

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

MEETING MINUTES – WEDNESDAY, APRIL 12, 2017

Attendance: William Denny, Brian King (by phone), Sara Beth Kohut, James Levine, Edward McAndrew, Ian McCauley, Bruce McCullough, Christian Wright (by phone)

1. Election of Officers for 2017-2018. The new officers are:

Chair: James H.S. Levine

Vice-Chair: Sara Beth A.R. Kohut

Secretary/Treasurer: Bruce W. McCullough

2. The Minutes of the meeting of February 15, 2017, were approved.

3. Bill Denny gave a presentation and led a discussion on developing an incident response plan. It is an important part of a cyber security plan. Before there is an incident, a company should identify and locate all its data. Determine whether there is a reason to keep data, reduce and eliminate unnecessary data, implement routine destruction. Data needs to be maintained in a secure location: a locked space. A company needs to put together an incident response team that has both authority and availability. There should be a plan to address legal, technical, public relations facets. A company needs to plan what to do if its email system is unavailable. Cyber insurance coverage needs to be evaluated. A company needs to have good contracts with vendors so they provide notification of incidents involving them. A company needs to evaluate criteria for notifying law enforcement. There needs to be training and practice implementing the plan. If there is an incident, document all steps that are taken.

4. Bill Denny summarized a proposed amendment to Computer Security Breaches statute, 6 Del. C. § 12B-101 *et seq.* The draft provides that, if there is breach of security of even one Delaware resident, notice must be sent to the Delaware Attorney General. Among other states, some have no reporting requirements and some have thresholds. Under consideration is whether the reporting should apply to breach of just electronic data or also include paper data. Breach of security is expanded from unauthorized acquisition to include intentional unauthorized access, use, or modification and intentional or unintentional disclosure.

Overall, the current draft from Rep. Paul Baumbach is problematic. A future draft will be circulated to the Section for comment.

5. Sara Beth Kohut reported on the CLE program held March 21, 2017: "Personal Privacy Protection 101: Data Security Tips for Individuals in the Professional World." Panelists were Sara Beth, Jeff Reising from the FBI, Richard Herrmann, and Bob Dolinsky from Adaptive Solutions. About 20 attended plus 3 by phone.

6. Sara Beth Kohut led a discussion of future CLE planning. We discussed having a panel on international aspects of e-discovery under the pending General Data Protection Regulation (GDPR) in the European Union. This could be a component of a larger 3-hour program

including privacy, security and criminal e-discovery. Sara Beth will contact DSBA for a fall 2017 date. Ed McAndrew and Ian McCauley can assist with this.

Sara Beth contacted the ACLU staff counsel about a personal privacy presentation. This could be offered to law firms, individually or in groups. Alternatively, it could be a cyber security component of a broader seminar. This idea needs to be pursued for spring 2018.

7. Sarah Beth Kohut reported on a Section profile for the *DSBA Journal*. She will prepare this with the aim of having it published when DSBA registration is due.

8. There was discussion of dates for quarterly Section meetings (tentatively July 12 and October 11, 2017, and January 10 and April 11, 2018). Bruce McCullough will check the dates with DSBA and send a save-the-date notice to the Section.

9. James Levine led a discussion on a Section contribution to *Delaware Law Review*. A difficulty for our Section is that e-discovery in Delaware is not unique to the state. If there is a Delaware topic that we can develop, Section members are encouraged to share it. We will continue to discuss this topic at future meetings.

10. Bruce McCullough reported that the Section page on the DSBA website (<http://www.dsba.org/sections-committees/sections-of-the-bar/e-discovery-and-technology-law/>) is current. Suggestions for additional links are the Exterro E-Discovery Case Law Library (<http://www.exterro.com/case-law-library/>), the Delaware Supreme Court Commission on Law & Technology (<http://courts.delaware.gov/declt/>), and the Commission on Law & Technology's Best Practices (<http://courts.delaware.gov/declt/practices.aspx>).

Respectfully submitted,

Bruce McCullough