmington, DE

"For this year's Bench and Bar, we are getting back to the more informal and collegial atmosphere of years ago. The CLE program this year is entirely focused on interaction between members of the Bench and Bar. Rather than a formal sit-down dinner on the evening before a work day, a barbecue will finish the Bench and Bar, which will be held on a Friday morning and early afternoon, allowing you to finish your work week in a constructive, fun, and relaxing way.

Casual dress is encouraged this year for the entire conference. I invite everyone to attend and take advantage of the more casual atmosphere to mingle with judges and your fellow attorneys."

- Chief Justice Leo E. Strine, Jr.

DSBA ANNUAL MEETING

Presided over by Yvonne Takvorian Saville, Esquire, Delaware State Bar Association President

Presentation of the First State Distinguished Service Award to John F. Schmutz, Esquire

Elections of Executive Committee Members

Passing of the Gavel to the new Delaware State Bar Association President, Richard A. Forsten, Esquire

Conference Program At-a-Glance

Registration/Breakfast: 7:30 a.m. - 8:30 a.m.

CLE: 8:30 a.m. - 10:00 a.m.

Break: 10:00 a.m. - 10:15 a.m.

CLE: 10:15 a.m. - 11:45 a.m.

Break: 11:45 a.m. - 12:00 p.m.

Annual Meeting: 12:00 p.m. - 1:00 p.m.

BBQ Reception: 1:00 p.m. - 2:30 p.m.

BBQ RECEPTION

Join us for a festive BBQ where you
can catch up with your colleagues
and make new acquaintances!

Hosted by

The Honorable Leo E. Strine, Jr.,
Chief Justice of the Supreme Court of Delaware,
Justices Randy J. Holland, Karen L. Valihura,
James T. Vaughn, Jr., Collins J. Seitz, Jr.,
and by The Delaware Judicial Conference

BENCH AND BAR CONFERENCE CLE

Friday, May 15, 2015 | Chase Center on the Riverfront | Wilmington, DE

CLE Program | 8:30 a.m. - 11:45 a.m. (includes 15 minute refreshment break)

Registration and Continental Breakfast | 7:30 a.m. - 8:30 a.m.

Program qualifies for 3.0 hours of CLE Credit in Enhanced Ethics

8:30 a.m. - 10:00 a.m. | 1.5 hours CLE credit in Enhanced Ethics

VIEW FROM THE BENCH

Esteemed members of the Bench from all Delaware Courts will discuss best practices, preferences, practical instruction, and pet peeves. Plenty of tips and insights, plus opinions on inappropriate conduct will be offered for new and seasoned attorneys – for both in and out of the courtroom. Know thy judge!

Moderator

The Honorable Randy J. Holland
Justice, Supreme Court of Delaware

Panelists

The Honorable Brendan Linehan Shannon
Chief Judge, U.S. Bankruptcy Court

The Honorable Andre G. Bouchard
Chancellor, Court of Chancery

The Honorable Jan R. Jurden
President Judge, Superior Court of Delaware

The Honorable Arlene Minus Coppadge
Judge, Family Court of the State of Delaware

The Honorable Alex J. Smalls
Chief Judge, Court of Common Pleas

10:00 a.m. - 10:15 a.m. | Break and Vendor Visit

10:15 a.m. - 11:45 a.m. | 1.5 hours CLE credit in Enhanced Ethics

VIEW FROM THE BAR

To help meet the challenges of the future, under the direction of Chief Justice Leo E. Strine, Jr., and in partnership with the DSBA and ACTL, extensive interviews were conducted with over 100 members of the Bar to give them the opportunity to provide confidential input about how the court system is doing. All Delaware Courts were covered by the survey. This seminar will discuss the findings from the in-person interviews, plus some of the results of an electronic poll that will be sent to the entire Bar prior to the Conference.

The Court asked for your opinions using questions that ranged from logistical matters to work-life balance. Now is your chance to hear how Delaware Courts are faring and to hear about how your responses will be used to develop a policy agenda for the future!

Panelists

The Honorable Leo E. Strine, Jr.
Chief Justice, Supreme Court of Delaware

Thomas J. Allingham II, Esquire
Skadden Arps Slate Meagher & Flom LLP

Bartholomew J. Dalton, Esquire
Dalton & Associates, P.A.

Joseph R. Slights III, Esquire
Morris James LLP

Gregory Brian Williams, Esquire
Fox Rothschild LLP

11:45 a.m. - 12:00 p.m. | Break and Vendor Visit

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ETHICALLY SPEAKING

By Charles Slanina, Esquire

A New Threat to Your Escrow Account

Two Delaware attorneys were recently targets of a scam that may be the latest threat to attorney escrow accounts, especially for real estate practitioners, but which may affect any attorney disbursing funds electronically. The attorneys received email instructions which purported to be from a party to a real estate transaction to direct settlement proceeds to an account by wire transfer. In both cases, the emails were from imposters.

The email accounts of the parties rather than the attorneys were hacked. As a result, the imposters had information regarding the transaction and, in one case, were even able to provide convincing signatures of the sellers to the settlement attorney authorizing the wire transfer. The bank designated by the scammers for the deposit agreed to reimburse some, but not all of the loss, but only after a significant delay. In the other case, the fraudulent email was detected before the wire transfer was sent.

The incidents have been reported to the law enforcement authorities, but there is little likelihood that the perpetrators will be caught. The incidents have also been reported to the Office of Disciplinary Counsel, the Real and Personal Property Section

“The experts’ suggestion that attorneys use encrypted email will not necessarily protect the escrow account from the misuse of the information that hackers gain from unencrypted non-attorney email accounts.”

of the Delaware State Bar Association, and the Lawyers’ Fund for Client Protection, which has issued a fraud bulletin to the Bar.

Delaware attorneys are not alone in being the target of this scam. Malpractice carriers and title insurance companies have issued claim alerts for the same or similar schemes.

Generally, the wire fraud scheme works like this: the scammers hack email accounts which happen to include the email accounts of real estate agents, brokers, lenders, attorneys, title companies, and others. Using sophisticated “search bots,” the scammers identify parties to real estate transactions by looking for terms such as “wire transfer instructions” especially in the subject line of the emails. Hackers then copy personal and business information from the parties referenced in the emails from websites including company logos, employees’ names, and street and email addresses to establish the false identity of the sender. The scammers use this information to send fraudulent emails, which purport to be from a party to whom a disbursement is due, to the lender or settlement attorney, directing the lender or attorney to wire escrow funds to a different bank account than provided in prior disbursement instructions. If

the fraudulent nature of the email request is not detected, the money is wired to a bogus account controlled by the hacker — never to be seen again.

As examples, Plus Companies, Inc., a malpractice carrier, published the following claim alerts:

9/5/13 Claim

The insured reported a claim in which the attorney served as the buyer’s closing agent. The seller’s closing agent’s email was hacked by a third party who provided “updated” wire instructions via email to the victim attorney. On the computer screen, the email looked legitimate and the fake address was only apparent if printed. The attorney even sent an email to the other closing agent to verify the new wire instructions. The hacker intercepted that email and created a fake reply confirming the wire instructions. After it was apparent that the FBI was not going to be able to recover the lost funds, the carrier paid the claim in full.

4/16/14 Claim

After receiving closing instructions by email for the proceeds of a real estate sale, the attorney received another email requesting a change to a different account. The attorney did not immediately notice that the second email instructions were from a different, but very similar email address. It was later determined that an unknown third party had hacked into either the attorney’s or the seller’s email account. The carrier paid the loss minus the attorney’s deductible.

6/30/14 Claim

The attorney was the settlement agent for the bank who was the seller of the property. The attorney sent \$376,043 enclosing funds to the wrong account after a hacker intercepted emails to and from the attorney and provided fraudulent closing instructions. It was determined that the hacker had gained access to the email accounts through a breach in the seller bank's security system. Once discovered, the attorney attempted to rescind the wire transfer, but the hacker was able to withdraw approximately \$38,000 before the rescission took effect.

9/11/14 Claim

Shortly before a closing, the attorney received an email changing the wire instructions. The email purported to be from a paralegal in the seller's attorney's office. That email was then forwarded by the buyer's attorney to the lender. Upon detection, the wire was successfully rescinded. An investigation revealed that a home computer for the seller's attorney's paralegal had been hacked.

9/17/14 Claim

An attorney received fake wire instructions from a hacker posing as the closing agent for a transaction. Carrying out those instructions, \$135,000 was wired to a false account. Upon being notified of the fraud, the lender took the position that the fault was attributable to the attorney and declined to return the funds.

Conclusion

In providing the claim alert, the advice of this malpractice carrier to their

insureds was to review their current communication protocols and to consider using fax communications to process escrow transactions instead of emails. Other authorities recommend using only encrypted email messages for wire instructions or banking information. A Chicago Title Insurance Delaware Legal Bulletin dated April 15, 2015, recommended that attorneys confirm written wiring instructions by phone and that wires should only be sent to an account in the recipient's name.

This scheme is especially alarming because the attorney's escrow account can be victimized even where the attorney does nothing wrong — especially where it was the email account of the non-client party to the transaction that was hacked. The experts' suggestion that attorneys use encrypted email will not necessarily protect the escrow account from the misuse of the information that hackers gain from unencrypted non-attorney email accounts. The suggestion to use a low-tech approach to avoiding this scam by using facsimile transmissions also would not necessarily protect the attorney from a scam fax employing the identifying and corroborating information gained from a hacked email account.

This topic is especially apropos in light of Delaware's recent adoption of Comment [8] to Rule 1.1 of the Professional Conduct Rules which states, "to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engaging continuing study and education and comply with all Con-

tinuing Legal Education requirements to which the lawyer is subject."

While focusing on this new threat, "Ethically Speaking" readers are reminded of the June 2011 column "Are You Still Too Smart to be Scammed?" which provided cautionary tales of attorneys swindled by elaborate bad check schemes primarily in collections scams. That article followed up on the November 2008 column "Are You Really Too Smart to be Scammed: Internet Scams and Attorney Trust Accounts." As always, think twice before hitting "Send."

"Ethically Speaking" is intended to stimulate awareness of ethical issues. It is not intended as legal advice nor does it necessarily represent the opinion of the Delaware State Bar Association.

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

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

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NEED AN X-RAY? THE FIRST STEP SHOULD BE A FEW CLICKS OF YOUR MOUSE...

By Aaron W. Mitchell, REBC

Twenty years ago, the average person would not purchase a car without shopping for the best deal. That meant going from dealer to dealer because you needed to know you were buying a safe car, at a fair price. Today, consumers still research large purchases like cars and TVs. However, easy access to information allows us to research even more goods and services. Most people do not even purchase a new set of sheets without reading online reviews and comparing prices on several websites. This is why I am always surprised to find out that someone has had medical services without any research. The combination of valuing your health and your bank account makes it very more important to do some research.

There are two important reasons why a medical procedure should be just as researched as your next car:

1. There is a very big difference in the cost of medical services from one provider or facility to the next.
2. Some facilities and physicians have higher rates of effectiveness.

When the HMO model came out, many Americans forgot what a deductible was. Over the last 10 years, many employers have moved away from plan designs with copays. More and more group health plans (like Health Savings Accounts and Health Reimbursement Arrangements) contain large deductibles. When that deductible is your responsibility, why would you not do everything possible to get the best price.

Services such as X-rays, physical therapy, and prescription drugs can

vary in price by up to 100% from one facility to the next. MRIs are a perfect example of enormous variance in price from one facility to the next. It is very possible to find an independent facility who will perform a MRI for \$700 or less. However, there are also facilities charging more than \$1,500 to perform the same scan. It is a very good idea to check with several facilities to find out their prices to make sure you're not overpaying.

As much as the cost matters, so should the outcome. No one would get physical therapy done by a doctor who is not successful at rehabilitating his or her patients. If you had a choice between saving \$25 per visit, but you are twice as likely to need a repeat surgery, most people would not take that chance.

What surprises most people is that the least expensive facility or provider can also show the best results. When a physician or facility performs a procedure with great frequency, they usually become the most proficient. They also recognize that they will keep their patient list full as they will be highly referred.

There is a surprising amount of information available online regarding medical facilities and their malpractice claim history, number of procedures completed and other relevant facts such as cost. There are also many applications and websites who provide this information on subscription basis. The concept of transparency in pricing has become very popular, both from an insurance carrier and third party approach. The desire to be more informed before walking into that provider's office can pay significant dividends.

The final point is that from the firm's perspective, you want to do everything possible to keep claims as low as possible. If employees are responsible for a deductible, showing them ways to prevent reaching that out of pocket limit helps their



pockets, and also keeps the firm's claims lower. It is an outcome where everyone can win: the employee, the firm, and the insurance company.

One of the most important things we emphasize is to continue to coordinate care with your primary physician. We are not suggesting to find a new doctor. When your doctor orders a test or a prescription, that is when it is important to be a smart consumer. If doing some shopping provides you with the chance to save money, and or find a facility with better "reviews" why would you not want to find the best possible combination.

We can all think of product or service that we spent 60 minutes online before buying. If you are willing to invest the time to be a good consumer on your electronics, kitchen gadgets, and children's toys, why would you not put that same amount of energy into your health? The next time that your doctor orders a MRI, think about spending a few minutes online, reading reviews and finding out the price. Your body and your wallet may thank you.

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Aaron Mitchell is DSBIS's lead marketing representative, coordinating all lines of insurance. His team can be contacted with questions on this article or any insurance topic. Contact Aaron at (302) 397-0170 or aaron.mitchell@willis.com.



OF NOTE

Condolences to the family of **Franklin S. Eyster II, Esquire**, who died on April 18, 2015.

Congratulations to **Doneene Keemer Damon, Esquire**, recipient of the 2015 Jean Allard Glass Cutter Award. This award is presented annually by the ABA Business Law Section at its Spring Meeting to an exceptional woman business lawyer who has made significant contributions to the profession and the Section.

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



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By Susan Simmons

May is “Paint Up, Clean Up, Fix Up” Month

It is spring. Time to clean up the yard, get the flowers planted, and think about painting the house. Watching our neighbors around us, we are pleased we can work together to make the place we live pleasant. But, we do not just live in houses; we live in communities that are a part of something larger—a city, a state, a nation.

As lawyers, you are part of a professional community as well. How can you work together to improve that community? What steps can you take to show your dedication to your profession?

Cleaning Up the Yard: Community Obligations

Volunteering your time and expertise helps you to connect with your community. Doing *pro bono* work also connects members of the Bar with the legal services community. Legal services programs alone cannot provide services to all low-income clients in need. Through *pro bono* work, we can expand the range of services available to clients beyond those traditionally covered by legal services programs.

The issue of providing legal services to the poor should not be addressed only by attorneys, but by the community as a whole. Nevertheless, our involvement in Access to Justice issues brings the cause of legal services to the attention of community leaders and increases their support for fundraising, legislative changes, and establishing court and public policies.

When we do *pro bono* work, we are assisting the court. Litigants with attorneys take much less court time and energy than those who attempt to represent themselves. Participation in *pro bono* service improves the administration of justice for everyone.

Painting the House: The Public Image

Lawyers are always examining the way the public perceives them. Visible efforts by attorneys

on behalf of the poor promote the positive image of the legal profession. Serving on boards and volunteering in schools and elsewhere can demonstrate that our communities are important to us and that we are involved in their maintenance and improvement. No public relations firm can do for us what we can do for ourselves through service to others in need and to our communities.

Planting the Flowers: Professional Growth

Learning new skills through the handling of *pro bono* cases can have a direct and positive impact on our careers. Participating in *pro bono* work can expand and improve our legal skills by providing new experiences in client counseling, in the courtroom, and in negotiating solutions.

“*Pro bono* can offer the chance to broaden your experience and nurture new skills. It is said that, to be a great lawyer, you have to act like a lawyer. *Pro bono* can offer a great opportunity to do so. *Pro bono* offers the chance to develop and hone new skills that will benefit all your cases. People at your firm will see you working with more responsibility and learn that you are ready to handle it.” Fuisz and McKinnell, “The Pros of *Pro bono*,” *New York L.J.* (June 22, 2001).

More Flowers: Personal Growth in Leadership

Volunteer experiences also can help us develop the type of social skills needed to become effective leaders in the legal profession and in the community. The Dean of one prominent law school states:



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“[S]ervice to the poor also is a wonderful opportunity to train your emotional intelligence, something vital to your growth as both a person and a lawyer. The challenges you encounter in *pro bono* practice should help you develop a high degree of self-awareness, the ability to control your emotions, empathy for others, an understanding of human differences, and the skill to help others help themselves. All of these are essential attributes of the emotional intelligence a real lawyer must have.” Sargent, “An Argument for *Pro bono*: A Message from Dean Mark A. Sargent,” *The Gavel Gazette*, Villanova U. School of Law (Feb. 23, 1998).

By stepping forward to assist others, we also help ourselves to grow professionally and personally. In the spirit of *pro bono*, get involved!

If you or your firm are interested or already participates in *pro bono*, let us know:

Susan Simmons
 Director of Development
 & Access to Justice Coordination
 Delaware State Bar Association
 405 North King Street, Suite 100
 Wilmington, DE 19801
 ssimmons@dsba.org
 (302) 658-5279 ext. 101

This is a reprint of an “Access to Justice Spotlight” article from May 2013 that bears repeating. ©

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



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DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

Getting the Job Done Might Be a Little Easier!

It is a well known fact that lawyering can be an extremely stressful and ever-demanding profession. Being a solo or small firm attorney can carry additional pressures. Besides lawyering, the practitioner must be familiar with approximately seven basic business processes in the law office. These business processes include: production, marketing, personnel, finance/banking, technology, communication and managing.

time, practice management knowledge, attitudes and skills to keep up and run an efficient, as well as a profitable, law business. This can often lead to the attorney experiencing a lack of engagement with, commitment to, or enthusiasm for their work. We know that certain forms of stress are inevitable and necessary to healthy-productive, and happy life. Some of the stressors in the attorney's lives energize their positive emotions and motivate them to get up in the morning, solve problems,

Small Firms & Solo Practitioners Section members with answers and solutions to law office management and marketplace questions. This Law Office Management Program is designed to be a clearing-house for information that includes: the use of technology, software systems, and media advertising, as well as information on the fine art of getting paid through updated billing systems.

A lawyer calling the DSBA'S Law Office Management Program is requesting

“The DSBA and DE-LAP understand that the world is changing around the legal profession and that today's lawyers must find business tools to survive and thrive.”

In fact, because the lawyer, who is flying solo or is a part of a small firm, is an entrepreneur and/or businessperson — it is not uncommon to picture the solo/small firm attorney spending his/her morning making marketing choices; reviewing bank statements; transferring funds; responding to motions, pleadings, e-mails, voicemails, and telephone calls; and then leaving for Court. While these issues are stressful enough, the solo/small firm attorney has another challenge. In today's world, the newest challenge to their survival is to provide legal services to a population that can get many of the same services online and never leave home. Therefore, the lawyer needs to know enough about technology, not only for e-filings, but also for marketing, banking, etc.

Sadly, and all too familiar to DE-LAP, some attorneys, although brilliant, lack the

and be creative. Conversely, bad stress, chronic stress is called distress. This type of stress is characterized by negative emotions such as fear, guilt, and anger. When such emotions are chronic and strong, they tend to destroy a lawyer's ability to enjoy life, stay healthy and work productively.

Fortunately, when a lawyer feels overwhelmed or burned out they can, and often do, call DE-LAP. However, what if the attorney(s) had a prevention tool and a new way to make their job easier? Starting this month they do! The new tool is the DSBA'S Law Office Management Program (LOMAP). The DSBA and DE-LAP understand that the world is changing around the legal profession and that today's lawyers must find business tools to survive and thrive. This new tool is designed to specifically help the

help on a law office management question or solution. For example, it may be because of one or more of the following circumstances:


1. The lawyer is “hanging out a shingle.” In other words, starting a new practice.
2. The lawyer is “taking down the shingle.” In other words, in transition and closing the office.
3. The lawyer has questions on managing a caseload. Needs information on caseload software.
4. The lawyer needs information on running the business side of the practice.
5. The lawyer is seeking advice on law office technology.
6. The lawyer is seeking advice on marketing.
7. The lawyer is retiring and/or changing law firms.

The reasons for a call may involve a specific business question or a general request for business information that can be handled over the phone. This new program is a clearinghouse for business information and is designed to prevent business problems and stress.

Not to be confused with LOMAP, DE-LAP, with its volunteer committees (The Lawyers Assistance Committee, The Professional Guidance Committee, SOLACE, and Mentoring), is the free, confidential program to call if you, or someone you know, needs help. This help, or assistance, is with personal and professional problems such as coping with change, transition, alcohol or drug abuse, gambling problems, stress management, time management, grief, career coaching, and/or other mental health issues that are affecting one's work productivity, quality of life, and/or professionalism.

The mission of DE-LAP is to provide confidential assistance to judges and lawyers. Our goal is to help individuals identify problems affecting their work productivity and/or their quality of life while assisting them in developing effective solutions for those problems thereby culminating in a workplace atmosphere that encourages health and wellness, professional growth and maintains the integrity of the legal profession. DE-LAP services include: initial assessment and referral; interventions; peer support network; mentoring; monitoring; structured rehabilitation program; educational programs and workshops with reference to stress management, time management, wellness inventory coaching, etc.

Conversely, if you have questions or problems regarding cloud computing for lawyers, collecting fees, strategic planning, legal Internet research, marketing, Adobe Acrobat for e-filing, how to open a law office, or how to close a law office, etc. — you might just get the answers that you are searching for or the solutions to your problem by using your new tool in that DSBA Tool Box — DSBA's Law Office Management Program.

The Delaware Lawyers Assistance Program, The Delaware Lawyers Assistance Committee, The Delaware Professional Guidance Committee, The Delaware SOLACE Committee, and the DSBA's Mentoring Program are all pleased to welcome The Executive Director of DSBA's Law Office Management Program, Chris Mourse. 

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

Looking for referrals?

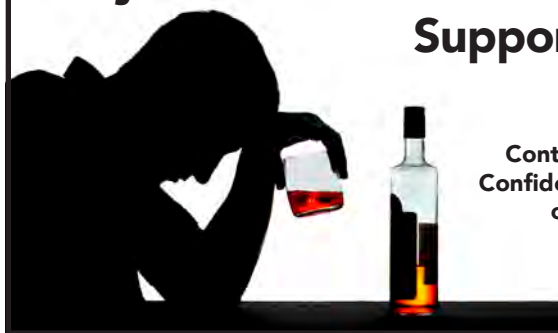


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The Delaware Lawyers Assistance Program (DE-LAP) was created to confidentially help Judges and Lawyers with substance abuse/dependence and/or mental and physical health problems.

Carol P. Waldhauser, Executive Director

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BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

Magna Carta! Magna Carta! Magna Carta!

Magna Carta, The Foundation of Freedom, 1215-2015

Edited by Nicholas Vincent (Third Millennium Publishing Ltd., 2014)

Magna Carta, Muse & Mentor

Edited by Randy J. Holland (Thomson Reuters, 2014)

Magna Carta and the Rule of Law

Edited by Daniel Barstow Magraw, Andrea Martinez, and Roy E. Brownell II (ABA Publishing, 2014)

June 15, 2015 marks the 800th anniversary of Magna Carta, an event now universally hailed as one of the most important in legal history. And yet, when one closely examines the facts, one wonders why is this so? Why June 15, 1215? Why this charter? Why, exactly, do we hail a document that was ignored by the King almost as soon as he had granted it and was annulled by the Pope less than three months later? Magna Carta was meant to prevent a civil war, yet in that regard, it failed. War followed anyway. Only the unexpected and sudden death of King John and the ascension of his nine year-old son, Henry III, led to peace. Other charters had been issued prior to Magna Carta, and, although Magna Carta would be “re-issued” by future kings, those re-issuances were shorter and less complete.

The short answer, of course, is that we do not celebrate Magna Carta for what it actually was, but for what Magna Carta came to represent and what it continues to represent today. Three recent books, all written to commemorate Magna Carta,

tell us why Magna Carta is important and why it is celebrated. Each takes a somewhat different approach. Each is an interesting and educational read.

Magna Carta, The Foundation of Freedom, 1215-2015, edited by Nicholas Vincent, takes the most straightforward and historical approach. It starts with the law in England before Magna Carta, takes us through the events leading up to the issuance of Magna Carta, and then traces the use and meaning of Magna Carta in the 800 years thereafter. With this historical approach, we see first how Magna Carta came into being (a fascinating story by itself), and then later how Magna Carta came to be recognized and called upon as a symbol of liberty and freedom, and a triumph for the rule of law, as later lawyers mischaracterized its actual meaning and history to advance the cause of freedom and liberty. Today, only a small fraction of Magna Carta survives as part of English statutory law, but when English laws were first compiled into one volume, Magna Carta was listed first.

When the Library of Congress held an exhibition devoted to Magna Carta, it commissioned *Magna Carta, Muse & Mentor*, as the companion volume to the exhibition and our own Justice Randy J. Holland served as editor. The book is richly illustrated and contains fifteen essays covering a wide range of topics, including Magna Carta and the right to trial by jury, Magna Carta and the writ of habeas corpus, and Magna Carta and due process of law. Magna Carta did not provide a right to trial by jury, nor did it recognize the writ of habeas corpus; these things would come later — but, Magna Carta did start the law down an evolutionary (some might say revolutionary) path. One of the essays discusses the life of William Marshal, the Earl of Pembroke, and perhaps the forgotten hero of Magna Carta. He was not only instrumental in the negotiations leading up to the issuance of Magna Carta, but, without him, the charter most likely would not have been re-issued during the reign of Henry III (John’s successor) and might easily have become forgotten

or a footnote in English history. In his forward to this volume, Supreme Court Chief Justice John Roberts provides the shortest and clearest explanation of why we revere Magna Carta today:

Whether King John and the barons knew it or not, the events at Runnymede 800 years ago marked the commencement of a social transformation. Magna Carta laid a foundation for the ascent of liberty and the rule of law. True, the barons sought to advance their own narrow interests, and some of their concerns have neither force nor relevance today. But, they bolstered their case with statements of principle that spoke to broader issues of governance, including due process, separation of powers, freedom from arbitrary action, and the elements of a fair trial. The Magna Carta of 1215 contains only the seeds of what we now regard as essential liberties. But those seeds have taken root. Great lawyers, judges, and legal theorists have recognized the enduring principles embedded in Magna Carta, adapted them to new circumstances, and extended their reach to distant shores. We celebrate Magna Carta not only for what it was, but for what it became in the hands of those committed to the cause of freedom and justice.

Magna Carta and the Rule of Law is the longest, least illustrated, and most densely written of the three books. Nevertheless, its eleven essays provide many interesting perspectives on the Great Charter, and, at times, more detail than the other two books. Magna Carta has been cited in some 170 Supreme Court opinions, and one essay looks at how it has been cited and used by the Supreme Court in those opinions, in cases ranging from the right to trial by jury to habeas corpus to cruel and unusual punishment. Another essay discusses how English lawyers in the sixteenth and seventeenth centuries, but especially Sir Edward Coke, “found” such rights as trial by jury and habeas corpus in Magna Carta, which they fur-

ther viewed as merely confirming even longer-standing English liberties which, they claimed, predated even Magna Carta itself. More than anything, it was Coke and the lawyers of his age who made Magna Carta what it became – the foundational document for English liberty. And so, it has been to this day.

In the movie *The Man Who Shot Liberty Valance*, a newspaper editor in the old west discovers that the actual truth about the shooting is not what people have believed in all the years

since. Upon learning the truth, though, the editor decides not to run the story, explaining: “No, sir. This is the West, sir. When the legend becomes fact, print the legend.” So it is with Magna Carta. We celebrate not the fact, we celebrate the legend. ⚖️

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



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A PROFILE IN BALANCE

By James G. McGiffin, Jr., Esquire

Kevin Healy: The Rewards of Discernment

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

- Jim McGiffin

• • •

A priest or a lawyer. The late and universally respected Delaware attorney Jim Collins would tell a young Kevin Healy that there were two professions to which he was suited. The cloth or the bar. Jim Collins was at least half right.

Kevin Healy is Delawarean by birth. He was born into a family of builders and grew up in the Wilmington area. Kevin attended Archmere Academy and credits his high school experience with two formative events. He played football at Archmere, in the trenches as an offensive and defensive lineman and served as co-captain for the team. That experience taught him that each team member affects the entire team. He also participated in the Voice of Democracy program, for which he wrote and recorded a speech, finishing in 2nd place in Delaware. He learned that he was good at something besides sports.

Boston College was Kevin's choice for college, and he attended that school for three years. He stayed closer to home to finish his degree program at the University of Delaware. He had worked construction for all of his previous summers, but after his junior year Kevin decided to try a business venture. So, he set up a water ice stand on the Jersey Shore. Sadly, the price of lemons quadrupled on him, and his business venture failed. A return to BC was no longer feasible, so he stayed closer to home to finish his degree. He was able to turn expensive lemons into some marvelous lemonade when he met Marian Johnson, a singer, at the University of Delaware. She has been his wife for 32 years.

Kevin continued to hear the voice of Jim Collins in his head. Clearly, the priesthood was out — Marian did not fit in to that picture very well. But, law school looked like a good idea. Kevin and Marian married in July 1983 and Kevin began his studies at the Delaware Law School the next month.

After graduation, Kevin clerked for judges Clarence Taylor and Vincent Poppiti at the Superior Court and then went to work for the firm Prickett Jones Elliot Kristol & Schnee. Somehow, his position at the firm did not seem to be a good fit for him, so Kevin started exploring other options. He met with a career counselor who was not very encouraging about the law as the right career for him. But, Kevin decided to try it as a solo personal injury practitioner. He was looking for people-oriented,

court-based work. And, he found it. Kevin needed to figure out who he was first, and then he could figure out what kind of lawyer he would be.

The solo practice gave Kevin the flexibility of schedule to stay connected with his wife and two talented daughters. Molly and Emma are both athletes and musicians, and Kevin never missed a game or a concert while they were growing up.

Solo practice also had a down side for Kevin. His wife suggested that if he was part of a larger firm, he would enjoy some stability that the solo situation lacked. At first, he resisted the idea. Then, his mentor, Delaware attorney and noted crime author Charlie Brandt, suggested Kevin might like the people at Morris James.



Once Kevin chatted with Pete Jones, the deal was done. Kevin and Pete started a personal injury practice at the firm that thrives today with their partners Susan Ament, Keith Donovan, Clayton Bunting, and associate Mike Owen.

Kevin works out of the Newark office of Morris James. He enjoys everything about it — the office environment, the people with whom he works, the work itself. Kevin spends much of his time counseling clients and guiding them through the process that helps them get their lives back together after a crisis of some kind.

When he is not working, Kevin is often helping people in other ways. He is a high school mock trial program coach (probably some influence of Pete Jones, “Mr. Mock Trial,” there). He also supports his wife, Marian, in her music teaching, by organizing recital logistics and doing the audio and visual recording of the events.

For recreation, the Healys still head to the Jersey Shore. Although no longer selling water ice, they get there every summer. A recent interest is golf. When the family was young, Kevin was reluctant to commit the time necessary to the game, but now he and Marian play (it was Marian’s idea), or he will venture out to the links on his own. He also enjoys walking while listening to music (Beethoven, Beach Boys, or Michael Buble — so long as it is good). Once baseball season arrives, Kevin tunes in to the Phillies on a daily basis — for better or worse.

Kevin Healy is smart enough to listen to those he trusts. He takes seriously the opportunity he has to discern his options. He maintains balance in his life by first understanding himself, and then valuing his family. Although he certainly would have made a good priest, the Delaware Bar is lucky he heard the secular call and that he responded so well. 🎧

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.

SUCCESS SECRETS

USING SOCIAL MEDIA TO FIND A JOB IN THE LEGAL PROFESSION

By Ann Jenrette-Thomas, Esquire, CPCC
Esquire Coaching, CEO

Job hunting can be such a daunting process. How do you stand out from the crowd and not have your resume lost in a stack of papers? One way is to leverage your brand into relationships via social media. Here are a few tips to help you get noticed and ultimately land a job that you will enjoy.

1. Top 40. Identify the top 40 places you want to work and take time to research and understand them. Confirm for yourself that this is the kind of place/environment you want to work. This will permit you to cast a wide, but strategic net during the job hunt. While 40 may seem like a lot, it is better to have more options during a job hunt.

2. Follow Your Top 40. Follow your top 40 through their social media links. Take it a step further and connect with the attorneys who practice in your field via LinkedIn (do not follow their other social media sites). If these individuals are part of any LinkedIn group that are pertinent to your field of law, request to join those groups too.

3. Engage. Take approximately 15-20 minutes at least three times a week to go through the social media links and engage with your top 40 and the attorneys who work there. Share and comment on their articles. Congratulate them on their accomplishments. Post comments in the groups to which you belong.

4. Write. Stand out by developing original content. Your writing should demonstrate your interest, understanding, and engagement within the field. Write a commentary on a new decision that come out in your practice area. Draft your thoughts on how breaking news in your industry of interest may impact the legal landscape. By writing thoughtful pieces, you are establishing credibility and increasing your visibility as a prospect to your top 40.

5. Connect. On LinkedIn, private message key individuals who work at your top 40. Let them know that you are interested in the field and ask if you could set up an informational interview, meeting, or a brief call. Your objective is to move the conversation off-line so you can establish a better connection with them.

6. Be a Giver. Don't you feel repelled by someone who just wants to “take” from you? People in your top 40 will be more inclined to help someone who spends time getting to know them or tries to help them with their own goals and obstacles. If there is any way you can help them, do so. It can be as simple as sharing a newsletter article they have written with your network or suggesting they attend a particular networking event where they may be able to find clients.

7. Ask. While it is important to give, it is equally important that you ask for what you need: What opportunities are available? How do I best position myself as the ideal candidate? Please pass along my resume to the appropriate person. Ultimately, you are looking for a job, so don't be afraid to ask for the information and assistance you need.

8. Follow Up. Make sure to schedule time to follow up with the people you have connected with every few weeks. Share the articles you write, resources that would help them based on the conversation you had, and/or just check in. Personalizing your follow up based on the conversation you've had can help you stay top of mind when a job opportunity arises.

By taking this strategic approach to keep in touch with your top 40 through social media, you will build a strong brand and reputation not only with your prospective employer, but others in your industry. This sets you up for greater success in the long-run. Be patient and stay determined.

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

By Antranig Garibian, Esquire

As 2015 flies by, our courts in Delaware continue to work hard — issuing decisions, tackling new issues and reinforcing well-settled law. Below is a brief discussion and overview of two recent decisions for practitioners to note.

Issue: Capacity of an Estate To Be Sued Under 12 Del. Code §2102(a)

In *Jane D. Doe v. Tanya Giddings, et al.*, Del. Super., C.A. No. N10C-08-178, Davis, J. (April 8, 2015), the Superior Court examined the application of 12 Del. Code §2102(a) (“Section 2102(a)”), which requires that all claims against an estate be presented to the administrator within eight months of the decedent’s death.

The underlying case arises out of an action for civil damages filed by Jane D.W. Doe against the estate of Delaware State Trooper Joshua Giddings and the State of Delaware. In March 2009, Doe was arrested by Giddings for shoplifting in the Christiana Mall. Trooper Giddings took Doe in his police car, drove to several locations around the mall parking lot and according to Doe, coerced her into sexual acts in exchange for letting her go home. Trooper Giddings was arrested and in May 2009, committed suicide. On August 1, 2010, Doe filed her civil action Complaint in Superior Court, against Trooper Giddings’ wife (administrator of his estate) and the State of Delaware.

Ms. Giddings moved to dismiss the Complaint, claiming that Doe’s claims are barred by the eight month time period mandated by Section 2102(a), since Doe’s Complaint was not filed until over fourteen months after Trooper Giddings’ death. Doe countered that the Section 2102(a) defense was 1) waived due to Ms. Giddings’ failure to assert it as an affirmative defense and 2) waived by Ms. Giddings’ litigating and defending the case for over four years.

Acknowledging that the equities clearly favored Doe, the Court nonetheless dismissed Doe’s Complaint against the Giddings estate. First, the Court found that Section 2102(a) is a “non-claim” statute whose purpose was to compel claimants with demands against a decedent’s estate to present those claims within the specified time. Where a claim arises before a decedent’s death, a claimant must present their claim within eight months or be forever barred in proceeding against the decedent’s estate. While sympathetic to Doe’s circumstance and receptive to her argument that Ms. Giddings had indeed been litigating the case for over four years, the Court found that under Section 2102(a), Trooper Giddings’ estate lacked any capacity to be sued by Doe.

Issue: Personal Jurisdiction of an Out of State Defendant

In *Charles Herman v. BRP, Inc., et al.*, Del. Super., C.A. No. N13C-11-105, Scott, J. (April 13, 2015), the Superior Court

applied Delaware’s well-settled approach to the exercise of personal jurisdiction over out of state defendants. The Court also addressed the issue of consenting to personal jurisdiction by instituting other litigation in the courts of Delaware.

Plaintiff, Charles Herman, filed claims of strict product liability and negligence against several defendants based upon personal injuries he allegedly suffered as a result of an August 2012 motor vehicle accident in South Dakota while test driving a 2012 Can-Am Spyder Roadster which ran off the road and crashed due to an alleged malfunction in the steering mechanism. Kongsberg Holding (a non-operational Norwegian holding company), parent of Kongsberg, Inc. (a Canadian corporation which had already been dismissed for lack of personal jurisdiction) moved for dismissal for lack of personal jurisdiction. Kongsberg Holding argued that 1) its lack of contacts with Delaware or connection to the action warranted dismissal under Delaware’s long arm statute, 10 Del. C. § 3104(c) (“Long Arm Statute”) and that 2) it lacks sufficient contact with Delaware to be subjected to general jurisdiction. Plaintiff argued that Kongsberg Holding had consented to jurisdiction in Delaware and had availed itself of the privileges of Delaware by 1) agreeing to litigate in Delaware in its contracts relating to Can-Am Spyder and then 2) initiating litigation in Delaware District Court for breach of those contracts against an entity Teleflex.

The Court applied Delaware’s two-prong analysis to the issue of personal jurisdiction over a nonresident. The first prong considers whether the Long Arm Statute applies, and the second prong evaluates whether the exercise of personal jurisdiction violates the Due Process Clause of the Fourteenth Amendment (whether the exercise of jurisdiction over the nonresident party is fair and reasonable).

The Court held that there was no basis to exercise specific personal jurisdiction, which may be found where a plaintiff’s claims arise out of a defendant’s acts or omissions within Delaware, over Kongsberg Holding. In addition to the fact that Plaintiff’s accident took place outside of Delaware, the Court found that a mere Delaware choice of law provision in a contract was not sufficient to establish specific jurisdiction. Second, the Court declined to exercise general jurisdiction over Kongsberg Holding, noting the absence of any regular or persistent contacts between Kongsberg Holding and Delaware.

While acknowledging that express or implied consent to personal jurisdiction can arise out of legal arrangements or by the initiating of a related suit, the Court declined to find that implicit consent here based on the lack of a logical relationship between the previous and current suits — in this case, the

litigation initiated by Kongsberg Holding against Teleflex and Plaintiff Herman's personal injury suit. The Court characterized the breach of contract claims asserted by Kongsberg Holding against Teleflex as "entirely different" from Plaintiff Herman's personal injury claims. Since there was "no logical relationship" between the underlying transactions, the mere appearance of minor similarities were not sufficient to serve as the basis for the exercise of personal jurisdiction. ⚖️

Antranig Garibian is a shareholder of Hanamirian, Garibian and Kranjac, P.C. Mr. Garibian maintains an active litigation practice throughout the state and federal courts of Delaware, New Jersey, New York, and Pennsylvania. Mr. Garibian advises clients ranging from individually held businesses to international companies on issues such as commercial contract disputes, liability claims, corporate governance and intellectual property disputes. He can be reached at ag@hgklawyers.com.



"The Birth of Modern Family Law"

Barry Cushman, PhD, Notre Dame Law School

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On May 21st, Notre Dame Law School Professor Barry Cushman will present a lecture on "The Birth of Modern Family Law." The lecture will survey the changes in laws concerning divorce, child custody, adoption, inheritance rights of children, and the property rights of married women during the 19th century, among other topics.

Delaware attorneys will receive 1.5 hours of free continuing legal education. Co-sponsored by the St. Thomas More Society and the Notre Dame Club of Delaware, the lecture is free and open to the public. There is no advanced registration or need to RSVP.

Please contact Ryan Newell (rnewell@connollygallagher.com /302.888.6434) with any questions.



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2015 Delaware High School Mock Trial Competition: February 27 and 28

By Pat Quann, Executive Director
Delaware Law Related Education Center

We are so grateful to all the wonderful people from the Bench and Bar who supported this year's Mock Trial Program. Twenty-four teams participated and there was an additional back-up B-Team from St. Elizabeth. The schools and organizations competing included; A.I. DuPont High School, Archmere Academy, Brandywine High School, Cab Calloway School of the Arts, Caravel Academy, The Charter School of Wilmington, Delaware Futures, Howard High School of Technology, Mt. Pleasant High School, Newark Charter School, Newark High School, Padua Academy, Red Lion Christian Academy, Salesianum School, St. Andrew's School, St. Elizabeth's High School, St. Mark's High School, Sussex Central High School, the Tatnall School, Tower Hill School, Ursuline Academy, William Penn High School, Wilmington Christian School, and Wilmington Friends School.

The two teams reaching the finals were the Charter School of Wilmington and St. Mark's High School, with St. Marks emerging as the champion. The third place winner was Padua Academy, fourth place went to Wilmington Friends, and fifth place was won by Wilmington Christian. St. Marks will represent Delaware at the National Championship which will be held in Raleigh, North Carolina in May. St. Marks previously earned fourth place in the Empire Mock Trial World Championship held in October 2014.

An Awards Banquet was held Saturday evening at the DoubleTree Hotel in Wilmington, where we acknowledged the hard work of the students, and their teacher coaches and attorney advisors. The Chairman of the Mock Trial Committee, Jason C. Jowers, Esquire presented

the trophies to the top five teams and special awards to individual students who received over three gravels in the competition. The Pete Jones Award was presented to the Honorable Paul R. Wallace, Judge, Superior Court, in recognition of his dedication and service to the Mock Trial Program and Morris James LLP received the Board of Trustees Award for its support of the Mock Trial and other LRE Programs of the Center. We deeply appreciate the continuing support from The Supreme Court of Delaware and for their sponsorship of the Awards Banquet.

The Center wants to acknowledge the months of work put in by our Mock Trial Committee, chaired by Jason C. Jowers, Esquire. The other members of the Committee include The Honorable M. Jane Brady, The Honorable Paul R. Wallace, Sean Brennecke, Esquire, Courtney Hamilton, Esquire, Paul Sunshine, Esquire, Andrew Vella, Esquire, Margaret Touchton, Eileen Wilkinson, Deputy State Court Administrator Amy Quinlan, Esquire, Kathryn Wolinski, and Ashley Tucker, Esquire of the Administrative Office of the Courts, and Rose Green from the Delaware Paralegal Association. We wish to give special thanks to The Honorable James T. Vaughn, Jr., Justice, Supreme Court of Delaware for serving as the Presiding Judge for the Championship Round of the Competition. We also thank The Honorable James J. and Mrs. Horn for their support for the program.

We thank the Delaware State Bar Association, the Administrative Office of the Courts, the Delaware Capitol Police, the Delaware Office of Facilities Management, the Delaware Paralegal Association, Widener University School of Law, Diamond State Party Rental, and Colonial Parking for their support for the Competition. We give a special thanks to GE Capital and Grotto Pizza which provided lunch on Friday and Saturday for our teams.

We deeply appreciate the commitment of the following Attorney Advisors to our Mock Trial teams. They gave both their time and their expertise to help the teams prepare for the Competition.

Jill Agro
Daniel Marcus Attaway
Jodi Barillare
Matthew Bartkowski
Ashley Bickel
Connor Bifferato
Karen Bifferato
Kevin Carroll
Shawn Carver
Ryan Connell
Catherine Damavandi
Sean Giambroni
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Thomas A. Uebler
Stephanie Volutro
Neill Mullen Walsh
Jason Warren
Stephen Welsh
Robert Whetzel
Adam Windett
Chandra Williams

We could not hold the Mock Trial Competition without the incredible support we received from our judge volunteers. Many thanks to:

The Hon. John J. Adams
 Meghan Adams
 Roger Akin
 Bill Alleman
 Barzzilai Axelrod
 Greg Babowal
 Nathan Barillo
 Dave Baumgerger
 Dawn Becker
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 Leo Boyle
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 Jennifer Williams
 Paula Witherow
 Julie Yeager
 Danielle Yearick
 The Hon. Robert B. Young
 Jeff Young
 David Zerbato

We also thank the following students from Widener Law Delaware, who served as judges and support staff.

Felicia Brownell
 Alexandra Clapp
 Jennifer Dickerson
 Ioana Enescu
 Melanie Evans
 Jacqueline Gomez
 Wilson Gualpa
 Elina Khutoryansky
 Michael Laukaitis II
 Meghan Power
 Lindsey Procida
 Meghan Sibiski
 Danielle Stowell

Finally, we thank all the runner volunteers from the Delaware Paralegal Association and other volunteers for helping make the competition flow so smoothly. They include:

Jose Amatas
 Michele Ashby
 Christine Bailey-Womer
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 Kay Tamone
 Sally Ann Warren
 Kacy Yates 

Committed to CLASI and the Community

Brian S. Eng reflects on winning the Roxana C. Arsht Fellowship

When people ask me what it is like working as a staff attorney at Community Legal Aid Society, Inc. (“CLASI”), I tell them that I have the dream job that I never knew I wanted until I had it. At CLASI, we provide free legal services to those who have been historically disenfranchised, including people with disabilities, people who are elderly, victims of housing discrimination, and people with low incomes. I like to say that we, along with our colleagues at Delaware Volunteer Legal Services (“DVLS”) and Legal Services Corporation of Delaware (“LSCD”), level the playing field for Delawareans who would otherwise have to fend for themselves in the civil legal arena. A complete list of the types of cases we handle at CLASI would require more space than I have here, but more information is available at www.declasi.org. Our rule of thumb is if you think CLASI may be able to help, call us. Even if we are not the right agency to address your case, we can usually point you in the right direction.



As a part of the Disabilities Law Program and the Elder Law Program, I have had the privilege of representing clients in a variety of forums and on a variety of legal issues. In my relatively brief time with the agency, I have had the opportunity to represent clients fighting discrimination in employment, housing, and places of public accommodation. I have represented parents trying to make sure that their children’s special education needs are met. I have helped protect clients’ access to Social Security and Medicaid benefits. I have represented CLASI and educated Delawareans in the community on their rights, because by educating we empower the communities we serve. Because new staff attorneys at CLASI are given large responsibilities, I have had the opportunity to grow as an attorney by learning about and experiencing both the substantive and procedural aspects of the practice of disabilities law and elder law. I have also had the opportunity to work with and learn from some of the smartest, most knowledgeable, and most dedicated colleagues while at CLASI. This, combined with the fact that I have daily opportunities to have real, lasting, positive impacts on my clients’ lives, is the reason I love what I do and why I tell people that, if I could afford to, I would work at CLASI for free.

No one goes into a career in public interest law for the money, but heavy debt loads and other financial concerns

can foreclose the opportunity for many. It is for this reason that I was so grateful to be awarded the Roxana C. Arsht Fellowship for 2015-2017. The Fellowship provides support for new attorneys in Delaware who are trying to start careers in public interest law. Equally important, by helping to make a career in public interest law a financially viable one for new attorneys, the Fellowship is a symbol of the value the entire Delaware legal community places on ensuring that every Delawarean has access to justice through access to legal services. I am, therefore, both honored and humbled to be the current recipient of the Fellowship. I will spend the next three years, and hopefully many more, striving to be worthy of the honor that has been bestowed upon me.

• • •

Rabbi Eng is a 2013 graduate of the Delaware Campus of the Widener University School of Law (currently in the process of changing its name to the Widener University Delaware Law School) where he graduated summa cum laude and served on the Delaware Journal of Corporate Law. He earned an honors bachelor’s degree in chemical engineering, with distinction, magna cum laude, from the University of Delaware in 2001. In the interim, he trained as a chaplain, served the leader of a synagogue and a school, and became a rabbi, father, and husband (but not in that order). Rabbi Eng’s position at CLASI is his first job as an attorney. He has been described by his supervisors and colleagues as “enthusiastic, positive . . . and passionate,” as well as “disciplined, proactive, and conscientious.” They add that “most importantly, he has tremendous people skills. Clients respect his knowledge but can easily gain rapport with him. He cares about his clients as people first, clients second.” As a result of the generosity of members of the Delaware community, the Fellowship will award Rabbi Eng over \$8,000 per annum for each of the next three years.

• • •

Please support the Roxana C. Arsht Fellowship by attending the Midsummer Wine Dinner on June 18, 2015 at 7:00 p.m. at Caffé Gelato. Tickets are \$79.00/per person, which includes a \$22.00/per person tax deductible donation. Tickets must be purchased in advance. Visit www.dsba.org/a-midsummer-wine-dinner for the registration form and send to Janice Myrick at jmyrick@dsba.org or (302) 658-5212 (facsimile). ☎

Tennis and Golf for a Cause: 2015 Combined Campaign Cup

By Makenzie Windfelder, Esquire and Charles Vincent, Esquire

The Litigation and Young Lawyers Sections of the Delaware State Bar Association have teamed up again to organize the Third Annual Combined Campaign Cup to benefit the Combined Campaign for Justice. We are excited to announce that this year's Cup will take place at DuPont Country Club, and in addition to golf, will feature a doubles tennis tournament. With our capacity more than double of years past, and the addition of the tennis tournament, we are looking forward to an even more successful event! Last year's Cup netted \$19,000 — to make this year's Cup the best yet, we need your help! We welcome all members and friends of the DSBA, Combined Campaign for Justice, and the general public to participate in the Cup.

This year's Cup will be held Monday, July 27, 2015 at DuPont Country Club. Do not miss out on a great opportunity to network with members and friends of the DSBA while raising money to support the vital programs made possible by Combined Campaign for Justice. A dinner and silent auction will follow the golf and tennis tournaments, and is open to all. This year's auction will again include gift certificates to restaurants, museums and theaters, golf packages to local courses (including DuPont and Bidermann), tickets to sporting events, and other great items. Bid early and often!

Everyone who participates in the day's events is sure to have a great time. Lunch and registration will begin at 11 a.m. The golf tournament (shotgun start, scramble format) will start at noon. The tennis courts will open by 1 p.m., and that tournament and other fun competitions will start at approximately 2 p.m. Both tournaments will offer opportunities for participants to compete for prizes by test-


ing their skills and luck, including the return of the \$10,000 putting contest. Prizes will be awarded to those doubles teams and golfers who place first or second in their tournaments. Winning the Combined Campaign Cup also means bragging rights good for 364 days. The 2014 Cup foursome champion was Bill Brady, Scott Kappes, Marty Knepper, and Andy Livingstone.

Firms, businesses, and individuals can support the Combined Campaign Cup by sponsoring the event, playing in the golf or tennis tournament, attending the dinner and silent auction, or by donating items for the silent auction. Many sponsorship levels are available. Beginning at the \$500 sponsorship level, sponsors will be recognized on all printed materials as well as on the Combined Campaign Cup's registration page, on other social media and in post-tournament press, and can include an item in the giveaway bag provided to tournament participants. Sponsors at the \$1,000 level or greater receive additional perks, including (for golfers), a guarantee to play on the DuPont Championship Course.

All proceeds from the Cup benefit the Combined Campaign for Justice. Derek Abbott, a partner at Morris, Nichols, Arsht & Tunnell, and one of the Co-Chairs of Combined Campaign for Justice, is looking forward to the event: "The Combined Campaign Cup has become a wonderful annual event and we hope that adding tennis and playing at DuPont will make it even better. Everybody should consider attending or supporting the Cup and Combined Campaign for Justice."

The Combined Campaign for Justice is a partnership of the DSBA, Community Legal Aid Society, Inc. ("CLASI"), Delaware Volunteer Legal Services

("DVLS"), and Legal Services Corporation of Delaware, Inc. ("LSCD"). Together these agencies work to provide Delaware's indigent population with access to civil legal services that would otherwise be unavailable. Specifically, CLASI provides legal services to low income Delawareans, to people who are 60 and over, or those who have a disability. DVLS provides pro bono legal representation to indigent clients facing dire — and sometimes life-threatening — circumstances, including protection from abuse, divorce and custody cases involving domestic violence, guardianships, housing, landlord/tenant disputes, wills, government benefits, home ownership, and consumer issues. LSCD counsels and assists low income Delawareans in matters including bankruptcy, repossession, eviction, foreclosure, and unemployment benefit problems. In 2014, these agencies provided legal services in 4,640 cases, affecting 11,112 low-income, elderly, and disabled individuals or members of their families.

Registration for the Combined Campaign Cup is open, but filling quickly. Individual golfer registration is \$175, and foursomes are \$600. Tennis players may register for \$75 each, or \$125 for two players. All registrants receive lunch and admission to the dinner and silent auction. Tickets for the dinner may be purchased separately for \$50 each. A portion of the registration fees and sponsorships are tax-deductible. For more information or to register, please visit the Combined Campaign Cup link on the Combined Campaign for Justice website (www.delawareccj.org). You can also contact Charlie Vincent at charlie@innovinent.com or (302) 566-8008. We look forward to seeing you on July 27th at DuPont! 

SUSPENSION – ONE (1) YEAR

Board Case No. 2012-0024-B

Effective Date: March 25, 2015

By Order of the Court of Chancery on March 25, 2015, Michele D. Allen, Esquire was appointed Receiver of Jeffrey K. Martin's law practice.

PRIVATE ADMONITION

Board Case Nos. 112192-B and

112274-B

Effective Date: March 25, 2015

A Delaware attorney was privately admonished for violations of the Delaware Lawyers' Rules of Professional Conduct ("Rules"). The private sanction was offered by a Panel of the Preliminary Review Committee ("PRC") after its finding of probable cause the attorney violated Rules 1.3 and 1.15(d).

The attorney represented a client before the Equal Employment Opportunity Commission ("EEOC"). Following receipt of a Right to Sue Letter from the EEOC, the attorney failed to timely file a Complaint the United States District Court for the District of Delaware. As a result, the client cannot bring a disability discrimination claim against her former employer. By failing to diligently and timely file the Complaint in District Court, the attorney violated Rule 1.3("a lawyer shall act with reasonable diligence and promptness in representing a client.").

The Lawyers' Fund for Client Protection ("LFCP") conducted an audit of the attorney's firm's books and records for compliance with Rule 1.15(d). The audit revealed the following deficiencies: (1) there were twenty-six (26) checks outstanding for longer than six months and four old reconciling items and two recording errors on the bank reconciliation for the firm's fiduciary account; (2) the reconciled end of month cash balances did not agree to total client funds held in any of the six months reviewed in the firm's fiduciary accounts; (3) there was one negative balance of \$87.00 on

the client funds list in June 2014 in the firm's fiduciary account; and (4) there were four client balances that were over six months old for which the attorney would not be providing additional services in the fiduciary account. By failing to properly maintain the books and records for the firm's accounts, the attorney violated Rule 1.15(d).

In support of a determination that the sanction of a private admonition with conditions was appropriate for the attorney's professional misconduct in the two matters, the PRC considered aggravating and mitigating factors pursuant to the ABA Standards for Imposing Lawyer Sanctions. In aggravation, the attorney has substantial experience in the practice law. In mitigation, the attorney (1) has no prior disciplinary history; (2) provided full and free disclosure in the disciplinary proceedings; and (3) had no dishonest or selfish motive. The conditions of the private admonition are: (a) the attorney shall complete a 1.5 hour continuing legal education on the subject of maintaining the firm's books and records in compliance with Rule 1.15; and (b) the attorney shall complete a pre-certification by a licensed certified public accountant approved by the Lawyers' Fund for Client Protection reporting the status of the firm's compliance, or lack thereof, with the recordkeeping requirements of Rule 1.15 and Rule 1.15(A).

PRIVATE ADMONITION

ODC File No. 112365-B

Effective Date: April 15, 2015

A Delaware lawyer was placed on private probation for two years for violations of the Delaware Lawyers' Rules of Professional Conduct ("Rules") in connection with his failure to maintain his law practice's books and records. The private sanction was offered by a Panel of the Preliminary Review Committee and imposed with the consent of the lawyer. The Lawyers' Fund for Client Protection conducted an audit in 2013 which revealed deficiencies in the books and records. The lawyer also made misrepresentations as to the status of the firm's books and records to the Supreme Court on the 2013 and 2014 Certificates of Compliance. Ⓢ



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EXECUTIVE DIRECTOR: Community Legal Aid Society, Inc., seeks an Executive Director to lead the highly respected civil legal aid organization. We are dedicated to the provision of legal services and advocacy on behalf of people with disabilities, elderly Delawareans, and people living in poverty. Details are available at www.declasi.org/employment. Send cover letters and resumes to jscarborough@mastersidlow.com.

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IMMEDIATE OPENING: Baird Mandalas Brockstedt, LLC is searching for an associate in its Lewes office. Work will include litigation, real estate and business law matters working directly with multiple partners. We offer a competitive compensation package and benefits including medical and 401(k). All inquiries are confidential. Please send resume and cover letter to diane@bmbde.com.

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Benesch, Friedlander, Coplan & Aronoff – Wilmington, DE. The Wilmington office of Benesch, Friedlander, Coplan & Aronoff LLP is seeking an Associate for its Litigation Practice Group. The ideal candidate will have been in practice for 2-4 years and/or have demonstrated complex commercial and debtor/creditor litigation experience in state, federal and bankruptcy courts. The litigation experience should include meaningful trial, hearing and appellate responsibility, conducting and defending depositions, motion practice, planning and managing e-discovery, planning and managing complex document reviews and managing a caseload with minimal supervision. Applicants must be a member of the Delaware Bar along with either the Pennsylvania Bar and/or the New Jersey Bar, have superior writing and analytical skills, excellent verbal skills, and be able to work well with our diverse client base. Must be able to work independently and take initiative. To apply, please send a cover letter, resume, and law school transcript by email to Laura Dutt, Director of Talent Acquisition and Development, ldutt@beneschlaw.com.


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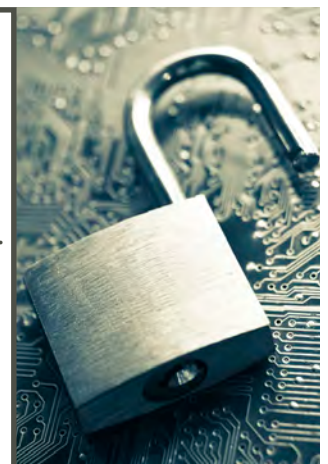
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Spring for Lemons

Although the cooler months are considered citrus season (surprised?), I tend to use lemons more frequently in the warmer months — lemonade, berry and lemon tarts, freshly squeezed lemon on grilled fish, just to name a few uses. So, I dedicate May's column to three dishes that feature the lemon.

Hummus

- 2 - 16 ounce cans chick peas
- 5 cloves garlic
- 4 tablespoons tahini
- Juice of 3 lemons
- 2 tablespoons olive oil
- 7 dashes Tabasco sauce
- Sea salt to taste
- Fresh ground pepper to taste

Place all ingredients in a food processor and blend until coarsely puréed. You may add more olive oil and/or lemon juice to achieve a smoother texture. You may also adjust the quantity of Tabasco sauce depending on your desired level of heat.

Serve the hummus chilled or at room temperature, using it as a dip for crusty bread, radishes, or endive leaves.

Chicken Tagine with Lemons

- Two tablespoons olive oil
- 2 cloves garlic, chopped
- Chicken thighs (about two pieces per person)
- Sea salt to taste
- 1 teaspoon fresh ginger, grated
- 1 half onion
- 1 teaspoon Turmeric
- Handful of black Greek, Spanish or Italian olives
- 6 to 8 fresh dates
- Zest of 1 lemon
- Juice of 2 lemons

A "tagine" is the name of the dish as well as the pot in which it is cooked. This Moroccan slow cooker has a conical cover that permits condensation to drip down to the ingredients in the base. I use our Le Creuset tagine with a cast iron base as it allows me to simmer directly on the stove. A 1-3/4 quart tagine is ideal to serve two to four. A larger group will require a larger tagine or a cast iron pot.

Place the oil and garlic in the tagine and sauté for several minutes until the garlic is softened. Add the chicken as well as all other ingredients except for the olives and lemon zest. The small amount of lemon juice will create enough liquid to braise the chicken as the condensation will circulate in the vessel. Turn the heat on medium high and cook until the liquid begins to boil. Then cover the tagine and turn the heat to a low simmer.

Periodically turn the chicken pieces to ensure that they are coated with the sauce. When the chicken is cooked, add the olives and lemon zest and simmer for a few more minutes. The ideal way to serve this tagine is to spoon it over couscous — I prefer Israeli.



Lemon Squares

- 1 cup butter, softened
- 2 cups all purpose flour
- 1/2 cup powdered sugar
- 4 eggs
- 2 cups sugar
- 6 tablespoons fresh lemon juice
- 1/2 teaspoon baking powder
- 1 cup pecans (quality pecans from Georgia are the key!)

Mix the butter, flour and powdered sugar together until well combined. Press into a 10 by 14 inch pan. Bake at 325 degrees for 15 minutes. Beat the eggs slightly, and add sugar, lemon juice and baking powder. Blend the mixture and pour on top of the baked pastry. Then sprinkle the pecans on the egg mixture and put back in the oven for 40 to 50 minutes. Cool, sprinkle with additional powdered sugar and cut into squares.

Happy juicing and zesting! 🍋



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



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Morris James DELAWARE

is pleased to announce
Nicolas Krawitz
has been admitted to the
Delaware Bar



"We are pleased to have such a talented associate join our Business Litigation Group." - David H. Williams, Managing Partner

Morris James LLP is pleased to announce that Nicolas Krawitz was admitted to the Delaware Bar on March 4, 2015. Mr. Krawitz is an associate in the **Business Litigation Group** focusing on commercial litigation and corporate and fiduciary litigation. He received his Juris Doctor at Georgetown University Law Center in 2014, where he graduated with **cum laude honors**. While in law school, he served as an editor for the *American Criminal Law Review* and as a legal intern for the United States Department of Justice in the Executive Office for U.S. Trustees – Office of General Counsel. He earned his undergraduate degree in finance from Tulane University. He can be reached at 302.888.6964 or nkrawitz@morrisjames.com.



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