NOVEMBER 2015 | VOLUME 39 • NUMBER 4

THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

Johnna M. Darby, Esquire
New Executive Director of the
Delaware State Bar Association

Presorted Std.
U.S. Postage
PAID
Permit No. 408
Wilmington, DE

Get Involved in DSBA Leadership!

The Delaware State Bar Association is looking for a number of talented members to join the 2016-2017 Executive Committee and lead DSBA to continued success.

The following positions on the Executive Committee of the Association must be filled for the year 2016-2017:

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

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

The following position must be filled for terms as noted:

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

The Nominating Committee wants to consider all interested candidates. If you are interested in serving on the Executive Committee or would like to recommend a candidate, please send your name or the candidate's name along with a CV and at least one letter of nomination to Johnna M. Darby, Executive Director, by e-mail at: jdarby@dsba.org or by mail at: Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE 19801 by **February 12, 2016.**

WE NEED YOUR HELP TO FIND STRONG LEADERS FOR THE FUTURE!

The Nominating Committee consists of:

Gregory Brian Williams, Chair
Yvonne Takvorian Saville, Vice-Chair

New Castle County

Sanjay Bhatnagar (2016)
Erika R. Caesar (2016)
Kiadii S. Harmon (2016)
Natalie J. Haskins (2016)
Rakesh H. Mehta (2016)
Sharon Oras Morgan (2016)
Jordan J. Perry (2016)

H. Garrett Baker (2017)
David L. Baumberger (2017)
Meghan Elizabeth Butters (2017)
Carolyn G. Connors (2017)
Michael B. Galbraith (2017)
Andrew William Gonser (2017)
Albert J. Roop V (2017)
Danielle K. Yearick (2017)

Rebecca L. Butcher (2018)
Richard B. Carroll, Jr. (2018)
Frederick L. Cottrell III (2018)
Joel Friedlander (2018)
Lisa B. Goodman (2018)
Timothy Jay Houseal (2018)

Kent County

David J. Bever (2016)
Reneta L. Green-Streett (2017)
Frederick A. Townsend III (2018)

Sussex County

James Patrick Sharp (2016)
John F. Brady (2017)
Julianne E. Murray (2018)

Delaware State Bar Association
405 N. King Street, Suite 100
Wilmington, Delaware 19801
(302) 658-5279

DSBA BAR JOURNAL
NOVEMBER 2015 | VOLUME 39 • NUMBER 4

The *Bar Journal* is published and distributed by the Delaware State Bar Association

405 North King Street, Suite 100
Wilmington, DE 19801
P: 302-658-5279
F: 302-658-5212
www.dsba.org

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.

The *Bar Journal* published monthly with a combined July/August issue.

All correspondence regarding circulation, subscriptions, or editorial matters should be mailed to:
Editor, DSBA Bar Journal
Delaware State Bar Association
405 North King Street, Suite 100
Wilmington, DE 19801
or emailed to: rbaird@dsba.org

All inquiries regarding advertising should be directed to the address above, Attention: Advertising, Bar Journal.

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

FEATURES

COLUMNS

DEPARTMENTS

Cover Photo Credit: Antonio Byrd

PRESIDENT'S CORNER

By Richard A. Forsten, Esquire

On the Quality of Justice – The Judiciary Needs Our Support

The French mathematician and philosopher Blaise Pascal once wrote that "Justice without strength is helpless, and strength without justice is tyranny," and while Pascal's observation may seem obvious, it brings to mind the famous cliché that "you get what you pay for." Law and order is the first and most important object of any government. Without law, and without order, civil society cannot function. Anarchy results.

> *"There are many worthy things which our state government funds, including education, transportation, and economic development to name but a few; but the single most critical function — justice — lags behind."*

Yet, while the first and most important role of government is to keep the peace, dictatorships can keep the peace too. Strength alone is not enough, there must also be justice — and justice is not inexpensive. There must be courts, and judges, and staff. There must be prosecutors, and public defenders, and prisons; but there must also be fairness, lest there be tyranny. All of this costs money.

The foregoing thoughts arise because the annual state budget process is just now beginning for fiscal year 2017 (which runs from July 1, 2016 through June 30, 2017), and, historically, the judicial branch has not always fared as well as it could in that process. For fiscal year 1996, the judiciary's share of the operating budget was 2.81%; by 2006, that percentage was down to 2.63%; and, last year, the percentage was down further still to 2.43%. Do not get me wrong. There are many worthy things which our State government funds, including education, transportation, and economic development to name but a few; but the single most critical function — justice — lags behind.

Indeed, our judiciary is continually asked to do more, but without always getting the funds needed. Security costs have increased. Under federal guidelines, the cost for interpreters has increased greatly. Indigent services grow in cost. Court technology lags behind — criminal law and family law filings are still not done using e-filing, and many of the New Castle County Courthouse courtrooms' technology has not been updated since the building opened in 2002. Our new problem-solving courts show great potential, but are resource-intensive. Many court personnel — particularly in Wilmington, where they must pay to park, as compared to their compatriots in Kent and Sussex who are paid similarly, but can park for free — work two jobs. Yet, despite all these increased requirements and demands (and many more), the judicial budget has increased only $322,000 over the last six years after adjusting for inflation and fixed costs.

Beyond the operational stresses the judiciary faces, there are also pressing capital needs. The Family Court desperately needs brand new facilities in both Kent and Sussex Counties. The court rooms are too small. There are insufficient waiting rooms and meeting rooms for attorney/client discussions. Inmates are either brought into court through the public lobby area or on the elevator which the judges use. Prisoner holding areas do not provide separate areas for juveniles and adults, or separate areas for males and females. Both family courthouses are woefully undersized for their current space needs, let alone future needs.

The New Castle County Courthouse also must address its longer term space needs, and that planning process should begin sooner rather than later if it is to be successful. There are a host of other capital requirements, but new facilities for the Family Court and planning for the New Castle Courthouse are the most pressing.

With such important funding requirements (which do not take into ac-

> *We are all trained advocates, and we all understand just how critical the judiciary is to the health and welfare of this State, not only from the perspective of justice, but also from an economic perspective.*

count many other less pressing items), one may ask why has the judiciary not fared well in the budget process and seen its relative share of the budget fall? I suspect that the reason for the judiciary's budget woes may have something to do with, ironically enough, advocacy. Another cliché claims that "the squeaky wheel gets the grease," and while lawyers are trained advocates — trained to be squeaky if you will — we do not squeak very much when it comes to the judiciary's share of the state budget. Meanwhile, other areas of the budget have strong constituencies and advocates that squeak quite a lot. Education is supported by parents and teachers. Economic development by business. The environment by environmentalists. And so on and so on. All of these constituencies participate actively in the political process; but lawyers, for better or worse, do not seem as engaged, and the judiciary itself is often left without strong assistance from the Bar and its allies — and we should be just as active in the political and budget process as other groups.

As I have written in other columns, one of the goals I have set for myself and for all members of the Bar Association is to get more involved. Supporting the judiciary is another way to get involved. We are all trained advocates, and we all understand just how critical the judiciary is to the health and welfare of this State, not only from the perspective of justice, but also from an economic perspective. The judiciary has pressing needs, particularly on the capital side, and if the squeaky wheel does indeed get the grease, then let's all make sure to squeak a bit on behalf of the judiciary.

Justice without strength is indeed helpless. For justice's sake, let's make sure our judiciary is as strong as it can be.

Richard "Shark" Forsten is the current President of the State Bar Association, as well as President of the Appoquinimink School Board, chairman of the Board of the Everett Theatre and a member of the boards of Goodwill of Delaware and the Delaware Homebuilders Association. He has been writing monthly book reviews for the *Bar Journal* since 1998, and elsewhere in these pages you can find his latest review. In 2006, he was recognized by the Delaware Supreme Court for Exemplary *Pro Bono Publico* Service. He is a partner with the firm of Saul Ewing, LLP, where he practices in the areas of commercial real estate, land use, business transactions and related litigation, and can be reached at rforsten@saul.com. His golf handicap remains much too high.

By Seth L. Thompson, Esquire

Set Adrift on Memory Contentment

"That ski slope seemed a lot steeper at sixteen," I thought to myself as I pulled into the Bear Creek Mountain ski resort's parking lot after a winding drive through the Lehigh Valley hills — and a chili dog and order of pierogies from Yocco's. "Although it looks like Mount Everest compared with Sussex County."

"Excuse me. I'm here for the Emmaus reunion. Which way is it?" I asked the person behind the lodge's front desk, immediately realizing that the difference in music should have been the first (and only necessary) clue in concluding a wedding was in the ballroom to the left and my fellow Green Hornets were to the right. Follow the Montell Jordan. As I looked for my nametag, the last verse of "This Is How We Do It" faded and mixed into P.M. Dawn's "Set Adrift on Memory Bliss." The singer's spoken style flowed, "I think it's one of those de ja vu things."

I have kept in touch with a core group of friends over the past two decades, many of us attending Penn State, living in Philadelphia after college, or both. Over time, we have established certain traditions, such as the spring training trip in March, the playoff football weekend over Martin Luther King, Jr. Day, and at least one Phillies game at Citizens Bank Ballpark. The traditions ensure we get together. ("Honey, I can't skip it; it's tradition.") During those occasions, we catch up, celebrate the latest family additions, share condolences on the latest subtractions, relate the same timeless stories of youth hijinks, and bust each other's chops so no one forgets his roots.

But, I already knew the latest scuttlebutt with those guys and their growing broods. Not the social media type — and thus uninformed of the developments already broadcast in the broader world of "Facebook friends" — I enjoyed seeing old buddies outside of my usual crew and hearing directly what they had done with their lives: kids, school, jobs, relocations, travels, adventures.

"So what do you do?" On its face, this is a very general question. In the context of a twenty-year high school reunion, the inquiry impliedly regards your profession. In the course of renewing old acquaintances, the inquiry came rather quickly, no more than four questions into the conversation, usually third, after "How are you?" and "Where are you living these days?" The immediacy of the question makes perfect sense if a person's life is measured based on time allocation. Other than sleeping, working probably accounts for a person's largest slice of the pie chart of time, our most valuable personal commodity. I imagine that is especially true for attorneys, now seemingly capable of churning work product 24 hours a day via email and e-filing — with the occasional client having expectations to match that capability. "I practice law in Delaware. What about you?"

> *"Other than sleeping, working probably accounts for a person's largest slice of the pie chart of time, our most valuable personal commodity."*

It was enjoyable to see how so many of us have gradually morphed into a blend of an older version of our younger selves and a younger version of our parents. My old soccer teammates now coach their children's youth squads, as their dads had done. The beach buds still make the trip to the Jersey Shore on summer weekends and for that one blessed full-week vacation. Only now they go as the planners and patriarchs of the trip. The former student government officers, urged by parents to become active, positive participants, have become lawyers, public servants, or military servicemembers.

There were more than a few attorneys in the bunch, the majority of which were something short of enthralled with the practice of law. I thought to myself, "How lucky am I? Every day is not exactly a day at the beach, but there are enough of those, and enough moments of fulfillment in having legitimately helped someone, to make it all worthwhile."

"Jack's already moved on. He's not really practicing anymore. Got into publishing. Do you think you are going to keep practicing?" I asked one disgruntled classmate,

with the accompanying implied question of whether the correct path was chosen. In my own mind, I attempted to imagine doing something else and happily came up blank. To lighten the mood, we exchanged funny stories from past cases, as attorneys are wont to do. There is at least one fringe benefit to practicing law: great cocktail party tales. The night drew to a close. "Well, see you in another five years. It will go by quicker than we think."

The next morning, I watched my nephew play soccer on a field where I used to do the same. "He's really improved, Boo, especially his ball skills," I told my sister. "He looks bigger out there, too," as I wondered if he might later consider the legal profession. In the words of P.M. Dawn, "That's the way it goes, I guess. Baadaa baadadaa."

Bar Journal Editor **Seth L. Thompson** is a shareholder with Sergovic, Carmean & Weidman, P.A., 142 E. Market Street, Georgetown, Delaware. He may be reached at seth@scdelaw.com.

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.

New Castle County

Karen Jacobs, Esquire, Co-Chair*
Victor F. Battaglia, Sr., Esquire
Dawn L. Becker, Esquire
Mary C. Boudart, Esquire
Ben T. Castle, Esquire
Thomas Conaty, Esquire
David J. J. Facciolo, Esquire
David J. Ferry, Jr., Esquire
Robert D. Goldberg, Esquire
Bayard Marin, Esquire
James K. Maron, Esquire
Wayne A. Marvel, Esquire
Michael F. McTaggart, Esquire
Elizabeth Y. Olsen, Esquire*
Kenneth M. Roseman, Esquire*
Thomas Doyle Runnels, Esquire
R. Judson Scaggs, Esquire*
Hon. William L. Witham, Jr.
David A. White, Esquire

Kent County

I. Barry Guerke, Esquire Co-Chair*
Crystal L. Carey, Esquire
Edward Curley, Esquire
Clay T. Jester, Esquire
Mary E. Sherlock, Esquire

Sussex County

Larry W. Fifer, Esquire

Carol P. Waldhauser, Executive Director
DSBA/DE-LAP Liaison

*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.

November 2015

Friday, November 13, 2015
Attorney Ad Litem for Guardianship Training in the Court of Chancery
3.8 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, November 18, 2015
Understanding Social Security Disability Programs and How the Benefits Interact with Other Claims
1.5 hours CLE credit
Delaware State Bar Association, Wilmington, DE

December 2015

Wednesday, December 2, 2015
Memory Skills for the Successful Attorney
6.3 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, December 9, 2015
Confidentiality in the Age of Cyber (In)Security
2.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Friday, December 11, 2015
Superior Court Trial Practice and Ethics Seminar
Sponsored by the DSBA and the Delaware Chapter of ABOTA
7.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, December 15, 2015
Family Law Update 2015
6.0 hours CLE credit
Christiana Hilton, Newark, DE

Wednesday, December 16, 2015
Closing and Retiring from a Law Practice
3.5 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

January 2016

Thursday, January 7, 2016
Social Security Retirement
3.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, January 19, 2016
Workers' Compensation Breakfast Seminar
3.3 hours CLE credit
Chase Center on the Riverfront, Wilmington, DE

SECTION & COMMITTEE MEETINGS

November 2015

Wednesday, November 4, 2015 • 12:00 p.m.
Environmental Law Section Meeting
Richards, Layton & Finger, P. A., 920 North King Street, Wilmington, DE

Wednesday, November 4, 2015 • 12:30 p.m.
Women and the Law Section Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Wednesday, November 4, 2015 • 6:00 p.m.
Multicultural Judges and Lawyers Section Bar Toast & New Admittee Networking Event
University & Whist Club, 805 North Broom Street, Wilmington, DE

Thursday, November 5, 2015 • 12:30 p.m.
Litigation Section Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, November 5, 2015 • 4:00 p.m.
Real & Personal Property Section Meeting
Tim Rafferty's Office, Artisans Bank, Centerville Road, Wilmington, DE

Tuesday, November 10, 2015 • 12:00 p.m.
Small Firms & Solo Practitioners Section Meeting
The Law Offices of Denise D. Nordheimer, Esquire, LLC, 2001 Baynard Boulevard, Wilmington, DE

Wednesday, November 11, 2015 • 4:00 p.m.
ADR Section Meeting
Berger Harris, LLP, 1105 North Market Street, 11th Floor, Wilmington, DE

Thursday, November 12, 2015 • 5:30 p.m.
Young Lawyers Section Happy Hour
TBD

Tuesday, November 17, 2015 • 12:30 p.m.
Labor & Employment Law Section Meeting
Young Conaway Stargatt & Taylor LLP, 1000 North King Street, Wilmington, DE

Thursday, November 19, 2015 • 12:00 p.m.
Executive Committee Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, October 22, 2015 • 4:00 p.m.
Family Law Section Meeting
Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE

Friday, November 20, 2015 • 12:00 p.m.
Workers' Compensation Section Meeting
Young Conaway Stargatt & Taylor LLP, 1000 North King Street, Wilmington, DE

December 2015

Tuesday, December 1, 2015 • 12:30 p.m.
Women and the Law Section Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, December 3, 2015 • 12:00 p.m.
Government Law Section Meeting
Connolly Gallagher LLP, The Brandywine Building, 1000 North West Street, 14th Floor, Wilmington DE

Thursday, December 3, 2015 • 4:00 p.m.
Real & Personal Property Section Meeting
Tim Rafferty's Office, Artisans Bank, Centerville Road, Wilmington, DE

Monday, December 7, 2015 • 12:30 p.m.
Senior Lawyers Committee Monthly Luncheon Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Tuesday, December 8, 2015 • 12:00 p.m.
Small Firms & Solo Practitioners Section Meeting
The Law Offices of Denise D. Nordheimer, Esquire, LLC, 2001 Baynard Boulevard, Wilmington, DE

By Richard K. Herrmann, Esquire

Ten Office Practice Technology Tips Without Glazing Over (Continued...)

Last month we covered the first five of our ten basic technology tips. The next five focus on "must know" security issues to protect client confidentiality (LRPC 1.6). The thread throughout is to protect your client's confidential information.

❻ Password your computer and all electronic devices.

We tend to follow the most efficient path as we work. It makes sense. Why do something in three steps if it can be done in one? Unfortunately, that is what all too many lawyers think of passwords. They are often viewed as an encumbrance — a barrier to be worked around and avoided. The bottom line is "the risks of breaching client confidentiality trumps maximum efficiency." Password everything. It is important to password the desktop computer at the office and at home. Set the computer screen to lock after a comfortable time of inactivity (10 or 15 minutes). Select a password that is not too complicated or long so that you actually use it. Remember, we are talking about a desktop computer at your office or your home and not a laptop or mobile device. Chances of someone walking into your home or office and trying to hack your password are slim.

❼ Send important communications via passworded Word or PDF documents.

The Lawyers' Rules of Professional Conduct do not read that all client communications can be freely sent by email. When you read Rule 1.6 and its commentary, you will see there is a balancing test — weigh the sensitivity of the information against the risk and means of transmission. The original Coca-Cola formula gets treated a bit differently than a declaration verifying interrogatory responses. If you are reading this column and believe that the Coca-Cola formula should never be sent by email you get an "A." However, there are those communications which are less sensitive than that, yet still need protection. And, even though your email may be secure, all too many times we inadvertently "reply to all" or send to the wrong address in our contact list. There is an easy solution. Important confidential information should be sent as a passworded attachment in PDF or Word. Arrange for a password with your client in advance for all of these kinds of communications. It is easy to lock the document in PDF or Word and the client will know the password. I am not saying every Word or PDF document that is passworded is not hackable. However, it is a very reasonable way of securing a confidential client communication. If the email inadvertently is sent to a wrong contact addressee or the "reply all" button is inadvertently selected, no one will be able to open the attachment without hiring a computer hacker.

❽ Do not give family members access to your work electronic devices.

Obviously, we all trust our family members. However, it is not a good practice to leave your client files laying around your house. It sends the wrong message to your children regarding confidentiality; and to the extent they have friends, confidentiality may no longer exist. If you want to share an iPad or other mobile device or a computer with your family, have a separate one dedicated for work. There is no reason to place your family or friends in a compromising position.

❾ Assume someone is virtually looking over your shoulder when you are using a public Wi-Fi.

Public Wi-Fi is just that — "public." If you have ever heard of the old telephone "party line" back in the day, that is public Wi-Fi. Assume someone is listening in. What you type when you are connected to public Wi-Fi may be secretly captured on someone else's computer screen before it actually goes to the Internet. It is easy to do. If you are not set up with a special connection (VPN), next time you are at Starbucks, just enjoy your coffee and read the paper.

❿ If you do not know about "Track Changes" in Word, make it a point to learn.

Almost everyone has seen a red-lined document. It is an edited draft with deleted words stricken and added words underlined. The easiest way to create such a draft is in Microsoft Word. It is called

Tips (continued on page 13)

The Amended Scope of Federal Discovery: New Words, Same Concept

By Stephanie E. Smiertka, Esquire

Discovery disputes. Most attorneys and courts loathe the phrase and the hassle involved. It is important to consider the proper scope of discovery prior to requesting, responding, or objecting to discovery in order to avoid wasting the time of all involved, especially the courts' scarce time and judicial resources. Those practicing in federal courts may be aware of several amendments to the Federal Rules of Civil Procedure ("FRCP") that will become effective on December 1, 2015. One such amendment pertains to FRCP 26(b)(1), which deals with the scope of discovery.

Amendments to the Current Rule

Rule 26(b)(1), as amended, will read in pertinent part:

"…Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense — ~~including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C)~~ and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs the likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable."[1]

What Do the Changes Mean? Guidance from the Advisory Committee

One notable change to Rule 26(b)(1) is the incorporation of the existing "proportionality analysis" found in Rule 26(b)(2)(C) directly into Rule 26(b)(1). The proportionality analysis is a list of factors to be considered by the parties and the court in determining the overall scope of discovery rather than court limitations on discovery.[2] With the incorporation of the proportionality analysis directly into Rule 26(b)(1), there is some fear that these factors will be used to expand discovery motion practice.[3] The Advisory Committee, however, stresses that moving the proportionality analysis does not change the existing responsibilities of the parties, nor does it allow refusal of discovery simply by making general objections to proportionality.[4] Further, "the change does not place on the party seeking discovery the burden of addressing all proportionality considerations."[5] It merely underscores the obligation of both parties to consider these factors prior to engaging in discovery.[6]

In addition to the inclusion of the proportionality analysis directly into Rule 26(b)(1), the new amendments add an additional proportionality factor to consider when determining the scope of discovery, namely, the parties' relative access to relevant information. The Advisory Committee emphasizes that this factor explicitly recognizes that cases routinely involve information asymmetry and that "[a] party claiming undue burden or expense ordinarily has far better information — perhaps the only information — with respect to that part of the determination."[7] Thus, "[i]n practice these circumstances often mean that the burden of responding to discovery lies heavier on the party who has more information, and properly so."[8] This amendment expressly acknowledges that a party with greater amounts of information will inherently have a greater discovery burden, and will not necessarily be shielded from discovery requests simply due to the undue burden of additional costs, for example. As such, going forward, it is wise for attorneys representing larger, sophisticated parties with access to more information to consider the additional proportionality factor, and accompanying Advisory Committee notes, prior to requesting judicial intervention on the grounds of undue burden.

How Will These Amendments Affect Practice?

As noted by the Advisory Committee, the new amendments to Rule 26(b)(1) are designed to control excess discovery by having the parties and the court consider the proportionality of all discovery at the outset.[9] It is yet to be seen whether the amendments to Rule 26(b)(1) will

1. FED. R. CIV. P. 26(b)(1), amended. For all amendments to Rule 26 and the Advisory Committee Notes, please visit Cornell University Law School, Legal Information Institute. https://www.law.cornell.edu/rules/frcp/rule_26#.Vh58f090yM8 (last visited Oct. 14, 2015). There are other changes to the amended Rule 26(b)(1) that go beyond the reach of this article.

2. FED. R. CIV. P. 26(b)(1) advisory committee's note.

3. *See* Patricia W. Hatamyar Moore, *The Anti-Plaintiff Pending Amendments to the Federal Rules of Civil Procedure and the Pro-Defendant Composition of the Federal Rulemaking Committees*, 83 U. CIN. L. REV. 1083, 1112-17 (2015).

4. *Id.*

5. *Id.*

6. Id. In addition to emphasizing the proportionality factors, the phrase "reasonably calculated to lead to the discovery of admissible evidence" was deleted. The Rule now simply states that information need not be admissible to be discoverable. The purpose of this change was to put an end to the incorrect belief that the phrase defined the entire scope of discovery.

7. *Id.*

8. *Id.*

9. *Id.*

Amended Scope (continued on page 13)

Technology Drives New Changes to Federal Rules of Civil Procedure

What Does this Mean for Practitioners and Judges?

By Kevin F. Brady, Esquire

For the second time in ten years, the Federal Rules of Civil Procedure will be amended primarily to address problems associated with escalating costs and volume of electronic information in discovery. On April 29, 2015, Chief Justice Roberts submitted the proposed amendments to Congress for final approval and absent legislation to "reject, modify or defer," the proposed amendments become effective on December 1, 2015. Of particular interest to practitioners and judges will be key changes to Rules 26(b)(1) and 37(e) which are driven by a renewed emphasis on proportionality, cooperation, and early and active judicial case management.

Proportionality Gets a Facelift and the Scope of Discovery is Narrowed

New Rule 26(b)(1) is narrowing the scope of discovery to " any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case…." The Rule identifies several factors to be considered (these factors, for the most part, are extracted from the current Rule 26(b)(2)(C)(iii)): (i) the importance of the issues at stake in the action; (ii) the amount in controversy: (iii) the parties' relative access to relevant information; (iv) the parties' resources; (vi) the importance of the discovery in resolving the issues; and (vii) whether the burden or expense of the proposed discovery outweighs its likely benefit. The movement of these limiting factors from current Rule 26(b)(2)(C)(iii) to new Rule 26(b)(1) marks an effort to highlight the need for proportionality in defining the scope of discovery and strengthen the Rule 26(g) obligation to consider proportionality in discovery requests, responses or objections.

A number of other significant changes were also made to Rule 26. Discovery of "subject matter" information is no longer available and information no longer needs to be admissible in evidence to be discoverable. Instead, the focus is on relevant claims and defenses. The "reasonably calculated to lead to the discovery of admissible evidence" language was also eliminated because it was being used incorrectly to describe the scope of discovery. Finally, the Advisory Committee notes indicate that the parties and the court have a "collective responsibility" to consider proportionality in discovery, but that is not intended to place the burden of proving proportionality on the party seeking discovery. Indeed, the change does not "permit the [producing] party to refuse discovery simply by making a boilerplate objection that it is not proportional." Moreover, because revised Rule 26(b)(1) uses proportionality to limit the scope of discovery, proportionality should now be part of the discussion regarding the duty to preserve information.

Standard for Spoliation Sanctions is Clarified

New Rule 37(e) attempts to create a uniform national standard for the imposition of sanctions, and in particular, case-determinative sanctions for spoliation of electronic data. Under the new Rule 37(e), if electronic data that should have been preserved is lost because a party failed to take "reasonable steps" to preserve it, the court must decide initially if the information can be restored or replaced by additional discovery. If it can, the analysis is over. If it cannot, then the court must determine if the requesting party is prejudiced by the loss of that information. If the court finds prejudice, then the court "may order measures no greater than necessary to cure the prejudice" which does not include more severe sanctions such as an adverse inference instruction or dismissal of the action. Only if the court finds that the party acted with "the intent to deprive another party of the information's use in the litigation," may the court impose one of the following sanctions: (i) presume that the lost information was unfavorable to the party; (ii) instruct the jury that it may or must presume the information was unfavorable to the party; or (iii) dismiss the action or enter a default judgment.

It is important to note that if a party can demonstrate that it took "reasonable steps" to preserve information, no sanctions under Rule 37(e) will be imposed. Thus, the revised rule focuses on a party's records management policies as well as a party's ability to identify preservation triggers and take appropriate preservation steps. Trans-

parent processes may substantially assist in nullifying any prejudice argument.

Rule 34 — Discovery Requests, Objections and Productions

Rule 34(b)(2)(B) will now require a party to state objections with specificity and to include a reasonable date for production. Boilerplate objections will no longer be tolerated. Moreover, objections such as "too costly, too complicated" will become a weaker argument over time as opponents better understand technologies and information governance principles. To avoid confusion in the current practice regarding objections and documents being produced or withheld, under new Rule 34(b)(2)(C), a party will have to indicate if a document is being withheld from production based on any of the stated objections.

Changes in Timing …

A number of changes to the rules are not driven by technology per se, but nevertheless are an attempt to speed up the litigation process. Rule 4 (Service of Summons) was amended to reduce the time period from 120 days to 90 days with a new form for waiver of service under Rule 4(d). The timing for a Rule 16 Scheduling Order was reduced from 90 days to 60 days. Finally, under Rule 26(d)(2), document requests can be "delivered" 21 days after service of summons and complaint. The purpose of this change is to give the responding party an idea of what information will be sought in discovery. However, those requests are not considered "served" until the Rule 26(f) conference. Finally, Rule 34(b)(2)(A) will now require a party to respond to request for production delivered pursuant to Rule 26(d)(2) within 30 days after the first Rule 26(f) conference.

Kevin F. Brady is Of Counsel at Redgrave LLP in Washington D.C. and can be reached at kbrady@redgravellp.com.

Tips (continued from page 10)

Track Changes. The phrase is appropriate, since Word tracks the changes in the document while it is edited. This is significant since "Track Changes" can be turned on and off. It is like a magic trick. Now you see it — now you don't. When you attach a Word document to an email, you will not know whether the draft versions of that document are available in Track Changes unless you look. Keep this in mind. Whoever receives your final document may also be able to see all of the prior versions of it as well. There are some easy solutions, but I am out of space. We will just have to wait until next time.

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.

Amended Scope (continued from page 11)

generate more discovery disputes, or whether the new Rule amendments and Advisory Committee's notes will provide litigants with sufficient guidance to avoid costly, time-consuming disputes. Although the Rule amendments apply only to the FRCP, Delaware State Court Rules have traditionally tracked the FRCP, and Delaware's State Courts could adopt these rule changes in the future. As such, it is important for all Delaware attorneys to understand the new amendments to the FRCP, as those amendments will likely affect how Delaware attorneys assess and litigate over the scope of discovery.

Stephanie E. Smiertka is an associate at Grant & Eisenhofer, P.A., where her practice focuses on complex pharmaceutical litigation. She can be reached at ssmiertka@gelaw.com.

ETHICALLY SPEAKING

By Charles Slanina, Esquire

Lawyers Behaving Badly

At least once a year, "Ethically Speaking" harvests tales of questionable conduct by attorneys and others. This year is a bumper crop.

Lots of attorneys are disciplined for lots of different types of conduct. But, in what may be a first, a New York lawyer was disbarred for — going to Cuba. As reported by Sampson Habte in a July 22, 2015, article in the Lawyers' Manual on Professional Conduct, attorney Mark C. Verzani travelled to Cuba by way of Mexico to circumvent the U.S. ban on direct travel to that embargoed country. Unfortunately, Mr. Verzani filled out a U.S. Customs and Border Protection form on his return falsely stating that Mexico was the only country he had visited while outside the United States. His resulting felony conviction was used as the basis for a New York disciplinary charge after the federal conviction was found to be "analogous to the New York felony of offering a false instrument for filing." That felony is one for which New York has an automatic disbarment rule. One can only imagine how bad Mr. Verzani will feel when Disney starts direct cruises to Cuba.

• • •

An August 14, 2015, letter opinion from Chancery Court sanctioned a *pro hac vice* admitted attorney and his firm for deposition misconduct. Kramer Levin Naftalis & Frankel, LLP attorney Phillip Kaufman was defending the deposition of another Kramer Levin attorney in February. The deposition arose when opposing counsel sought to disqualify the Kramer Levin lawyer claiming that the lawyer had formerly represented the opposing party. Opposing counsel filed a motion for sanctions after Mr. Kaufman repeatedly directed his witness to not answer many of the deposition questions causing the deposition to be terminated.

The Court found that Mr. Kaufman's direction to his witness prevented opposing counsel from conducting a fair examination of the witness. After reviewing the transcript, the Court concluded that many of the answers to the questions would have been benign and did not implicate privilege. Chancellor Bouchard ordered payment of reasonable costs and attorneys' fees incurred in conducting the deposition and in briefing the motion, even though the witness' testimony was not introduced at trial.

• • •

"Ethically Speaking" previously reported on a unique sanction imposed by a federal court trial judge for deposition misconduct. Judge Mark W. Bennett of the U.S. District Court for the Northern District of Iowa had found that a Jones Day partner had used inappropriate tactics during depositions. As a sanction, Judge Bennett ordered the attorney to write and produce an instructional video about improper deposition tactics. That video was to include the topics of form objections, witness coaching and excessive interruptions, all practices in which the judge found the offending attorney had engaged. *Nat'l Bank of Sioux City, Iowa v. Jones Day*, 80 F.3d 936 (8th Cir. 2015), rev'g 299 F.R.D. 595, (N.D. Iowa 2014).

On appeal, the court found that while discovery abuse is "a topic of widespread concern in the legal community," the order could not stand. Among the reasons given for the reversal were that opposing counsel did not raise any objection to the attorney's conduct during the depositions, the court did not give the attorney advance notice of the sanction being considered and the sanction was not imposed "within a timeframe that has a nexus to the behavior sought to be deterred."

• • •

A Chicago criminal defense lawyer, Beau Brindley, was accused of coaching witnesses to lie in five criminal trials. Criminal justice authorities executed a search warrant on Brindley's office and seized scripted questions and answers for a client charged with dealing cocaine. That client had advised authorities that Brindley charged him a $150,000 contingency fee payable if he was acquitted. Authorities also cited an email from Brindley to an associate that allegedly stated that he had "bolded a few important questions and answers I think he (the witness) should give." Brindley was also accused of obstructing a grand jury investigation by dissuading authorities from calling a witness by falsely claiming to represent a witness and advising the prosecution that the witness would not testify by asserting her Fifth Amendment rights against self-incrimination.

A year after the authorities raided Mr. Brindley's office, he was acquitted of the resulting charges by a federal judge after a bench trial. At trial, Brindley testified

> *Finally, in a case of judges behaving oddly if not badly, the Florida Supreme Court recently and without explanation, found it necessary to adopt a policy on courtroom attire.*

that he got the idea of preparing Q&A scripts by seeing prosecutors use them. He is reported to have called the defense verdict a victory for the criminal defense bar.

• • •

An Ohio attorney employed by the Ohio Law Enforcement Gateway was publicly reprimanded for accessing confidential information reserved for law enforcement personnel in several data systems. Reportedly, Assistant Attorney General Erin G. Rosen used the data bases "to seek information about four individuals that either she or her friends were dating." Specifically, the Iowa Supreme Court found that her conduct violated Ohio Rule 8.4(h) of the Ohio Rules of Professional Conduct which prohibits conduct adversely reflecting on a lawyer's fitness to practice law. *Disciplinary Counsel v. Rosen*,—N.E. 3d,— WL 5039401 (Ohio Supr. Mar. 11, 2015).

• • •

Under the heading "When Will They Ever Learn?," the U.S. District Court for the District of Puerto Rico fined attorney Camilo Salas $1,000 and ordered him to attend a course on professionalism. Attorney Salas is reported to have remarked that his female opposing counsel's complaint about the temperature in the room where she and fifteen other attorneys were taking a deposition may have been attributable to menopausal symptoms. The Court found that Mr. Salas' comment violated the Professional Conduct Rule governing respect for the rights of third persons. The Court also found that his comments were intended to humiliate the attorney based on her age and gender which "tarnishes the image of the entire legal profession and disgraces our system of justice."

The Court declined to revoke Salas' *pro hac vice* admission finding that his comment was an "isolated incident" mitigated by his apology. *Cruz-Aponte v. Caribbean Petroleum Corp.*, — F.Supp.3d — 2015 WL 5006213 (D.P.R. Aug. 17, 2015).

• • •

Finally, in a case of judges behaving oddly if not badly, the Florida Supreme Court recently and without explanation, found it necessary to adopt a policy on courtroom attire. This also touches on a topic which has been the subject of prior "Ethically Speaking" columns. However, in this case, the new Florida policy addresses judicial rather than attorney attire. The new rule approved by the Florida Supreme Court requires that judges wear solid black with no embellishment. The Court said that embellishment or different color robes could lead to uncertainty for those coming before the courts and legal participants could be confused about whether the markings denoted rank or even reflected a judge's mood or attitude during that day. According to a May 19, 2015, article in the *Miami Herald*, the move may have been prompted by some of the past sartorial choices of the Florida judiciary. A Union County judge is reported to have a fondness for wearing camouflage colors in court. An Alachuan County judge sported a straw hat along with his black robes. Others were reported to display flashes of color associated with favored college athletic teams.

As always, "Ethically Speaking" offers examples of attorney conduct and misconduct only as cautionary tales with no intent to ridicule or embarrass. Happy Holidays!

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.

DISCIPLINARY ACTIONS

DISABILITY INACTIVE

Kenneth J. Young, Esquire
Supreme Court No. 467, 2015
Effective Date: August 31, 2015

On August 31, 2015, the Delaware Supreme Court transferred Kenneth J. Young, Esquire to disability inactive status, pursuant to Rule 19(b) of the Delaware Lawyers' Rules of Disciplinary Procedure.

INTERIM SUSPENSION

James J. Woods, Jr.
Supreme Court No. 527, 2015
Effective Date: October 7, 2015

By Order dated October 7, 2015, the Delaware Supreme Court suspending James J. Woods, Jr., from the practice of law pending the disposition of disciplinary proceedings.

During the period of suspension, Mr. Woods shall not (a) share in any legal fees arising from clients or cases referred by him during the period of suspension to any other lawyer or (b) share in any legal fees earned for services by others. Mr. Woods is further prohibited from having any contact with clients or prospective clients or witnesses or prospective witnesses when acting as a paralegal, legal assistant or law clerk under the supervision of a member of the Delaware Bar.

The Court of Chancery appointed Francis J. Jones, Jr., Esquire, as Receiver for Mr. Woods' law practice.

DISABILITY INACTIVE

Melissa E. Cargnino, Esquire
Supreme Court No. 563, 2015
Effective Date: October 19, 2015

By order dated October 19, 2015, the Delaware Supreme Court transferred Melissa E. Cargnino, Esquire, to disability inactive status, pursuant to Rule 19(b) of the Delaware Lawyers' Rules of Disciplinary Procedure. Ms. Cargnino is prohibited from practicing law in Delaware until such time as she is reinstated to active status.

HIGHLIGHTS FROM THE COURTS: SEPTEMBER 2015

By Antranig Garibian, Esquire

With so many interesting decisions regularly coming out of our Courts, choosing cases to write about is no easy task. This month's installment contains two cases with fact patterns which may not present themselves in many attorneys' practices, but do offer guidance on fundamental legal principles — one grounded in common law and the other in statutory authority.

No Dismissal for a Dog Bite Case at Law Firm's Office

This case is certainly not your everyday fact pattern — but offers a helpful reminder of basic premises liability principles. Plaintiff Chaka Maddrey brought suit against a local firm, Berkowitz and Schagrin, P.A., for injuries she allegedly suffered as a result of being bitten by a dog at the firm's offices. In *Chaka Maddrey v. Berkowitz & Schagrin, P.A.*, Del. Super., C.A. No. N15C-07-076, Rocanelli, J. (September 9, 2015), the Superior Court denied the firm's motion to dismiss.

Ms. Maddrey visited defendant's law office in Wilmington for an appointment with defendant when she was bitten by a dog. The firm moved to dismiss her personal injury lawsuit based on the fact that the dog was not owned by the firm, but that the dog was owned by the firm's secretary.

In denying the firm's motion to dismiss, the Court referenced black letter premises liability law. In Delaware, a business invitee is one who is invited to enter onto another's land or premises for the purpose of doing business. The duty of the land possessor to a business invitee is that "once the possessor knows, or should know, of a condition which poses an unreasonable risk of harm to the invitee, he must employ reasonable measured to warn the invitee or protect him from harm." *DiOssi v. Maroney*, 548 A.2d 1361, 1368 (Del. 1988). Accordingly, given the undisputed fact that Ms. Maddrey was a business invitee of the defendant law firm, whether the dog was owned by the firm was simply not dispositive of her claims.

Asbestos Personal Injury Case Dismissed on Statute of Limitations Grounds

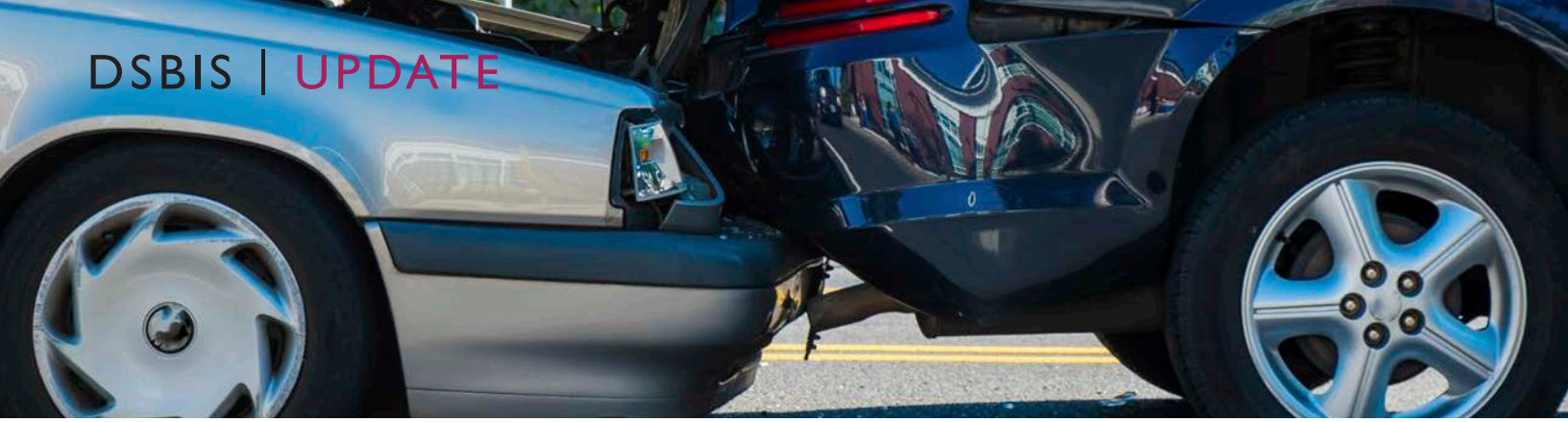
When a plaintiff brings a personal injury action in Delaware for injuries sustained in a state other than Delaware, which state's statute of limitations applies? This issue was discussed by the Superior Court in conjunction with Delaware's "Borrowing Statute," 10 *Del. C.* § 8121, in *Frank G. Schultz and Deloris Schultz v. American Biltrite, Inc.*, Del. Super., C.A. No. N13C-04-015, Wallace, J. (September 1, 2015) (Mem. Op.).

> *"When a plaintiff brings a personal injury action in Delaware for injuries sustained in a state other than Delaware, which state's statute of limitations applies?"*

Mr. Schultz alleged that he suffered from lung cancer as a result of his work in Michigan with asbestos-containing construction products. He testified that he was diagnosed with lung cancer in June 2010, triggering the statute of limitations period, and filed his lawsuit in April 2013. While the parties agreed that Delaware law governed procedural issues and Michigan law governed substantive issues, the parties disagreed as to whether the Court should apply Delaware's two-year statute of limitations period (10 *Del. C.* § 8119) or Michigan's three-year statute of limitations period (Mich. Comp. Laws Ann. § 600.5805). This question turned on the application of Delaware's Borrowing Statute, which provides that a cause of action that arises outside of Delaware cannot be brought in Delaware after the expiration of whichever is *shorter*, the time limited by Delaware law or the time limited by the law of the state where the cause of action arose.

Defendants argued that the Court must apply Delaware's two year limitations period, Plaintiffs contended that the sole purpose of the Borrowing Statute was to prevent forum shopping, which would not apply in this case, given the obvious fact that Delaware's statute of limitations period was actually shorter. The Court rejected Plaintiffs' argument, stating that the authority in favor of their position did not create a broad rule banning the use of the Borrowing Statute in all situations except for the "typical" scenario. Finding that the language of the statute is clear and unambiguous, the Court held that it was bound to apply the shorter two year limitations period. Accordingly, Plaintiffs' lawsuit was dismissed as a matter of law.

Antranig Garibian is the owner of Garibian Law Offices, P.C. He 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, loss prevention and general business matters. He can be reached at ag@garibianlaw.com.



DODGING STAGED AUTO ACCIDENT FRAUD

Presented by Kimberly A. Matthews, CIC, CISR

Consider this scenario: you are stuck in heavy traffic on a busy highway. Another car cuts off the driver in front of you, forcing him to slam on the brakes. You try to stop, but there is no time… and you rear-end the person in front of you. Sounds like an everyday accident, right? Not this time. Turns out you have been had by a well-organized criminal ring that staged the entire thing.

How It Works

This particular scam is called the "swoop and squat." The first car "swoops" in while the second car "squats" in front of you. After the "accident," everyone in the car you rear-ended — usually crammed full of passengers — will file bogus injury claims with your insurance company. Each will complain of whiplash or other soft-tissue injuries — things difficult for doctors to confirm. They may even go to unethical physical therapists, chiropractors, lawyers, or auto repair technicians to further exaggerate their claims.

Here are some similar scams to look out for:

- **The Drive Down:** You are attempting to merge when another driver waves you forward. Instead of letting you in, he slams into your car. When the police arrive, he denies ever motioning to you.
- **The Sideswipe:** As you round a corner at a busy intersection with multiple turn lanes, you drift slightly into the lane next to you. The car in that lane steps on the gas and sideswipes you.
- **The T-Bone:** You are crossing an intersection when a car coming from a side street accelerates and hits your car. When the police arrive, the driver and several planted "witnesses" claim that you ran a red light or stop sign.

How to Protect Yourself

According to the Federal Bureau of Investigation, staged accidents cost the insurance industry about $20 billion a year. Those losses get passed on to all of us in the form of higher insurance rates — at an average of $100 to $300 extra per car, per year.

- If you are in an accident, call the police immediately.
- Report accident claims to your insurance broker or carrier immediately. Do not settle on-site with cash.
- Be careful with your personal information — be mindful of identity theft.
- If you can, photograph the car and passengers and write down names, addresses, and phone numbers.
- Use medical, car repair, and legal professionals you know and trust.
- Drive defensively…do not tailgate!

Delaware State Bar Insurance Services (DSBIS) is here to help you with all of your auto insurance needs. Contact us today to learn about our auto policy coverage and personal risk solutions. DSBIS is a wholly owned insurance brokerage subsidiary of the Delaware State Bar Association and powered by USI Insurance Services. DSBIS was formed by Delaware attorneys for Delaware attorneys and serves all insurance needs for attorneys, their firms, their families, and their clients.

Kimberly Matthews is a DSBIS Consultant specializing in personal lines coverages and Senior Client Manager at USI Insurance Services. She may be reached at (302) 397-0185 or kimberly.matthews@usi.biz.

Access to Justice
For the Public Good

By Susan Simmons

Using *Pro Bono* Work to Develop and Perfect Your Craft

Any lawyer who watches the TV news, reads a newspaper (Do you still read the newspaper? I do.), or surfs the web is aware of the struggles currently facing the economy. This time lawyers are not unaffected; young litigators may be sitting at their desks with time on their hands. There is a better alternative than checking your alumni website or Facebook to see who may be currently unemployed —taking on *pro bono* matters to gain valuable experience and hone skills for the future while riding out this economic decline.

Now, why should any young litigator listen to this advice? A fair question. One obvious answer is that taking on *pro bono* matters provides young lawyers with the opportunity to do some good in the world — an important initiative in its own right, especially in these challenging times. Beyond that, though, there are important benefits to be had that are generally not available to young lawyers through traditional work in law firms of any significant size.

> "Pro bono *is a large part of how you may develop your legal skills over the years.*"

Ernest Poole states in *Brandeis: A Remarkable Record of Unselfish Work Done in the Public Interest:*

> The strategy of using *pro bono* work to develop and perfect one's craft as a lawyer was established over a century ago by a young litigator named Louis Brandeis. Young Louis, who appears to have been one of the first lawyers to incorporate public service systematically into the private practice of law, cut his legal teeth on a wide array of *pro bono* matters. While it is difficult to dispute that he did some great work for his clients, it is also difficult to dispute that the work ultimately did as much good for his own professional development. So active was he in taking on and relentlessly pursuing matters for public interest clients that people eventually dubbed him "the People's Lawyer." Most of us now know him better, not as Louis, the junior litigator, but as the person he ultimately became through perfecting his craft: Justice Louis Brandeis, an associate justice of the Supreme Court of the United States.

Your experience, although more limited, may also be influenced by the value of *pro bono* work in perfecting your craft. As a young lawyer, you may be routinely encouraged by senior lawyers to always have at least one active *pro bono* matter, even if the economy is humming along. *Pro bono* is a large part of how you may develop your legal skills over the years.

Both Justice Brandeis's work and the experience of many *pro bono* lawyers, then, suggest that *pro bono* work is not only good for the soul, but it can also be good for the career. In particular, three things about *pro bono* work stand out:

1. *Pro bono* work can provide early opportunities for substantial and meaningful direct interaction with clients.
2. It often offers young litigators the opportunity to develop skills through experiences that simply would not be available to them from paying work.
3. It can provide experience in a far wider range of subject matters than the standard commercial litigation fare.

Pro bono work often provides an opportunity for immediate, meaningful client contact. Any young associate who has worked on large-scale commercial proceedings knows that client interactions are typically in the realm of senior associates or partners on the team. In many law firms, particularly the larger ones, associates frequently express dissatisfaction with the minimal interaction they get with the firm's large corporate clients and the lack of immediate impact of their work as a result of this isolation.

Pro bono work, in contrast, often provides young associates a chance to interact directly with their clients. Such interactions provide important learning experiences for young associates and great opportunities to develop skills critical to the litigator's arsenal, such as active listening, effective face-to-face interpersonal communication, and, where appropriate, managing expectations. Moreover, client interactions can also be personally rewarding, allowing the young associate to connect directly with the person

or people who will be immediately and directly impacted by the attorney's work. In ways that large commercial cases tried on behalf of massive legal entities cannot, *pro bono* projects often present opportunities for face-to-face contact with clients and the chance to see firsthand the impact the work of the lawyer has in the lives of clients.

For all of these reasons, then, we encourage young lawyers to get involved in *pro bono* work, and the sooner the better. *Pro bono* work can help a young associate's career in very tangible ways. Specifically, by taking on *pro bono* projects, a young associate also takes on the responsibilities of the case that are, in the realm of paying clients, usually reserved for more senior members of a team. With these responsibilities come great learning and training experiences for the young associate and also the chance to work in areas of the law typically not encountered in law firm commercial practice.

There is, of course, no guarantee that taking on *pro bono* cases will mean that a young litigator will eventually sit on — or even argue before — the Supreme Court as in the case of Justice Brandeis. But, there can be little dispute that *pro bono* work will provide an excellent means to develop one's craft, not to mention that the right cases can go a long way in nourishing the lawyer's soul, even in these challenging times.

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
Wilmington, DE 19801
ssimmons@dsba.org
302-658-5279 ext. 101

REFERENCE:

Ernest Poole, "Brandeis: A Remarkable Record of Unselfish Work Done in the Public Interest," Foreword to Louis D. Brandeis, *Business—A Profession* at ix, l–li *(1914)*.

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.

OF NOTE

Condolences to the family of **Mark Harrison Froehlich, Esquire,** who died on September 27, 2015.

Condolences to **Daniel R. Losco, Esquire,** on the death of his mother, Eileen C. Losco, who died on September 28, 2015.

Condolences to the family of **Carole Jean Dunn, Esquire,** who died on October 2, 2015.

Condolences to **The Honorable Kenneth S. Clark, Jr.,** on the death of his father, Kenneth S. Clark, Sr., who died on October 9, 2015.

Condolences to the family of **The Honorable Alan N. Cooper,** who died on October 18, 2015.

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

Meet Johnna Darby

The Delaware State Bar Association's New Executive Director

By James G. McGiffin, Jr., Esquire

Johnna Darby has been on a quest to find the right job for her entire professional life, and she has taken more of a scenic than direct route. It may be that she has now landed that job, prepared to thrive.

I sat down with Johnna at the DSBA office recently to find out why she is interested in working as the Executive Director of this unique agency. What I learned was that she came to this job one step at a time, learning lessons at each opportunity.

Johnna is a native Delawarean and a graduate of the Christiana High School. She began her professional life right after high school, as a legal secretary. Johnna worked for several Delaware law firms, including Biggs & Battaglia, Tybout Redfearn Casarino & Pell, Prickett Jones Elliot Kristol & Schnee, and Richards Layton & Finger. Along the way, she decided lawyering was something interesting that she could do, so she commenced her formal higher education. At the University of Delaware, she studied English and Communications and earned a Bachelor's Degree. Then, she moved to Washington, D.C., and enrolled in the Columbus School of Law at The Catholic University of America. She was interested in telecommunications and the law, and Catholic had an institute with that particular emphasis. Throughout her educational career, Johnna worked full-time, eventually working for a Federal Communications Commissioner.

Johnna returned to Delaware when she completed her law degree and clerked for Judges Graves and Lee in the Superior Court in Sussex County, and then for Judge Cooch in New Castle County. She could not say enough about how much she gained from those experiences and how grateful she was to those judges for their wisdom and guidance.

When Johnna left the clerkship job, she was not quite ready for full-time lawyering, so she went to work for Lexis as a sales representative, and her clients included Delaware's larger law firms. She then worked for McCarter & English in the Wilmington office. She took and passed the Pennsylvania and New Jersey Bar examinations and moved to Harrisburg, Pennsylvania, to work with the firm of Rawle & Henderson. For family reasons, she returned to Delaware and to McCarter & English.

Johnna was working with attorney Paul Bradley at McCarter & English when he left to form the firm Maron Marvel Bradley & Anderson, and she went with him. She then bit the bullet and took (and passed) the Delaware Bar exam. She stayed with MMB&A for a few years, struck out on her own for a few years, and then joined the boutique law firm Hiller & Arban.

> *"We have a great Bar, and Delaware is a great place to practice, but we cannot take that for granted."*

At this point in her career, Johnna has decided that the more mundane aspects of law practice — the marketing, the billing and collections, the administrative requirements — have drained some of the joy out of the practice of law. This realization allowed her to be open to a new path at the same time DSBA was looking for the successor to its Executive Director of long standing, Rina Marks.

Johnna was familiar with Rina and her work. Johnna served on the DSBA Executive Committee for a couple of years and also worked a lot with the Litigation Section (as Secretary, Vice Chair, and Chair). Fortunately for all concerned, Rina has agreed to remain with DSBA until the springtime to give Johnna the great benefit of her experience and support.

Succeeding the Executive Director of 24 years is a challenge by itself, and Johnna is quick to recognize Rina's remarkable, and intimidating, legacy. But, she also appreciates the words spoken to her by former DSBA President and ABA Delegate Harvey Rubenstein: "Don't fill her shoes, make it your own."

Johnna's scenic route has provided her with the opportunity to develop a wide range of skills that will be useful in her new role. With DSBA's annual leadership shuffle, Johnna will find herself supporting a different president each year. Each president will have a particular agenda, to be sure, but will also present with a particular set of strengths and weaknesses. Some (like your writer, 2011 - 2012) will have more of the latter than the former. Others will be truly remarkable people with boundless intelligence, energy, enthusiasm, and ambition. Either way, "The president is the star." She will provide the behind-the-scenes support. "I am well-suited to this," she explains. Johnna's work as a legal secretary for a variety of attorneys, as well as her work as a lawyer for a variety of clients and as local counsel for other lawyers, has taught her flexibility in service and diplomacy in relationships. At the same time, she looks forward to consistently leading the staff of DSBA, a group of professionals she already sees as "an incredible team."

I asked Johnna whether she has an agenda for DSBA as she begins this job. She thought it a bit early in her tenure for such a question, but allowed that there are some issues upon which she thinks DSBA can have some good influence. "With more out-of-state counsel taking a more active role in more Delaware litigation, as well as the growth of the Bar in general, I have noticed a denigration of 'The Delaware Way' and I want to help stem that tide, however slight, and even reverse it." She is certainly not alone in that observation. She hopes to find ways to encourage Delaware lawyers to demonstrate respect for each other while zealously representing their clients, and still maintain the civility that has always characterized the Delaware Bar. "We have a great Bar, and Delaware is a great place to practice, but we cannot take that for granted." She is also interested in expanding DSBA's social media presence. And, perhaps in reaction to Rina's notorious campaign to promote healthy food to even the most uninterested lawyers, Johnna exclaims, "Cake is making a comeback at DSBA!"

Though Johnna has lots of experience with the Delaware Bar and with a few of the DSBA sections, she is anxious to get to know everybody, including those not yet involved. She has happily accepted the unique challenge of this position — to be a leader and a servant at the same time. "I hope to grow into the dual role." Her strength of character and her courage to pursue her own happiness will serve her well as she helps DSBA begin a new era of service to the legal community.

When you see her, stop and say hello. You will be rewarded with a bright smile and an abundance of sincere charm.

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.

By Carol P. Waldhauser, Executive Director

A Word to the Wise

No Work Function is Ever a Party – It is Part of Your Ongoing Audition

By Denise D. Nordheimer, Esquire

This month, I am pleased to welcome Denise D. Nordheimer, Esquire, as guest columnist in the DE-LAP ZONE.

Ms. Nordheimer is a Delaware attorney who practices in Wilmington, DE. When Ms. Nordheimer is not practicing in Estate Planning, Estate Administration, Adult Guardianships or Fiduciary Litigation, she is the new Chair of the DSBA'S Solo and Small Firm Section and plans functions for the Section. Please visit her website at www.nordheimerlaw.com for more information.

• • •

For years, I have told some funny stories to friends about one of the many crazy assignments I had in my years working at a large law firm in New York. Some of the most memorable stories came about because my beloved former employer would throw a really extravagant holiday party every year, which in and of itself was memorable.[1] For as long as anyone could remember, the party was held at the Rainbow Room at Rockefeller Center on a prime Friday evening in mid-December. There was live music, top shelf open bars, and different themed food in every room. Add to that, 1400 people who were working 80-hour plus weeks and you had all of the ingredients for a great party — or a powder keg.

Early on in my employment (I was on the support staff and had not gone to law school yet), it was determined by the powers that be[2] that I had the right demeanor to "work" at the party. Thus began my indoctrination into trying to save the careers, mostly of naïve and overworked associates, at the annual office holiday party. It was explained to me, that sometimes young, overworked, usually smart people make terrible mistakes in situations where there is access to lots of liquor. It was further explained that it would be much appreciated[3] if I would join the team which tried to save the associates from themselves.

As I recall, my instructions were that I would simply go to the party like everyone else, but when I saw one of these potential disasters in the making, I would run interference. A veteran of Catholic school, I had seen many such instances of the nuns running interference on our behalf, and thus understood the general rules of engagement for these kinds of things. Although I had some actual tools at my disposal (car services to get people out of there discreetly), mostly, like the nuns, I had to insert myself into each little potential disaster and try to redirect the person who was in professional danger. As you can imagine, it was a long night.

What the young associates often failed to understand was that this was not a party at all — despite the surroundings and the invitation calling it a "party." It was part of their ongoing audition. Every one of the associates had worked hard for the opportunity to get an offer from a firm like this since their first high school debate. Having achieved this, I am sure they wanted to enjoy something that seemed like a fruit of their success. This was a big mistake. The stress of their daily lives combined with all of the temptations at the party often proved too much for many not to

1. This extravagance was in direct contradiction to its typical understated ways, but everyone happily accepted this inconsistency.

2. "Powers that be" are real things in these places.

3. Translation – "This is a direct order."

fall prey. There were times my colleagues and I could not save someone from his or her own excess and the resulting bad decisions. It would be impossible to list every "bad decision" I witnessed, but let's say it included things like messy drunkenness, emotional outbursts, dirty dancing, and sin of sins, enjoying the party way too much. I saw many promising legal careers die at the Rainbow Room. The inevitable walks of shame the following Monday were heartbreaking because by then the person had no doubt understood the damage they had done to their reputation.

Although it is fun to tell my story about how I was the "undercover party police" for years, my serious advice to anyone going to an event sponsored by your employer would be:

1. Be social (that is a test too);
2. Be appropriate in every way; and
3. Do not ever mistake it for a party.

• • •

At The Delaware Lawyers Assistance Program (DE-LAP), your well-being really matters to us. In fact, part of our mission is to assist all Delaware lawyers in being a healthier, happier lawyer. Also, the DSBA and DE-LAP want you to understand that wellness is much more than just eating right and exercising, it is really about expressing health and vitality across the whole spectrum of your life: physically, mentally, socially, emotionally, spiritually, and professionally.

For that reason, our weekly Wellness seminars are scheduled to return in January 2016 with more information to assist you with health, wellness, and stamina and yes even your mojo! For more information, call (302) 777-0124 or e-mail Carol Waldhauser at cwaldhauser@de-lap.org or Rina Marks at rmarks@dsba.org. We want to hear from you!

Denise D. Nordheimer practices estate administration, estate planning, adult guardianships, and fiduciary litigation at Nordheimer Law and can be reached at denise@nordheimerlaw.com.

BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

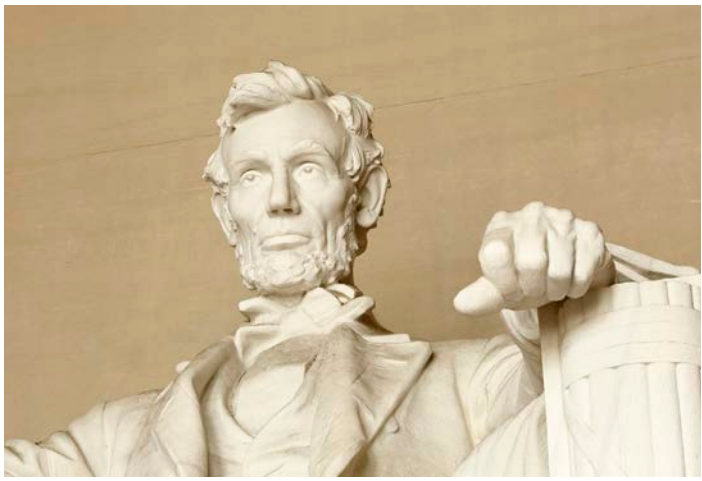
A Case of Serious Consequences: *Lincoln's Greatest Case*

By Brian McGinty (Liveright Pub. Corp. 2015)

Given his near universal recognition as our greatest president, it is often easy to forget that Abraham Lincoln was also a trial lawyer, and a pretty good one at that. Given our tendency to take history and the law for granted, it is also easy to forget that both are the result of countless prior events and trials. In *Lincoln's Greatest Case: The River, the Bridge, and the Making of America*, attorney Brian McGinty takes us back to the 1850s, when railroads first began to reach out across the Mississippi River and threatened to supplant steamboats as the major means of transportation for goods and agricultural products in the Midwest. When the steamboat *Effie Afton* crashed into a pillar of the Rock Island Bridge — the first railroad bridge ever to span the Mississippi River — the stage was set for a first-of-its-kind case that could determine the fate of railroad transportation and the future of the Mississippi River.

The first steamboat to ply the Mississippi was constructed in 1811 just outside Pittsburgh, and, upon reaching New Orleans, was not powerful enough to make the return trip up river. But, by the 1830s, steamboats were regularly travelling up and down the great river. Meanwhile, railroads were just getting their start, mainly connecting various waterways to one another, so that goods could be shipped west to east, and Midwestern agricultural products could reach markets on the East Coast.

Construction began on the Rock Island Bridge in 1853 to connect Illinois and Iowa. Once completed, it would allow goods to be shipped via rail from west of the Mississippi to Chicago, and thence from Chicago by rail to the East Coast, as rail lines had recently connected Chicago to the Atlantic states. Rail transport threatened the dominance of the steamboat industry and so, naturally, litigation ensued to enjoin construction of the bridge. The injunction was denied, construction was completed, and the bridge officially opened to traffic on April 21, 1856.



The *Effie Afton* arrived at Rock Island on the morning of May 5, 1856. It was carrying 350 tons of cargo as well as 150 passengers and 50 crewmembers. Upon arrival, the captain found a number of boats tied up below the bridge, and, looking up river, he could see a number of boats on the other side as well. Strong winds and a swift current had persuaded the various river pilots to wait until there was less wind before attempting to cross under the bridge. The next morning, with the wind having died down, the *Effie Afton* left the pier and headed up river. There was another boat ahead, but the *Effie Afton* was a more powerful boat and easily passed the boat in front. Coming up to the bridge, though, the *Effie Afton* swung wide and hit one of the bridge pillars. The boat caught fire and sank, and much of the bridge came down as well. All of the passengers managed to make it to shore, but the cargo and much livestock were lost. The wreckage from the bridge and the boat were carried downstream where they lodged in a sandbar near the Rock Island wharf where the *Effie Afton* had started out earlier that morning.

The stage was now set for the great clash of interests: Steamboats versus railroads. The central question being whether the bridge (and, therefore any railroad bridge) was an obstruction to navigation and should, therefore, not be permitted.

The steamboat's owners wasted little time, filing their suit in October, 1856, in the United States District Court for the Northern District of Illinois. The suit alleged that the piers of the bridge were constructed in an unsafe manner and that on the date of the accident, while the *Effie Afton* was being piloted "with due care and skill," it was "forcibly driven by the current and eddies caused by" the bridge against one of the bridge's piers. The total losses claimed amounted to $930,000, a staggering sum for its day.

Enter Abraham Lincoln. He was asked to join the defense team by the railroad's lead attorney and its secretary, Norman Judd, about six months after the lawsuit was filed. Lincoln's first appearance in the case was to argue a motion for continuance. Lincoln asked that the trial be continued until December, 1857, while the plaintiff's attorney argued they were prepared to start trial immediately. The judge split the difference and set trial for September.

The trial went 11 days, with over 100 witnesses, before closing arguments, which lasted another 4 days. Lincoln was the last of the railroad's attorneys to make closing argument. Ultimately, the jury could not reach a unanimous verdict.

Thereafter, the case was never retried. The bridge was rebuilt, and several more bridges were built, so that by 1880, some thirteen railroad bridges spanned the great river between St. Louis and St. Paul.

Lincoln received his fee at the end of trial and had no further involvement. By all accounts, he acquitted himself well during the trial and added to his already excellent reputation. Moreover, in working with Norman Judd, Lincoln formed an alliance that would help him gain the Republican presidential nomination just three years later (Judd became chairman of the Illinois Republican Party, and helped Lincoln obtain the party's nomination for senate in 1858 as well as the presidential nomination in 1860).

The *Effie Afton* case, itself, had the potential for much mischief for the country's future. Had the case resulted in a plaintiff's verdict, the Rock Island Bridge might never have been rebuilt and the future of railroad transportation easily set back decades. St. Louis had been the great city of steamboats, but Chicago would become the great city of railroads. New technologies are often disruptive and cause changes that later generations take for granted; but history might easily have proceeded along a different path if the jury in a largely forgotten case had decided differently on a September day in 1857. At the same time, had the accident never happened, and the lawsuit never brought, Lincoln might never have forged his alliance with Norman Judd, there might not have been the Lincoln Douglas debates, and no Lincoln as president. Lincoln's greatest case may also have been one of the most important in our history, even if it is largely forgotten.

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.

By James G. McGiffin, Jr., Esquire

Mike Cochran

Why Would Anyone Leave Middletown?

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

• • •

Wilmington attorney C. Malcolm Cochran IV (Mike, to his friends) is very comfortable at home, and by home, we mean his ancestral home. He has lived in the Middletown area since birth, and his family has been there since before Delaware became the First State. For a sophisticated litigator, Mike has simple tastes.

Mike first left home after high school when he wandered a few short miles up Route 896 to the University of Delaware. There, he met a teacher who would change his life — Jim Soles. Professor James R. Soles, the late chair of the Department of Political Science and International Relations, is legendary for his impact on Delaware through his many disciples, including Senator Tom Carper, U.S. District Court Judge Len Stark, Chancellor Bill Chandler, among the many. Mike had thought he was destined to return to Middletown to work in his father's auto repair business, but Professor Soles encouraged Mike to consider law school and even took him to visit a few. Mike credits Soles with awakening his interest in the law and in community and government issues.

During the summer before law school, Mike worked as an intern with then-Senator Joe Biden in his Washington, D.C. office. One task from that job stands out in his mind. Mike was assigned to research legal issues related to a proposal by Senator Jesse Helms to amend the Constitution and permit prayer in public schools. Mike was hooked.

Photo by Hope Cochran

Mike with dogs Woody and Henry.

Law school for Mike was the Columbus School of Law at The Catholic University of America. Washington, D.C., is a great city for a law student. Mike did what one would expect of a future business and commercial litigator — *Law Review*, Moot Court, Mock Trial. While at CUA, Mike interviewed for a summer job with Richards, Layton & Finger attorney Bill Wade. Apparently, the interview went well, as Mike has spent nearly his entire career with that law firm doing what he finds most interesting — litigating cases in a wide variety of areas, including a wide range of complex business disputes, trade secret and civil rights cases, estate and trust, healthcare, and various others.

Early in his career, Mike also worked as an attorney for the House Democrats in Delaware's General Assembly. Mike met Hope, now his wife, at Legislative Hall during his stint as a House attorney. Like Mike, she was

raised on a farm. And, like Mike, she was interested in politics. Together they have raised three children: Lucy (a Nashville fiddle player), John (also in Nashville, working in music management), and Sam (a freshman at the University of Maine, pursuing engineering studies).

Mike credits former RLF partners Jim McKinstry (1926-2013) and John Parkins (now on the Superior Court) as his mentors. He also acknowledges the value placed on *pro bono* work at RLF. Mike succeeded Jim McKinstry in chairing the firm's *pro bono* efforts and he is justifiably proud of the work RLF lawyers have done in the field, including (among other causes) its support of the Office of the Child Advocate, representing children otherwise lost in the child welfare system.

His interest in the child welfare system runs deep. For many years, Mike has chaired the Child Protection Accountability Commission, a body that oversees state child welfare policy. Mike often returns to Legislative Hall to advocate for improvements in services to children.

But, Mike might be most happy when he is outdoors. He grew up hunting and fishing, and he still gets outdoors whenever he can. Whether he is crabbing on the Bohemia River, building a duck blind, or finding a good spot for a deer stand, Mike is in his element. He has two bird dogs that go with him. One gets the sense that these dogs are not pets, they are partners in the process. He also appreciates the company of a group of men with whom he has hunted and fished since returning to Delaware from law school.

A relatively new endeavor for this hunter/litigator is the stage. Although, Mike denies any musical ability, Hope begs to differ. She has heard him sing in the shower, and she encouraged him strongly (that is, compelled him as only a spouse can) to fall in with Judge Rob Young and the other members of the Bar who produce a biannual musical comedy to raise money for the Combined Campaign for Justice. This year's production, *The Crucible: Plymouth Rocks*, will display Mike (as Judge Hawthorne) and many other lawyers acting, singing, and dancing into utter hilarity in a version of the story that Arthur Miller would likely find deeply disturbing, but that audiences will relish. Despite the fact that Mike's last acting gig was as a raindrop in Mrs. (Dolly) Thornton's second grade class play, Mike's singing, his comic timing, and his ability to avoid injury while dancing will surprise and impress even the most severe critic. And, the real benefit for Mike, aside from the funds raised for Delaware's nonprofit legal services providers, is the therapy of giving his brain a break and letting his frustrations melt away as he rehearses in the company of many talented people who just happen to be lawyers.

It will surprise no reader of this column that big-time litigation is stress-producing stuff. Mike Cochran can smile easily because he knows where to deal with that stress — in a duck blind or a chorus line.

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.

By Chris Mourse

T3

Tips, Tools, and Techniques for Small Firms and Solos

Small Law Cyber Vulnerability

There are lots of articles being written about the vulnerability of law firm data. Data breaches continue to grow in both numbers and sophistication. Why are law firms targets? Because that is where the sensitive data is. In today's world, this data is an extremely valuable currency. There are certainly assaults that are only about ransomware (i.e. making you pay to get the key to unencrypt the data they have essentially stolen from you by locking up your computers). But, to a law firm it is probably more serious if the assault is about stealing your client's confidential data. Poor security practices in this day and age could destroy the reputation and future of a small law firm. And, it is not just your computers that are targets. Mobile devices and smart phones are increasingly being targeted by cyber crooks.

Hacking is an international organized criminal business. A lawyer has an ethical obligation to protect the confidentiality of clients' information.

Kiffin Hope of the ALPS Corporation has put together the following steps that a small firm can do. They are not simple or necessarily inexpensive steps in terms of your time and wallet. But, the reality is that you need to focus on them if you maintain any confidential client information.

1. Utilize the best tech barriers you can afford.
2. Educate yourself and your staff on cyber security best practices.
3. Establish a cyber security policy for your staff and stick to it.
4. Have a cyber breach incident response plan in place and practice it.
5. Get cyber liability insurance coverage.
6. Be careful where you click when you are online!
7. Choose strong passwords and establish a schedule to change them regularly!
8. Encrypt confidential information!

Marketing: Email Addresses

Lawyers should have a professional email address. Hotmail, Yahoo, AOL, and Gmail do not provide a good first impression and could reflect negatively on you by prospective new clients. The legal profession is rooted in tradition and formality … your email address should reflect this.

Spend the money and get your own domain name. It is not expensive. Do not try to be cute. People are looking for good lawyers, not clever domain names. And, of course, do not be misleading.

Plan on creating a website as soon as you can, but immediately create an email address with your new domain name that reflects professionally on your law practice. And, it will not hurt to ask your domain name provider if they have the ability to provide you with encrypted and protected email services.

Technology

Pick technology that will improve the way you practice law and the way you live. Technology should be a tool that allows you to deliver legal services to your clients. The newest gizmo is only a game changer if it aligns with how you practice and helps you to be more efficient. That being said, most small firms and solos do not have the resources of a large law firm behind them…but selecting the right technology package(s) can make a big difference in the efficiency of your practice, providing you with the time to lawyer, not searching for documents or client contact information, and to compete with the big guys. Define areas where you need to be more efficient

> *"Technology should be a tool that allows you to deliver legal services to your clients. The newest gizmo is only a game changer if it aligns with how you practice and helps you to be more efficient."*

and seek solutions that will solve them. Do not just listen to sales pitches from your consultants or vendors; discuss with them your specific needs and make sure they address how they will specifically handle them. Talk with your peers and ask them what technology they are using. When you have selected technology, the next step is for you to become proficient in it. Get training. Take the on-line tutorials. Join user groups. In fact, you might try joining the user groups before you buy the software or hardware. Who knows what you will learn.

Bonus Business Tax Tip

From the Small Firm & Solo Practitioners Section Chair, Denise Nordheimer

Now is the time to look at your income tax situation with your accountant. The fourth quarter is where you really have some leeway to have a look at where you are and save yourself from a really big "make up" payment early next year (your punishment for having a great year!). Anyone who has been in business a few years knows that estimated payments are just that — and sometimes with a great year, or even a great quarter, they can be way too little. Call your accountant now (I promise you they will be glad for your call) and provide them with the information they need to look at your situation and advise you. If they do not understand this, get a new accountant. There are many things you can do here in the fourth quarter that are less painful than writing a giant check to the IRS because your estimated payments were too low. Remember, the smart small business owner's only worry on December 31st should be whether the champagne is cold enough for midnight!

Chris Mourse is the Law Practice Management Advisor for the DSBA. He can be reached at cmourse@dsba.org.

THE DELAWARE STATE BAR ASSOCIATION PRESENTS

DR. MARTIN LUTHER KING, JR.

Annual Breakfast & Statewide Day of Service

•

DATE/TIME:

• Monday, January 18, 2016 • Breakfast: 8:00 a.m. •

Keynote Speaker

Fred D. Gray, Esquire

Veteran Civil Rights Attorney,

Represented Rosa Parks and Dr. Martin Luther King, Jr.

LOCATION:

Chase Center on the Riverfront • 815 Justison Street • Wilmington, DE 19801

TICKET PRICES:

Tickets: $35.00/person • R.S.V.P. Deadline: January 11, 2016

PLEASE COMPLETE THE ATTACHED FORM TO PURCHASE TICKETS AND/OR SPONSORSHIPS. ADDITIONAL INFORMATION ABOUT THE SERVICE PROJECTS WILL BE CIRCULATED AT A LATER DATE.

PLEASE DIRECT ALL QUESTIONS TO
THE DELAWARE STATE BAR ASSOCIATION OR
EVENT CO-CHAIRS, GREG B. WILLIAMS, ESQ. AND MARY I. AKHIMIEN, ESQ.

Delaware State Bar Association Martin Luther King, Jr. Breakfast and Statewide Day of Service Sponsorship Opportunities

Platinum $5,000	Gold $3,500	Silver $2,500	Bronze $1,500	Friend $500
One Designated Table of Ten (10) at the Breakfast	One Designated Table of Ten (10) at the Breakfast	Half Table of (5) Seats at the Breakfast	Three (3) Individual Tickets to the Breakfast	Recognition of Sponsorship in DSBA Journal
Onsite Signage	Onsite Signage	Onsite Signage	Onsite Signage	
Full Page Ad in Breakfast Program	Half Page Ad in Breakfast Program	Quarter Page Ad in Breakfast Program	Recognition of Sponsorship in DSBA Journal	
Recognition of Sponsorship in DSBA Journal	Recognition of Sponsorship in DSBA Journal	Recognition of Sponsorship in DSBA Journal		

✂- -

CONTACT INFORMATION

Name of Sponsor:
As you would like it to appear in listing
____

Contact Name: ____________________

Address:__________________________

City: ________State: ___ ZIP:_________

Phone: ___________________________

Email Address: ____________________

Sponsorship Level (Please check one)

○ Platinum $5,000
○ Gold $3,500
○ Silver $2,500
○ Bronze $1,500
○ Friend $500

Payment by Credit Card:
__MasterCard __Visa __Amex __Discover

Credit Card #:_____________________

Name on Card: ___________________

Expiration Date: __________________

Billing Zip Code: _________________

Payment by Check:
Amount Enclosed: $_______________

Please include name, firm, and DE ID numbers of all attendees with response. Refunds issued if cancellation is received no later than one week prior to an event. All refund requests must be in writing. Unpaid registrants who fail to attend the event are responsible for the full registration fee. Call DSBA at (302) 658-5279 for more information.

Please make your Check payable to:
Delaware State Bar Association

Mailing Address:
Delaware State Bar Association
Attn: Martin Luther King, Jr. Breakfast
405 North King Street, Suite 100
Wilmington, Delaware 19801
Fax: (302) 658-5212

Completed Sponsorship Forms and Checks for Sponsorships are due by December 30, 2015.

Individual tickets are available for purchase for $35 per person. Visit www.dsba.org for online registration.

POSITIONS AVAILABLE

DORSEY & WHITNEY LLP is seeking an associate attorney with four or more years of experience to join the Finance & Restructuring Department in its Wilmington, Delaware office. This associate will have the opportunity to work on corporate transactional, lending, and opinion matters. Qualified candidates will have four or more years of experience in corporate transactional, lending, and/or opinion matters; excellent analytical, research, and writing skills; and strong academic performance. Delaware bar admission is required. Dorsey & Whitney LLP is an Equal Opportunity Employer. Apply online at www.dorsey.com/careers.

SUCCESSFUL, SMALL LAW FIRM is offering attractive terms to an experienced attorney(s) with a solid book of portable business. The firm's primary "wish list" is for a skilled attorney who works well in a collaborative environment that compliments their current practice areas, including estate planning, estate administration, fiduciary litigation, adult guardianships and family law. Attorneys will find an exciting and collegial atmosphere here. The firm has newly remodeled, beautiful offices in a popular location, complete supportive services and free parking. If you want to maximize your current practice, contact denise@nordheimerlaw.com today to discuss this great opportunity.

ATTORNEY WANTED: Logan & Petrone, LLC is seeking to add an experienced attorney to complement its practice group with potential to develop new areas. Practical construction experience, whether professional or non-law related an extra, but not necessary. If you're a motivated, business-minded lawyer, send your confidential resume w/salary requirement to Vicky Petrone, 100 W. Commons Blvd., Suite 435, New Castle, DE 19720 or VPetrone@loganllc.com.

ATTORNEY WANTED: Tybout, Redfearn & Pell seeks attorney with 3-5 years experience working in civil litigation law. Salary commensurate with experience. Excellent growth opportunity. Send resume to: Susan L. Hauske, Esquire at TR&P, P.O. Box 2092, Wilmington, DE 19899.

GROWING SUSSEX COUNTY LAW FIRM SEEKS NEW ADDITION: Bustling boutique law firm with offices in Rehoboth Beach, Millville, and Millsboro is looking to add an attorney. Candidates must be energetic, conscientious and entrepreneurial minded with skills that complement the firm's real estate and estate planning practice. Candidates who thrive in a fast-paced, industrious and team oriented environment and who are willing to generate new ideas as well as cultivate new business for the firm are encouraged to inquire. Please send a confidential email expressing your interest to susan@spwdelaw.com for consideration.

BAIRD MANDALAS BROCKSTEDT, LLC, has an immediate opening for an attorney in its real estate practice group. The position is based in the firm's Lewes, Delaware office with coverage in both Kent and Sussex counties. This is a great opportunity to live and work at the beach, and join a team atmosphere at a dynamic and growing law firm. Please email cover letter and resume to diane@bmbde.com.

EMPLOYMENT OPPORTUNITIES: Jr. bankruptcy and litigation associate position; mid-level transactional real estate associate positions, partners or practice area groups with minimum portables, and more. Please contact kgattuso@klglegalconsulting.com for more information. All inquiries are confidential.

POSITIONS WANTED

EXPERIENCED, DELAWARE barred corporate and commercial litigation attorney looking for a part-time position. Please contact kgattuso@klglegalconsulting.com for more information. All inquiries are confidential.

OFFICE SPACE

FURNISHED WILMINGTON OFFICE: large windows, desk, credenza, file cabinets,WiFi, fax, Market & 7th, 3rd Floor, elevator, courts 2 blocks, 154 sq. ft., $500/month, (302) 888-1290.

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

THE JUDICIAL *Palate*

By Susan E. Poppiti, Esquire

A Charming BYOB in the City of Neighborhoods

According to Ruth Reichl, "You don't want to give people what they want. Give them something that they didn't know that they wanted." I did not know that I wanted a Bloody Beet Steak until dining at The Farm and Fisherman.

This Philly BYOB is owned by husband and wife team Josh and Colleen Lawler. Both have impressive resumes. Josh served as chef de cuisine of Telepan, one of New York's top New Americans, while Colleen was sous chef at Picholine, the Upper West Side Mediterranean. The couple returned to their hometown (they are both Drexel alums!) to open the intimate "farm to table" on Pine between 11th and 12th Streets.

The setting is inviting. The large pane glass window overlooking Pine Street allows for lots of light while the white tablecloths provide an elegant touch. The 30 seat dining room is cozy, yet free of hubbub. On both occasions I visited, the room was full, but not noisy. My table companions and I felt as if our conversations were private, and we visited with ease — no shouting necessary, as in other small establishments.

Now, back to the signature dish — the Bloody Beet Steak. While the menu changes with the seasons, the Bloody Beet Steak is a constant. The thick slabs of beef, I mean beet, are roasted and topped with aged balsamic. The earthy root vegetable is transformed into a rare slice of beef, tender and meaty, and the tanginess of the vinegar is perfectly balanced by the refreshing yogurt.

I have experienced two seasons at The Farm and Fisherman to date — summer and fall. Both menus contained a blend of meat, poultry, and fish. The summer menu was light and bright. My favorite starter was the Maine Crab Salad with cucumber gazpacho, radish, and yogurt. The cucumber was a cooling complement to the peppery radish. The Smoked Bluefish starter was a smoky treat accompanied by mustard greens and fiddleheads — symbols of summer.

For main courses, we enjoyed two fish dishes — the Grilled Sturgeon with pickled ramps, sunchokes, and flowering kale and the Roasted Sea Scallops with Anson Mills grits, asparagus tips, and nettles. The seafood was cooked to perfection; and, what would a summer seasonal menu be without ramps, asparagus, and nettles — a forager's favorites?

On my second visit, the Bloody Beet Steak had a pleasant variation; it was served with amaranth rather than baby greens. We also savored our other first course, the Purple Kohlrabi and Honey Crisp Apple Salad with mint, cashews, and lemon, which was crunchy and bittersweet.

The most noteworthy of our second course selections was the Long Island Blowfish Tails with risotto, butternut squash, and trumpet mushrooms. The risotto was silky smooth, and the meaty little tails offered a slight sweetness to counter the earthiness of the mushrooms. The Handmade Pappardella Pasta with Espelette sausage and pecorino was velvety and zesty. The Basque region would be proud to lend its native chili pepper's name to this dish.

The richest of our main courses was the Lamb Loin and Belly with green beans and Jacob's cattle beans. The loin was the highlight due to its "melt in your mouth" tenderness and the smoky tomato sauce that mirrored the changing fall foliage. My Crusted NJ Bigeye Tuna with farro and butternut squash was rare at its center and crusted with perfect pepperiness on the outside.

The Farm and Fisherman's Signature Starter: Bloody Beet Steak

The dessert finale was outstanding. We ordered two to share, but our thoughtful server, Jessica, brought us all three options for a thorough sampling. The Salted Chocolate Napoleon with caramel, earl grey tea, and dark chocolate was our favorite. The Filo dough coated in honey created crackling layers to enclose the dark chocolate filling. The Black Sesame Mousse was the most creative combination of tastes — the nuttiness of the sesame seeds with the smear of Concord grape was a sophisticated twist on a PB&J. The more traditional Vanilla and Lemon Panna Cotta was topped with pumpkin seeds and cider apples — an appropriate way to ring in the fall.

Just a few blocks from the Avenue of the Arts, The Farm and Fisherman is ideal for a pre- or post-Kimmel Center performance. Of the myriad flavors on the ever-changing menu, I am confident that you will have something "you didn't know that you wanted." Blowfish tail risotto. Need I say more?

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.cucinadipoppiti.com.

Delaware State Bar Association

2015 Awards Luncheon

Thursday, December 10, 2015
12:00 Noon
The du Barry Room, Hotel du Pont
Wilmington, Delaware

Daniel L. Herrmann Professional Conduct Award

Edmund D. Lyons, Jr., Esquire
The Lyons Law Firm

Richard A. DiLiberto, Jr., Esquire
Young Conaway Stargatt & Taylor, LLP

Government Service Award

Ciro Poppiti III, Esquire
Poppiti Law, LLC

Women's Leadership Award

Lisa B. Goodman, Esquire
Young Conaway Stargatt & Taylor, LLP

Distinguished Mentoring Award

Dana Harrington Conner, Esquire
Widener University Delaware Law School

Young Lawyers
Distinguished Service Award

N. Christopher Griffiths, Esquire
Connolly Gallagher LLP

Awards Luncheon • Thursday, December 10, 2015 • 12:00 Noon

Please RSVP by December 3, 2015

Please include names and DE ID numbers of all attendees with response.

Name: _____ DE Bar ID No.: _____

E-mail (required): _____

Firm: _____ Phone: _____

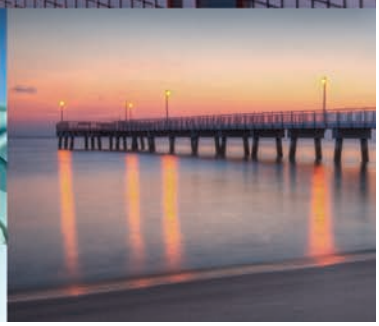
Address: _____

Check/Charge in the amount of $ _____ enclosed. ($48 per person) Please make checks payable to DSBA.

o MasterCard o Visa o Amex o Discover Expiration date: _____ Card No.: _____

Signature: _____ (Required if card purchase) Billing Zip Code: _____

Please return completed RSVP to DSBA: By fax to (302) 658-5212 or mail to 405 North King Street, Suite 100, Wilmington, DE 19801.Refunds issued if cancellation is received no later than one week prior to an event. All refund requests must be in writing. Unpaid registrants who fail to attend the event are responsible for the full registration fee. Call DSBA at (302) 658-5279 for more information.



Comprehensive **Business & Personal** Representation

- **Business Bankruptcy**
- **Corporate & Commercial Litigation**
- **Business Transactions, Strategic Planning and Counseling**
- **Employment Law**
- **Family Law**
- **Healthcare Industry Practice**
- **Intellectual Property Litigation**
- **Personal Injury Litigation**
- **Professional Liability Litigation**
- **Real Estate & Zoning**
- **Tax, Estates & Business Practice**

We look forward to serving you in one of our six offices.

Visit: **www.morrisjames.com** Call us: **302.888.6800**

Morris James
DELAWARE

Wilmington-Downtown | Wilmington-West | Newark | Dover | Georgetown | Rehoboth Beach