

**DELAWARE STATE BAR ASSOCIATION
E-DISCOVERY AND TECHNOLOGY LAW SECTION**

QUARTERLY MEETING MINUTES – TUESDAY, APRIL 30, 2019

Attendance: Aisha Bennett (via phone), Joan Kluger, Sara Beth Kohut, James Levine (Chair), Bruce McCullough

1. Old Business
 - A. Approval of Minutes from December 11, 2018, annual meeting
 - i. The Minutes were approved.
 - B. Report on CLE program planning ó Sara Beth Kohut
 - i. Sarah Beth reported on the õBlockchain Technology and Smart Contracts for Business Lawyersö CLE program held on April 11, 2019. Attendance was good and the program was well-received.
 - ii. We will look to doing a recent developments CLE in the fall on E-Discovery and Security. James reported that Ian McCauley is interested in being on a panel. Sara Beth will contact DSBA for available dates in October or November.
 - C. Report on Section web page
 - i. The Section web page will be brought up to date. We selected new meeting dates: July 16, October 15, 2019; January 14, and April 21, 2020.
2. New Business
 - A. Section Elections
 - i. Nominations approved:
 - a. Chair: James Levine
 - b. Vice-Chairs: Sara Beth Kohut and Joan Kluger
 - c. Secretary: Bruce McCullough

- B. Discussion of recent e-discovery and technology law
- i. James discussed a data breach incident. Two employees of an unnamed Israeli company discovered a Microsoft cloud website with unencrypted data on 80 million U.S. households over age 40.
 - ii. Aisha reported on *NuVasive, Inc. v. Kormanis*, (M.D.N.C 3/13/2019) (<https://docs.justia.com/cases/federal/district-courts/north-carolina/ncmdce/1:2018cv00282/78303/154>). A defendant who received a preservation notice stated he was unaware of a self-destructing app on his phone that deleted text messages after 30 days. He argued that he did everything reasonable to preserve data; sanctions were imposed.
 - iii. Sara Beth reported on a case in which an arrested criminal defendant gave his phone passcode to police to have them call his girlfriend to come get her car. The police got a warrant and used the passcode in searching the phone. The Colorado Supreme Court ruled that this was acceptable—no expectation of privacy if the passcode was voluntarily provided for any purpose.
 - iv. Bruce reported on a Florida Supreme Court decision on Judges being Facebook friends with attorneys. The Court ruled 4-3 that it did not require a Judge to step off a case. ABA Formal Opinion 432 states that a Judge must “evaluate” the connection to decide whether disclosure is indicated.
- C. Next meeting date
- i. July 16 at noon with lunch at Pepper Hamilton. The meeting was adjourned.

Respectfully submitted,

Bruce W. McCullough, Secretary