



# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

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1936 - 2016

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# Law Day Luncheon 2016

Tuesday, May 17, 2016 • 12:00 noon

Gold Ballroom • Hotel du Pont • Wilmington, Delaware



## Keynote Address by Paulette Brown

*President, American Bar Association*

**Paulette Brown**, Partner and co-chair of the firmwide Diversity & Inclusion Committee at Locke Lord LLP, is president of the American Bar Association.

Brown has held a variety of leadership positions within the ABA. She has been a member of the ABA House of Delegates since 1997 and is a former member of the ABA Board of Governors and its Executive Committee, as well as the Governance Commission. While serving on the Board of Governors, Brown chaired the Program, Planning and Evaluation Committee. Brown has served on the Commission on Women in the Profession and was a co-author of "Visible Invisibility: Women of Color in Law Firms." Brown also chaired the ABA Council on Racial and Ethnic Justice (now Coalition on Racial and Ethnic Justice) and is a past co-chair of the Commission on Civic Education in our Nation's Schools. Brown served on the Section of Legal Education's Council on Legal Education and Admissions to the Bar and its Executive Committee. Brown joined the ABA Young Lawyers Division in 1976. She became active in the Section of Litigation in 1995, which has continued to be her section "home" ever since. She is a former member of The Fund for Justice and Education (FJE), FJE President's Club and a Life Fellow of the American Bar Foundation.

Brown has held many positions throughout her career, including as in-house counsel to a number of Fortune 500 companies and as a municipal court judge. In private practice, she has focused on all facets of labor and employment and commercial litigation. Brown has been recognized by the National Law Journal as one of "The 50 Most Influential Minority Lawyers in America" and by the New Jersey Law Journal as one of the "prominent women and minority attorneys in the State of New Jersey." She has received the New Jersey Medal from the New Jersey State Bar Foundation and currently serves on its Board of Trustees.

Brown has repeatedly been named as a New Jersey Super Lawyer and by *US News* as one of the Best Lawyers in America in the area of commercial litigation. In 2009, Brown was a recipient of the Spirit of Excellence Award from the ABA Commission on Racial and Ethnic Diversity in the Profession. In 2011, she was honored with the Margaret Brent Women Lawyers of Achievement Award by the ABA Commission on Women in the Profession. Brown, who served as President of the National Bar Association from 1993-1994, received the NBA's highest honor, The C. Francis Stradford Award, in 2015. Brown earned her J.D. at Seton Hall University School of Law and her B.A. at Howard University.

## Law Day Luncheon • Tuesday, May 17, 2016 • 12:00 noon

Please reserve \_\_\_\_\_ place(s) for me at the Tuesday, May 17, 2016 Law Day Luncheon to be held at 12:00 noon at the Hotel du Pont.  
\$55/per person. Please include names and DE ID numbers of all attendees with response.

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OF THE DELAWARE STATE BAR ASSOCIATION

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## PRESIDENT'S CORNER

By Richard A. Forsten, Esquire

# It's the Pepsi Generation

**J**erry Seinfeld once joked that babies may be cute, but they are here to replace us. With the coming 2016 election, millennials (those born between 1981 to 1997) will make up the largest bloc of voters. Larger than the Baby Boomers (those born between 1946 and 1964), and larger than Generation X (those born between 1965 and 1980). A generational shift is not just on the horizon, it is here.

This generational change has implications not only for our politics, but for our workplace as well. Millennials are “different,” we are told, from those who went before them; and so, the advice goes, if law firms are going to be successful, they need to recognize and adapt to these changes. But, to be honest, as someone who has been practicing a bit longer than he might care to admit, and so perhaps a bit more curmudgeonly than he might care to admit, I have to say I am not sure that the supposed “differences” between the generations are really all they are cracked up to be. In fact, in many ways I do not think millennials today are all that different from baby boomers or gen-Xers when those generations were first starting out. Consider:

- **Millennials Want Meaningful Work.** We are told that millennials want “meaningful work.” But, I think everyone wants meaningful work. If this is supposedly one of the differences between the generations, I’m not sure millennials are all that different from their elders. There is, of course, a reason why more experienced lawyers are the “lead” on legal projects — they are more experienced — and, to paraphrase Oliver Wendell Holmes, the life of the law is not logic, but experience. But, if millennials don’t think they are doing “meaningful” work, they are mistaken. Finding the “smoking gun” in a voluminous document production, or hitting upon a critical legal theory, is often the difference between winning and losing and is the work of younger lawyers.
- **Millennials Want Work/Life Balance.** We are told that millennials want “work/life balance.” Again, I think everyone does. For some, this may mean leaving the office early to watch a child’s sporting event or to have dinner with their family, and then working remotely from home.

I am not really sure this is work/life balance, because one must still put in the hours, but I think the practice of law has already integrated the idea of flexible hours pretty well. If there is a problem with work/life balance, it may have more to do with the fact that in this wired age of 24/7 constant client contact and demands, the practice of law is not necessarily compatible with work/life balance. In any event, I think everyone would prefer more work/life balance.

- **Millennials Want Feedback.** Millennials, it is said, want feedback. Again, in this regard, it seems as though millennials are no different than prior generations. First year associates have wanted feedback from time immemorial and have never felt as though they received enough. And, while I am sure more senior lawyers always try and give feedback, the practice of law just never seems to provide enough time for as much feedback as folks would like — either to give or receive. (Note — I always offer two bits of advice to junior associates when I work with them: (1) always hold onto the first draft of the brief, motion, loan document or whatever it was that you first turned into the partner requesting the work product, and then compare that first draft to the final draft — you can learn a lot simply by comparing the two; and (2) whenever a partner uses something you drafted verbatim or nearly so, that is high praise and good feedback.)
- **Millennials Are Tech Savvy.** It is said that millennials are tech savvy, using apps that baby boomers have not heard of, and able to work anywhere their tablet gets WiFi. Now, it is true that millennials are more cutting edge than their elders; but, again, I question whether that is really as much of a difference as we are led to believe. I would submit that younger generations are always more receptive to change and are always earlier adapters of technology. I remember as a first year associate, fresh out of law school, asking the managing partner at my office if I could get a personal computer for my desk (IBM Selectrics and XEROX Memorywriters were still the norm for secretaries — I told you I have been practicing longer than I care to admit).

He responded that no lawyer would ever have a computer on their desk so long as he was managing partner because lawyers were not word processors and clients would never pay for lawyers to do their own typing. Eventually, though, he came around. Twenty-some years later that same partner is probably more efficient with a computer than I am, and more embracing of change.

▪ **Millennials Want Collaborative Areas.** Finally, we are told that millennials like to collaborate — again, something I am not sure is all that new or different. Some of the best briefs and some of the best deal structures are the result of collaboration, and effective lawyers recognize the power of effective collaboration. Nevertheless, the “conventional wisdom” here may be pushing things too far. The latest trend in law office design is smaller, one-size-fits-all offices for partners and associates, with open, “collaborative” areas where millennials can

*“The differences that baby boomers see between themselves and millennials are, in many respects, the same differences that the baby boomers’ elders saw between themselves and the baby boomers when the boomers first entered the workplace.”*

gather and “collaborate.” In some law firms, these new smaller offices only have one visitor’s chair. Now, open, collaborative areas may work at Google, and elsewhere in Silicon Valley, but is such an approach truly consistent with the practice of law? Much of what lawyers do is quiet, contemplative work — drafting complaints, interrogatory responses, motions, or reviewing transaction documents and the like. It requires individual concentration, not collaboration. Moreover, if discussions of cases or transactions are going to be had, should they occur in large, open areas for all to hear? The “conventional wisdom” is telling us that millennials want large, open

collaborative areas — but is that what millennials really want, or it is what designers think they want since it is used in other industries? One wonders how law offices are going to be designed 10 years from now and whether the pendulum will swing back.

Now, in the foregoing paragraphs, I have suggested that millennials have more in common with their seniors than “conventional wisdom” might suggest. The differences that baby boomers see between themselves and millennials are, in many respects, the same differences that the baby boomers’ elders saw between themselves and the baby

President’s Corner (continued on page 15)

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## EDITOR'S PERSPECTIVE

By Benjamin A. Schwartz, Esquire

# This Essay Is Brought to You by the Letter Q

### The Q Test

Before you read this interactive little essay, please take the index finger on your dominant hand and draw the capital letter Q on your forehead.

Note the orientation of the Q. Was the tail pointing to your left eye or your right eye?

I will come back around to this. In the meantime, do not forget whether it was left or right.

### An International Love Story

It was 6:00 a.m. My cell phone began vibrating off the side table next to my bed where I had perched it the night before. Waves of text messages were rolling in from my long-time client, a very prominent member of the community with a (currently) sterling reputation.

"MY LIFE IS OVER! I'M BEING EXTORTED!" shouted the text message.

"WAKE UP! YOU HAVE TO CALL ME!" he implored.

It turns out that my client — let's call him "Vincent" for anonymity's sake — had met a young lady on the internet through a popular website that connects singles. Let's call our young lady protagonist "Delilah."

Vincent began by communicating back and forth with Delilah over the internet. She was young — in her twenties. She was beautiful — he saw lots of attractive pictures of her on her Facebook page. And, like Vincent, Delilah was lonely. So, they

connected by way of a video conference application called Skype. Delilah was in Romania, precluding their face-to-face meeting at least for now, she told him.

Their discussions on Skype quickly became intimate, and then downright amorous. Before Vincent knew it, one thing had led to another. During a Skype video chat, they began having the modern equivalent of "phone sex," but with the added component of a live video feed.

During the event, she implored him to reveal his most intimate body part to her. Believing such international exposure would bring added pleasure to his new partner, Vincent revealed himself before his webcam.

At the precise moment of revelation, and to Vincent's great surprise, Delilah halted her engagement in the amorous process, sat bolt upright, exclaimed, "Now I've got it!" and Vincent's screen went blank.

She had switched off the video chat. She was gone. Vincent stood before his webcam stunned, wondering what had just happened.

He did not have to wonder for very long. Within minutes, he began to receive text messages through Skype, as well as emails to his work email. Now the messages were coming from someone calling himself Ionel Boeru:

"Delilah videotaped you."

"You are a pervert."

"This video will ruin you."



"Your life is over."

"Do not contact anyone, for you also have committed a crime in violation of international law."

"We will share your video with all your friends and family in one hour."

"You will pay \$10,000 for us to destroy the video. If you do not pay, you will be ruined."

I calmed Vincent down as best as I could, and argued with him to try to convince him not to send any money. Then the screen shot came. The man had already uploaded the video to Facebook. He had not hit the "share" button yet. It was one click away from going live! Was the man going to send the link to all of Vincent's friends and family members or was Vincent going to pay the fee to have the video removed?

• • •

Now for a quick question: Which of the following statements most closely ex-



presses your thoughts and feelings about Vincent's story? (Please note your answer.)

- a. I feel sorry for Vincent, falling prey to these scam artists.
- b. I bet the woman was the real victim. She was probably forced into sexual slavery by an international criminal.
- c. If I could run a hustle like that without being caught, I could probably make twice what I am getting now.
- d. I am not going to show my private parts on Skype now that I have read this.

• • •

The Q Test is an indicator of your personality type. If you are extroverted, the theory goes, you will draw the Q so that it is orientated toward others who may read it. The tail will be pointing toward your left eye. Conversely, if you are introverted, you will draw your Q so that you can read it, with the tail pointing toward your right eye. According to psychologist Richard Wiseman in his book, *Quirkology: The Curious Science of Everyday Lives*, the Q Test may be a good indication of how good you are at lying.

People who draw the Q so that it is oriented for others to read are high self-monitors. High self-monitors are concerned with how others view them, and tend to be skilled at manipulating the ways in which others view them. That makes them relatively better at lying than those of us who are introverted, low self-monitors, and who are not interested particularly in how others perceive us.

• • •

I would be interested to know how you drew your Q, and I would be interested to know whether you answered (a), (b), (c), or (d) on my multiple choice question.

Is there a correlation between the folks that pointed their Q's tail towards their left eye and the folks that answered (c) on the multiple choice question?

Is this all a bunch of baloney because the Q test is not a valid indicator of psychopathy?

Do you have an ever better client scam story than this one?

Please note: "An International Love Story," above, is based loosely on a real case of a real client, but I have changed certain facts and details so as to comply with DLRPC 1.6. There is no reasonable likelihood that anyone reading this story will be able to ascertain the identity of my client or the situation involved. If the story seems familiar to you, it is because "sextortion" is relatively common, and not because I am talking about the person you

know who got caught up in something like this.

Feel free to email me at [ben.schwartz@schwartzandschwartz.com](mailto:ben.schwartz@schwartzandschwartz.com) to continue the conversation! ⚖️

*Bar Journal* Editor **Ben Schwartz** is Managing Partner of Schwartz & Schwartz, where he helps people recover after catastrophic injuries and accidents. He is a frequent speaker, writer, and blogger. For more information, go to [facebook.com/schwartzandschwartz](https://facebook.com/schwartzandschwartz) or email [ben.schwartz@schwartzandschwartz.com](mailto:ben.schwartz@schwartzandschwartz.com).

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## 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.

### March 2016

**Tuesday, March 22, 2016**

#### **Finance for Lawyers 2016**

5.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Wednesday, March 23, 2016**

#### **Labor and Employment Law Update 2016**

5.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

### April 2016

**Friday, April 1, 2016**

#### **Small Firms and Solo Practitioners Conference**

5.0 hours CLE credit

Atlantic Sands Hotel and Conference Center, Rehoboth Beach, DE

**Tuesday, April 19, 2016**

#### **Short Topics in Real Estate 2016**

3.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Tuesday, April 26, 2016**

#### **Environmental Law 2016**

3.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Thursday, April 28, 2016**

#### **When the Court Calls**

3.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

### May 2016

**Wednesday, May 4, 2016**

#### **Workers' Compensation**

6.5 hours CLE credit

Chase Center on the Riverfront, Wilmington, DE

**Thursday, May 12, 2016**

#### **Fundamentals of Civil Litigation**

6.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Tuesday, May 17, 2016**

#### **Law Day Luncheon**

Hotel du Pont, Wilmington, DE



# SECTION & COMMITTEE MEETINGS

## March 2016

**Monday, March 7, 2016 • 12:30 p.m.**

**Senior Lawyers Committee Monthly Luncheon Meeting**

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

**Tuesday, March 8, 2016 • 11:00 a.m.**

**LGBT Section Meeting**

TBD

**Wednesday, March 9, 2016 • 4:00 p.m.**

**ADR Section Meeting**

Berger Harris, LLP, 1105 North Market Street, 11th Floor, Wilmington, DE

**Thursday, March 10, 2016 • 6:00 p.m.**

**Young Lawyers Section Happy Hour**

TBD

**Friday, March 11, 2016 • 12:15 p.m.**

**Health Law Section Meeting**

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

**Wednesday, March 16, 2016 • 12:30 p.m.**

**Diversity Committee Meeting**

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

**Thursday, March 17, 2016 • 12:00 p.m.**

**Executive Committee Meeting**

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

**Thursday, March 17, 2016 • 4:00 p.m.**

**Elder Law Section Meeting**

Kleiner & Kleiner LLC, 501 Silverside Road, Suite 46, Wilmington, DE

**Friday, March 18, 2016 • 12:00 p.m.**

**Workers' Compensation Section Meeting**

Young Conaway Stargatt & Taylor LLP, 1000 North King Street, Wilmington, DE

**Thursday, March 24, 2016 • 4:00 p.m.**

**Family Law Section Meeting**

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

**Monday, March 28, 2016 • 4:00 p.m.**

**Taxation Section Meeting**

DuPont Headquarters, 974 Centre Road, Chestnut Run Plaza, Building 735, Room 1135, Wilmington, DE

## April 2016

**Monday, April 4, 2016 • 12:30 p.m.**

**Senior Lawyers Committee Monthly Luncheon Meeting**

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

**Tuesday, April 5, 2016 • 3:30 p.m.**

**Estates & Trusts Section Meeting**

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

**Wednesday, April 6, 2016 • 12:30 p.m.**

**Women and the Law Section Meeting**

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

**Thursday, April 7, 2016 • 4:00 p.m.**

**Real & Personal Property Section Meeting**

Tim Rafferty's Office, Artisans Bank, Centerville Road, Wilmington, DE

**Tuesday, April 12, 2016 • 11:00 a.m.**

**LGBT Section Meeting**

TBD

**Tuesday, April 12, 2016 • 12:15 p.m.**

**Small Firms & Solo Practitioners Section Meeting**

The Law Offices of Denise D. Nordheimer, Esquire, LLC, 2001 Baynard Boulevard, Wilmington, DE

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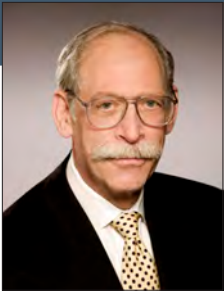
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## TIPS ON TECHNOLOGY

By Richard K. Herrmann, Esquire

# Fundamental Basics in CyberSecurity

**W**e continue to experience the problem of “glazing over” when we try to absorb too much “tech talk” in one session. I believe the fault lies with those talking more than those trying to learn. We on the panel or faculty tend to present too much and too fast. If the audience is not yet familiar with the vocabulary and basic concepts, the discussion is difficult to follow. We have been trying a new approach at Delaware Law School. In our Advanced Law and Technology class, instead of listening to lectures, the students are researching the problems and presenting or writing about the issues themselves. The present assignment is to select four fundamental topics relating to CyberSecurity that every member of the Bench and Bar should know.

*“In our Advanced Law and Technology class, instead of listening to lectures, the students are researching the problems and presenting or writing about the issues themselves.”*

### The Dangers of Public WiFi

Wi-Fi is accessible now more than ever due to public areas creating their own public Wi-Fi networks. Nonetheless, the accessibility has also created common security issues such as “man-in-the-middle attacks,” malware, and Wi-Fi sniffing. Hackers are able to create fake networks through various devices which allow third parties to access the information of those using the public Wi-Fi. (<http://www.digitaltrends.com/mobile/how-dangerous-is-public-wi-fi/>)

The WiFi Pineapple is one example of a device that can be used to compromise how computers interact with wireless access points. Devices such as these open the door for Wi-Fi connections to invade attorney’s private devices. Client’s private information is then exposed bringing about confidentiality issues, amongst others. (<http://www.flashrouters.com/blog/2011/05/19/the-dangers-of-the-pineapple-using-public-wi-fi-connections/>)

By Ruby Gonzalez & Colette Monaghan

### Ransomware

Ransomware is software that freezes up your computer, encrypts all data, and demands ransom, often in the form of bitcoins, for the system’s

restoration. This malware, often being CryptoLocker or CryptoWall, is sent via e-mails as .pdf or .exe files with titles like “missed fax” or “voicemail,” and can appear to be from reputable law firms or courts. Firms should have blocking software, such as CryptoPrevent, and keep operating systems, browsers, browser plug-ins, and firewalls current. Additional security includes educating employees to avoid malicious email attachments or links and regularly backing up data with media not connected to the Internet. (For further information, see Sharon D. Nelson & John W. Simek, “Hot Buttons, The Scourge of Law Firms: Ransomware that Encrypts Your Data,” *American Bar Association, The Leadership Issue*, September/October 2015; Joe Dysart, “Data Kidnapping: Software Attacks Stymie Law Firms,” *ABA Journal, The Lawyer’s Magazine*, June 2015.)

By Gwen Lentine & Carli McClafflin

### Hacking

Hacking of firms has become a big problem in recent years. Hackers target mainly larger firms, but small firms are susceptible as well. Targeted the most are intellectual property, trade secrets, and personal information that firms hold for their clients. Most firms lack adequate security measures in place to keep cyberattacks at bay, but there are some simple steps that can be taken without hiring dedicated personnel. These include simulated email attacks aimed at employees meant to make them aware what suspicious emails and links could look like. A firm’s employees are its greatest weakness when untrained in how to avoid malicious attacks. ([http://www.huffingtonpost.com/daniel-garrie/attacking-the-weakest-link\\_b\\_3862354.html](http://www.huffingtonpost.com/daniel-garrie/attacking-the-weakest-link_b_3862354.html))

By L. Joseph Link

### Password Protection

With the threat of hacking ever present in this Internet era, clients’ confidential information is con-

stantly at risk. As such, it is crucial that law firms employ strict policies regarding password protection. According to the Delaware Supreme Court Commission on Law and Technology, the best practices include changing passwords regularly, avoiding re-use of passwords across multiple networks, and creating multi-layered and controlled access to sensitive information on a "need-to-know" basis. (<http://courts.delaware.gov/declt/blogspot/DataSecurityGeneralPrinciples.stm>)

Furthermore, the American Bar Association suggests an alphanumeric password of at least twelve or more characters. ([http://www.americanbar.org/publications/law\\_practice\\_magazine/2012/march\\_april/hot-buttons.html](http://www.americanbar.org/publications/law_practice_magazine/2012/march_april/hot-buttons.html)) By following these simple guidelines, law firms can vastly enhance security.

By Michael Schwander &  
Melissa Frederick

• • •

As we, at the Delaware Law School and the Commission on Law and Technology, continue to develop more Technology content for the Delaware Bench and Bar, it would be helpful to know the most satisfactory means of presenting it to you. If you would like to share your thoughts, please let me know. Email me at [rherrmann@morrisjames.com](mailto:rherrmann@morrisjames.com). ☎

**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](mailto:rherrmann@morrisjames.com).

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



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# Can an iPad Pro Replace a Laptop?

By Steven L. Butler, Esquire

**T**he iPad Pro was released late last year by Apple with a desktop class microprocessor and a massive 12.9 inch screen that begged the question of whether the device could replace a laptop for most attorneys. Although it does not include a keyboard, an optional “Smart Keyboard” is available from Apple that adds very little weight to the 1.5 pound basic configuration, and allows you to prop the display up like most laptop wedges we see today. Although there are still limitations when trying to use a tablet in place of a laptop, as a secondary device, the iPad Pro mostly succeeds.

## The Advantages of the iPad Pro

Because you are reading this article as part of the Delaware Supreme Court’s Commission on Law & Technology monthly column, I will start first with what should be the biggest concern for any attorney using mobile technology — security. All models of the iPad Pro include Apple’s Touch ID. Touch ID allows you to unlock your iPad by simply placing your finger on the home button. By using a fingerprint to secure your device, you do not have to worry about your password being seen by others as you type it. Once you set a password and start using Touch ID, your device is also encrypted, meaning that even if you misplace it, your data is safe from most prying eyes (and you are at least taking steps to protect confidential data).

The screen is not only big (12.9 inches means it is just slightly smaller than most 13 inch laptops), it also is a “Retina” display, meaning that text will appear clearer than on most 24 inch desktop

monitors. The entire device is about the dimensions of an 8.5 by 11 inch sheet of paper, and thinner than most printed depositions. With the larger screen, the iPad Pro can open apps side-by-side to allow you to easily work with data from two apps at the same time.

Although the screen size may be what initially attracts, the 10-hour battery life of the iPad Pro is star of the show. The nicest thing about using the iPad Pro is knowing that you can rely on it for a full day, and not have to worry about bringing an external charger. The 10-hour battery usage time can also be achieved without sacrifices in screen brightness, or worrying that your device will die in standby mode while still sitting idle in your bag. (Competently using technology also means knowing that the technology will be available when you need it!)

Anyone familiar with prior iPads or iPhones also knows that it is nice to not have to worry about viruses, spyware, or out of control background app processes. The iPad Pro is no different. Other than running out of storage space, any current iOS app runs without problem on the iPad Pro. Apps are all sandboxed, which means that they can only interact with each other with your permission. Your files are all protected within the app you use them with, and most apps that allow you to create, also provide a cloud storage option. And, for every attorney worried about confidentiality and competency, it is nice knowing that all apps that are installed must first pass by Apple’s App Store screening process for potential security risks.

The availability of an LTE/cellular connection sets the iPad apart from

most laptops. Yes, laptops have options of connecting to hotspots, but most do not even have the option of adding an LTE/cellular connection directly to the device. This means that if you do not have a WiFi connection available, you have to worry about the battery life of your laptop and any additional cellular device you use, or connecting to a potentially unsafe public WiFi connection, in order to access data not stored on your device. The iPad Pro cellular option is not only convenient, it has little impact on your battery life and provides you with a secure connection.

Finally, the price of software is probably the biggest benefit to choosing the iPad Pro. My most used paid apps cost about \$5 each. The most expensive app that I have installed was the \$90 TrialPad app. Considering its ability to manage complex court presentations, it is still a bargain compared to laptop equivalents. My most used app, iAnnotate, only costs \$9.99, and gives me most of the features that would have cost hundreds of dollars if I were using a Windows laptop.

## Are there Disadvantages of an iPad Pro?

Although overall the iPad Pro can be used in place of a laptop, it does have limitations. The biggest issue I have found is that you cannot run two instances of the same app (for example Microsoft Word documents) side-by-side. This makes it more difficult to view one document on screen while editing another (for example copying and pasting between two briefs). There are workarounds, but this is simply not



as easy to do on an iPad Pro as it is on a laptop.


The software interface on the iPad Pro also remains confining. Every app you install places an icon on your home screen. You can add these icons to folders, and move them to different screens, but you cannot randomly rearrange them anywhere you want on the screen, or remove them without deleting the underlying app. There is also no device-wide file storage. This means that each app starts carving out more of your storage space to store your documents, and if you are not using cloud storage, you must remember which app has the latest version of your document.

Expandability options are also limited. There is no USB port, the iPad Pro memory cannot be increased, and the camera placement leads to awkward views if you are trying to participate in a web-meeting using the iPad camera. There are workarounds to connect to some devices by Bluetooth or WiFi, but it is not the same as just plugging any standard USB device into your laptop.

## The Final Verdict


Despite any disadvantages, the iPad Pro normally replaces my laptop. In the end, even though the iPad Pro is not perfect, I am able to do at least 85% of what I can do on a laptop on the iPad Pro, and there are many areas where my iPad Pro improves my ability to get work done while being compliant with the Rules of Professional Conduct. Determining what works best for you is of course a personal decision, but I only expect that the iPad Pro will continue to improve with future iOS updates, and will remain a competitive solution for most attorneys looking to do work away from their desk while also securing their data. ⚖️

**Steven L. Butler** is an attorney at Morris James LLP, handling Workers' Compensation, Personal Injury, and Social Security Disability matters. He is the chair of the Commission on Law & Technology's Mobile Computing Working Group. Additional information about his practice areas can be found at [www.depersonalinjury.com](http://www.depersonalinjury.com).







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## ETHICALLY SPEAKING

By Charles Slanina, Esquire

# To BCC or not to BCC: The Danger of “Blind Copy” Emails

**A**dd this to the list of why I hate email. There was a time when you got a letter and you had the time to compose a response and then reflect on whether or not that response was appropriate before it was posted. Now, it is too easy to fire off an unwise or intemperate response. It is too easy to send confidential information to the wrong addressee (Thank you, Autofill in Outlook Address Book!). It is too easy to mistakenly hit “Reply All.”

*“Do not get me started on what the use of email has done to attorney quality of life. Email has become an electronic tether which makes me long for the days of regular mail.”*

Do not get me started on what the use of email has done to attorney quality of life. Email has become an electronic tether which makes me long for the days of regular mail. There is a presumption, if not expectation, that attorneys are “at least available by email” 24 hours a day, 7 days a week. In an attempt to meet that expectation (to which I do not recall agreeing), there is a temptation to respond using cell phones and other portable devices under less than ideal circumstances (e.g. while driving or attending a child’s soccer game) which can contribute to mistakes. In addition to these well-known

issues, I recently discovered another: the danger of blind copying your client on emails otherwise known as BCC.

Let me begin with a disclaimer. I have been guilty of this practice. Without appreciating the risks, I have made my clients blind copyees on correspondence with opposing counsel, the court, hearing panels, and others. My purpose in some instances was to protect the confidentiality of my clients’ contact information. In other cases, it was to avoid the appearance that I was

permitting or inviting direct contact with my clients by the recipients of my emails that could result from showing a CC to my client.

A recent New York State Bar Association Ethics Opinion has caused me to rethink this practice. Opinion 1076 (12/8/15) was issued in response to an inquiry as to whether a lawyer may ethically send a blind copy of an email to opposing counsel or third party where opposing counsel has objected to such practice. The NYSBA Committee on Professional Ethics concluded that the Professional Conduct Rules do not prohibit the practice despite the objection of opposing counsel. The Committee noted that opposing lawyers do not have a relationship of confidentiality. A lawyer does not need

the “consent” of opposing counsel to send clients copies of correspondence between counsel because a lawyer is an agent of the lawyer’s client and attorneys have a duty to keep a client reasonably informed about the status of their matter. (Rule 1.4). Opposing counsel should expect the sending lawyer to copy correspondence to his or her client.

However, after reaching this conclusion, the Committee went on to caution about risks inherent in the practice. Specifically, the Committee noted that while sending a BCC may initially shield the client’s email address, it can result in other problems. If the client mistakenly responds to the email by hitting “Reply All,” confidential information in the client’s response intended for his or her lawyer could also be exposed to opposing counsel.

If this were to occur, several Delaware Professional Conduct Rules could be implicated. Rule 1.6(c) requires that “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”


Comment [18] to Rule 1.6 explicates what it means to act competently to maintain client confidences explaining that paragraph (c) requires a lawyer to act competently to safeguard information relating to the representation of a client and against unauthorized access against third parties and against inadvertent or unauthorized disclosure by the lawyer or

other persons who are participating in the representation of the client or who are subject to the lawyer's supervision referencing Rules 1.1 (Competency), 5.1 (Supervision of other lawyers), and 5.3 (Supervision of non-lawyers). The Comment provides some assurance that the unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. "Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards and the extent to which the safeguards adversely affect the lawyer's ability to represent clients."

Rule 1.1 requires a lawyer to provide competent representation to a client and competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The recent addition of Comment [8] to that rule suggests that a lawyer keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology... (Emphasis added).

As an alternative to using "BCC," consider forwarding a copy of the Sent email to your client. Of course, you could always go "old school" by sending a letter in response to the email and a copy of that response to your client by regular mail.

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

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


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

## President's Corner (continued from page 5)

boomers when the boomers first entered the workplace. Every generation is seen as different from the one that preceded it, and while there are always some differences to be sure, I would submit that most "differences" simply boil down to youthful idealism compared to practical experience.

If my thesis seems anticlimactic, let me simply observe that the more things change, the more they stay the same. Concerns about the younger generation go back to ancient times. Socrates reportedly complained that "children now love luxury; they have bad manners, contempt for authority; they show disrespect for elders and love chatter in place of exercise... They no longer rise when elders enter the room. They contradict their parents, chatter before company, gobble up dainties at the table, cross they legs, and tyrannize their teachers." The Roman poet Horace famously observed "Our sires' age was worse than our grandsires'. We, their sons, are more worthless than they; so in turn we will give the world a progeny yet more corrupt."

But, if concerns about the younger generation are not new, there is always one difference between the generations that bears note, and may account for the occasional failure to communicate or understand one another — shared history. Ronald Reagan. The Challenger explosion. The fall of the Berlin Wall. The Clarence Thomas hearings. Many millennials were born after these events. They will not remember TV shows such

as *MASH* or *Cheers* or *Seinfeld* or *L.A. Law* (the show which, I submit, started the practice of law down a ruinous path). They never saw *Star Wars* or *Back To The Future* or *E.T.* in movie theatres. Watergate. The Iran Hostage Crisis. Oil embargos. Iran-Contra. All history they never experienced. We sometimes take for granted that our younger colleagues and co-workers have the same frame of reference we do. The greatest challenge that law firms — and, indeed, all organizations — face is remembering that not everyone has that same frame of reference, and so using what you assume to be a clever turn of phrase may be met with a blank stare. Not that there is anything wrong with that. 

**Richard "Shark" Forsten** grew up in Delaware and is the current President of the State Bar Association, although the views expressed in his President's columns are entirely his own. The title to this column refers to Pepsi TV commercials he remembers from his childhood, while the line "Not that there's anything wrong with that" comes from the TV show *Seinfeld*. Shark has been writing monthly book reviews for the *Bar Journal* since 1998, and elsewhere in these pages you can find his latest review. 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](mailto:rforsten@saul.com).



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# WOULD YOU LET YOUR FIRM CHOOSE YOUR NEXT CAR?

Presented by Aaron W. Mitchell, REBC

**T**here is a reason why J.D. Power & Associates gives awards to cars and trucks by category. It would be unfair to directly compare a Nissan Quest to a Lexus LS to a Chevrolet Spark. They all serve different market segments. If I lived in Philadelphia and wanted something easy to parallel park with good gas mileage, then the Lexus LS and Nissan Quest would be poor choices. Likewise, if I wanted to transport five kids, then the Chevy and the Lexus are not the cars for me. Your employees share a similar trait to that person looking to buy a new car. Each employee has specific needs that are unique to his or her family. Here is our roadmap to making sure each employee can find the right “car.”

## Step 1: Consider the Needs of Your Staff

The major point behind drawing this parallel is to raise the question “Are the Employee Benefits programs that we offer protecting the varying needs of our staff and attorneys?” Many firms rely on the simplicity of one or two plans because they are easiest to explain. However, is it likely that the following all have similar insurance needs?

- A healthy first year associate
- A 45-year-old paralegal with a family
- A 60-year-old partner expecting knee surgery

You might assume that your employees want to keep a “gold” level health plan, regardless of how much comes out of their paycheck. What about those employees who never see their doctor for a sick visit? Given the choice, would they take the silver level plan if it meant less deductions from their paycheck? Surveying your staff can be a great way to find out the needs of your employees and their families.

## Step 2: Create a Benefits Package with Solutions to Meet those Different Needs

We often ask firms that we meet with, “Why do you offer that plan?” It is not a trick question, but intended to find out if there are features of that plan that most employees value. Many firms have simply done their best to keep their plans unchanged for more than a decade. The discussion becomes less about “What are the best plans for our employees?” and more about “What plan is closest to our current plan?”

Do not assume that none of your employees would like an HMO plan, just because you currently have PPO plans. Find out if your partners paying for their own pre-

miums want higher deductible options. Determine if your attorneys are looking for plans that can lower their taxable income. Even if your firm can afford a silver level plan, do not overlook employees who may be willing to contribute more premium to secure a gold plan.

## Step 3: Do Not Forget to Explain the Plans

The last step is the most often forgotten step. The firm needs to help the employees relate to the value in the different plans. There are many different ways to accomplish this:

- a. Utilize online enrollment portals. Many group health insurance companies provide such a portal to help the employee review, compare, and select the best plan for their family.
- b. Open Enrollment meetings are a great way to address your staff directly, but make sure there is a way for the employee to take the Enrollment Meeting home. Recording the meeting is a great example.
- c. Provide examples of employees who could be best suited to each plan. For example, if the employee needs an unexpected surgery, what is the financial exposure (deductibles, copays, etc.) of each plan.

Employees are always overwhelmed with the Annual Enrollment for Employee



Benefits. It is nearly impossible to please all of the employees all of the time. However, it's not impossible to explain how each plan is different and why your firm selected those programs. If this sounds difficult, feel free to use the car analogy. Help your employees to understand who needs the Chevy Spark, who should upgrade to the Lexus and everything in between.

*Aaron Mitchell is not a car dealer, but DSBIS's lead marketing representative, coordinating all lines of insurance. His team can be contacted with questions on this article or any insurance topic. Contact Aaron at (302) 397-0170 or aaron.mitchell@usi.biz.*

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By Susan Simmons

# Pro Bono Work: A Highly Effective Marketing Tool

If you are interested in blowing your proverbial *pro bono* horn, I would like to explore how to effectively publicize your *pro bono* efforts and successes to create buzz around your program, both externally and internally. You can utilize the available expertise and resources, along with mainstream and social media, to attract new *pro bono* volunteers, enhance your *pro bono* program's reputation, increase visibility for your institution and *pro bono* program, and secure new *pro bono* opportunities, including high-profile representations.

In the current highly competitive environment, firms are increasingly focused on marketing their services to retain current clients and attract new ones. Firms are expanding their marketing staff, hiring public relations firms, and committing substantial resources to advertising and to "branding" that differentiates their firm. As with other firm functions, *pro bono* work can be a highly effective marketing tool. Bill McBride, managing partner of Holland & Knight, one of the nation's fastest-growing law firms, has noted that every dollar his firm spends on *pro bono* generates ten times its value in good publicity and heightened visibility for the firm.

An article for "Law Firm *Pro Bono* Project" that was prepared by Esther F. Lardent of The *Pro Bono* Institute shows how *pro bono* is an effective marketing tool in several ways:

### Greater Credibility

Unlike firm brochures, press releases, advertisements, and similar vehicles, *pro bono*-related publicity is less likely to be viewed as self-serving. Even though law firms may consciously place stories about *pro bono* achievements, the very nature of the work involved makes the stories more credible. In addition, in many instances, publicity about a *pro bono* matter is generated by a public interest group involved in the matter or attracts media interest because of the issue involved. Such placements are viewed as inherently more credible than paid advertisements.

### Greater Visibility

Even the most interesting and important commercial work undertaken by law firms is unlikely to receive broad coverage

and publicity beyond the legal media. Major *pro bono* matters, or smaller cases with great human interest, are far more likely to receive extensive coverage. Firms undertake often time-consuming, controversial cases because it was the right thing to do. However, creative, successful lawyering can become a front-page story. In addition, *pro bono* contacts can become business contacts.

### Improved Client Relationships

An increasing number of law firms jointly undertake *pro bono* work in conjunction with the legal departments of corporate clients. Some corporate client relationships these days are fraught with tension and uncertainty, as clients transfer business, aggressively bid work out, negotiate for reduced rates, pare down the list of firms with whom they work, and closely scrutinize and question bills. Joint *pro bono* ventures offer an opportunity to interact socially and professionally with clients on matters of common concern outside the commercial arena. Since firms, for the most part, are far more experienced in the substantive law and venues involved in *pro bono* work, these joint ventures offer a subtle, but effective opportunity for law firms to demonstrate their skills and capacities. In addition, jointly sponsored clinics and clients are an opportunity for teamwork that can lead to closer personal and professional relationships.

### Good Deeds as a Business Generation Tool

Increasingly, major corporations are viewing good corporate citizenship and strategic philanthropy as important elements of the culture of an effective institution and as solid business practice. Major law firms, which may be among the largest institutional employers in their communities, should take note of the increased interest in good works among leading corporations.

Corporations are increasingly committing substantial resources to good cause campaigns. They are doing so because they seek to make a positive difference in the communities in which they locate their facilities and market their products. However, these corporations are also doing so because research has determined that association with good causes is good for business.

When respondents were asked what philanthropic activities were considered most impressive, the two top answers were “donating products and services” and “volunteering employees to help.”

An analysis of the benefits of *pro bono* in the law firm context, as well as the greatly enhanced commitments by corporations to volunteerism, reinforces the argument that *pro bono* is not only right, it is, indeed, good for business.

There are loads of features that legal services and *pro bono* programs can take advantage of for free to promote their volunteer programs, to recruit and train volunteers, and to communicate with the legal community. Utilize the following easy-to-use tools now to expand your reach:

- Take advantage of new and interesting collaborations and partnerships that have not only engaged *pro bono* attorneys, but non-profits and state agencies as well.
- Use technology and social media to effectively market your *pro bono*

program and associated opportunities and promote giving.

- Invest in effective use of e-newsletters and emails to promote your *pro bono* program and opportunities.
- Maximize your firm’s or agency’s website to promote your program and opportunities, encourage and acknowledge giving, recognize award winners, and provide links to other sites.
- Use the Bar’s publications, website, and credibility to market opportunities, news, trainings and other resources, to support the *pro bono* message.

The Access to Justice Coordination Program at the Delaware State Bar Association would like to highlight a *Pro Bono* Attorney of the Month.

Each month, a Delaware attorney who is doing exemplary volunteer work will be featured. You can highlight your volunteers and *pro bono* programs by nominating people for this honor. Just nominate a DSBA attorney by sending the name,

firm or affiliation and a short nomination to Susan Simmons, Access to Justice Coordinator: [ssimmons@dsba.org](mailto:ssimmons@dsba.org). These nominations will also be used toward the Christopher W. White Distinguished Access to Justice Awards nominations during Celebrate *Pro Bono* Week in October.

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

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## DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

# Preaching or Reality Check: You Be the Judge!

**T**he first empirical study in 25 years confirms lawyers have significant substance abuse or mental health problems, more so than other professionals or the general population. And, many lawyers are not seeking the help they need, for the wrong reasons. Researchers hope that the new data will promote change within the profession. As the DE-LAP columnist, is this preaching or a reality check? You be the judge.

With the help of 15 state bar associations, almost 15,000 lawyers from 19 states in every region of the country completed an anonymous 2015 survey assessing alcohol use, drug use, and symptoms of depression, anxiety, stress and other mental health concerns. Of those, nearly 13,000 respondents met the criteria for inclusion in the study: lawyers had to be licensed in the United States and currently employed in the legal profession as an attorney or judge. Close to equal numbers of men and women participated, identifying their respective age groups, job position types, and whether they worked in private firms, state bar associations, government or nonprofit organizations, or other working environments.

As stated by Patrick Krill, Director, Hazelden Betty Ford Foundation's Legal Professional Program:

This is a huge data set. We wanted to get a clear picture of what's going on with licensed and employed attorneys and judges in America, and this is a representative sample from all corners and regions of the country, from the biggest metropolitan areas to the smallest towns. What we found is that the problems are far-reaching and consistent. There's no one group within the profession that seems to be immune to behavioral health problems and the problems are significant.

The following is a break down of the survey data.

### **Alcohol Abuse: 21 Percent Report Problematic Drinking**

A significant number of the participants in this survey, approximately 11,300, completed a 10-question instrument known as the Alcohol Use Disorders Identification Test (AUDIT-10). To better understand the results, it is important to understand the screening tool. This instrument is used to screen for different levels of problematic alcohol use, including hazardous use, harmful use, and possible alcohol dependence. The test identifies quantity and frequency of use, and asks whether an individual has experienced consequences from drinking. Of the 11,300 respondents, 21 percent of men respondents experienced consequences, compared to 16 percent of women.

Summarizing the data, and in no way preaching, the results are undeniably disturbing for the profession:

1. Of those identified as working in private firms, approximately 23 percent were considered problem drinkers.
2. Of the private law firm lawyers identified as junior associates, 31 percent identified as problem drinkers, the highest compared to senior associates (26 percent), junior partners (24 percent), managing partners (21 percent), and senior partners (18.5 percent). Thus the data suggest that a higher rate of lower-level lawyers engaged in problem drinking behavior, and problem drinking slightly decreases as they move up the law firm chain.
3. For lawyers in other working environments, the rate of alcohol use disorders is also relatively high under the AUDIT-10. Of those identified as in-house, governmental public or non-profit lawyers, 19 percent were considered problem drinkers.
4. For lawyers that were sole practitioners, 19 percent of those identified as having an alcohol use disorder.
5. Approximately 18 percent of the in-house corporate or for-profit organizations lawyers were considered problem drinkers.
6. Approximately 16 percent of judges identified as having an alcohol problem.

Again, I am not preaching – just stating the data.



When sifting data by age and years of practice, it becomes clearer that younger lawyers are struggling the most with alcohol abuse. Respondents identified as 30 years or younger had a 32 percent rate of problem drinking, almost 1 in 3, higher than any other age group. Those attorneys ages 31-40 reported a 25 percent rate of problem drinking. Starting at age 51, the percentages fall below 20 percent.

Amazingly, and most notably, 44 percent of lawyers reported that their use of alcohol was problematic during the 15-year period that followed graduation from law school. Another 28 percent reported problematic use that started before law school and 14.2 percent said that their problem drinking started in law school.

Comparing the new data to older research, evidence suggests that the widespread belief that lawyers are at higher risk, or more vulnerable, and suffer from significant substance abuse problems, or mental health disorders, in numbers greater than other professionals or the general population is still true. The difference? Now, alcohol problems seem to start earlier.

### Drug Abuse: Picture Less Clear

Researchers used the 10-question Drug Abuse Screening Test (DSAT) to gauge low, intermediate, substantial, and severe drug abuse among participant lawyers and judges. Drug abuse includes the nonmedical use of illegal substances or prescription drugs, or the use of prescribed or over-the-counter medications in excess of prescribed or directed amounts. Only 27 percent of all respondents completed the DAST, a much smaller sample than the AUDIT, which had nearly full participation.

It is suggested by the authors of the study that “we can speculate that a lower sample means drug use is not as prevalent as alcohol use among lawyers, and that’s logical.” Linda Albert goes on to say, “But you may also have lawyers who do not want to voluntarily disclose information about illegal drug use even though the survey was confidential and anonymous.” In fact, it is suggested “they would likely be more open to answering questions

about alcohol, since alcohol is legal. So the picture is less clear. Obviously, any indication of drug abuse among lawyers is concerning.”

With reference to the research data compiled on drug abuse, of the 3,419 participants that completed the DAST:

1. 0.1 percent reported severe drug use.
2. 0.3 percent reported substantial drug use.
3. 21 percent reported intermediate use.
4. 76 percent reported low use.

Albert, one of the facilitators of the survey, suggests that “low use” means low quantity and frequency with little or no consequences. The highest rate, 16 percent, reported using sedatives, which include depression, anxiety, or sleeping medications. About 10 percent used marijuana or hash and 6 percent reported opioid use.

### Depression, Stress and Anxiety: 28 Percent Report Concerns with Depression

Approximately 11,500 participants completed a 21-question Depression Anxiety Stress Scales (DASS-21). The results are as follows:

1. Approximately 61 percent reported experiencing concerns with anxiety and depression at some point in their career.
2. Approximately 16 percent reported experiencing social anxiety.
3. Approximately 12.5 percent reported experiencing attention deficit hyperactivity disorder.
4. Approximately 8 percent reported experiencing issues with panic disorder.
5. Approximately 2.4 percent reported experiencing bi-polar disorder.
6. More than 11 percent reported suicidal thoughts during their careers.

Equally as apparent, and like the rates associated with alcohol use, mental health conditions were higher in younger or less experienced attorneys.

### Barriers to Treatment

Sadly, only 7 percent of participants report that they sought treatment for alcohol or drug use, and only 22 percent of those respondents went through programs tailored to legal professionals. When asked to identify the biggest barriers to seeking drug or alcohol treatment, participants listed:


1. 67.5 percent said they did not want others to find out.
2. 64 percent identified privacy and confidentiality as a major barrier.
3. 31 percent identified concerns about losing their law license.
4. 18 percent said they did not know who to ask or they did not have the money for treatment.

Ironically, lawyers fear that help will not be confidential and someone will find out, and if someone finds out, their practice and livelihood will be ruined. This thinking is faulty.

In Delaware, lawyers and judges have a confidential way to get help — the Delaware Lawyers Assistance Program (DE-LAP). Plus, the means for treatment, in part, is available through the Delaware Lawyers Assistance Fund (510C3). Remember, seeking help voluntarily does not, by itself, impact someone’s law license. It just allows them to be healthier, minimizing the risk of breaking ethical rules. As Linda Albert states: “We want to dispel the misconceptions, eliminate stigmas attached to mental health and substance abuse issue, and encourage lawyers to get the help they need before bigger problems arise.”

Do not think of this as preaching — think of it as a time for a reality check. If you, or someone you know needs help, call DE-LAP. The confidential number is (302) 777-0124 or e-mail [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org).

#### REFERENCES:

1. Krill, Patrick R. JD, LL.M.; Johnson, Ryan MA; Albert, Linda MSSW. “The Prevalence of Substance Use and Other Mental Health Concerns” *Journal of Addiction Medicine*, February 2016 Volume 10, Issue 1, P. 46-52. 

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## BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

# A Matter of Some Importance and a Justice Who Will Always Matter: *A Matter of Interpretation*

By Antonin Scalia (Princeton Univ. Press, 1997)

*Reviewer's Note: Back in March 1998, I wrote a review of A Matter of Interpretation. It was my first book review for In Re:, and, it is a book that still stands the test of time. If you have not read it, I commend it to you. Below is my original review as it appeared, and, after that, I add some personal thoughts and an anecdote about the late Justice.*

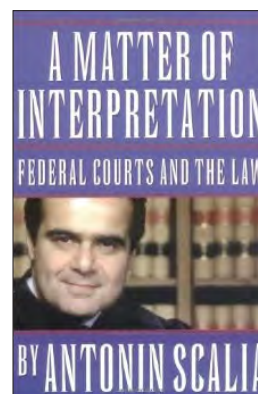
**W**henver a Supreme Court Justice takes the time to publish something, it is worthy of note. In *A Matter of Interpretation*, Justice Antonin Scalia “attempts to explain the current neglected state of the science of construing legal texts, and offers a few suggestions for improvement.” It is a book “addressed not just to lawyers, but to all thoughtful Americans who share our national obsession with the law.” The book itself is fairly short (149 pages), and well-written. Following Scalia’s initial essay, there are four shorter comments on it by Gordon S. Wood, Lawrence H. Tribe, Mary Ann Glendon, and Ronald Dworkin, which are in turn followed by a response from Justice Scalia.

Scalia’s argument is simple. In interpreting statutes (as well as the Constitution), too many lawyers and judges look beyond the words of the statute to find

a meaning or interpretation which they believe the statute ought to mean or the legislature intended. To show how far things have gone afield, he recounts reading a brief only a few years ago which began with a review of the legislative history of the statute at issue and then continued “[u]nfortunately, the legislative debates are not helpful. Thus, we turn to the other guidepost in this difficult area, statutory language.” Justice Scalia, however, agrees with Justice Holmes’ remark concerning the construction of statutes: “Only a day or two ago — when counsel talked of the intention of a legislature, I was indiscreet enough to say I don’t care what their intention was. I only want to know what the words mean.”

In determining what the words mean, Scalia states that “[a] text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably, to contain all that it fairly means.” He illustrates his point with a brief review of *Smith v. United States*, 508 U.S. 223 (1993), where the statute at issue provided for an increased jail term if, “during and in relation to ... [a] drug trafficking crime, [the defendant] uses ... a firearm.” The defendant in that case sought to purchase cocaine in exchange for a handgun, and the lower court held that the sentence should be increased because the defendant “used” a firearm. Scalia believes the phrase “uses a firearm” means to use it for the purpose for which it was intended — that is, as a firearm. However, the Supreme Court upheld the increased jail term by a vote of 6-3 with Scalia in the minority.

Moving from statutory interpretation, Scalia then discusses the interpretation of the Constitution. His approach is the same. He looks to the meaning of the text, and rejects both the intent of the framers (for the same reasons that he rejects the intent of the legislature in interpreting statutes) as a basis for interpretation as well as the “living Constitution” approach. With respect to the idea of a “living Constitution,” which has a meaning which changes over time, Scalia says that “[p]erhaps the most glaring defect of Living Constitutionalism, next to its incompatibility with the whole antievolutionary purpose of a constitution, is that there is no agreement, and no chance of agreement, upon what is to be the guiding principle



of the evolution.” He concludes his brief essay with the following observation:

Seventy-five years ago, we believed firmly enough in a rock-solid, unchanging Constitution that we felt it necessary to adopt the Nineteenth Amendment to give women the vote. The battle was not fought in the courts, and few thought that it could be, despite the constitutional guarantee of Equal Protection of the Laws; that provision did not, when it was adopted, and hence did not in 1920, guarantee equal access to the ballot but permitted distinctions on the basis not only of age but of property and of sex. Who can doubt that if the issue had been deferred until today, the Constitution would be (formally) unamended, and the courts would be the chosen instrumentality of change? The American people have been converted to belief in The Living Constitution, a ‘morphing’ document that means, from age to age, what it ought to mean. And with that conversion has inevitably come the new phenomenon of selecting and confirming federal judges, at all levels, on the basis of their views regarding a whole series of proposals for constitutional evolution. If the courts are free to write the Constitution anew, they will, by God, write it the way the majority wants; the appointment and confirmation process will see to that. This, of course, is the end of the Bill of Rights, whose meaning will be committed to the very body it was meant to protect against: the majority. By trying to make the Constitution do everything that needs doing from age to age, we shall have caused it to do nothing at all.

Although there may be some who disagree with the votes Scalia has cast on the Supreme Court, it is difficult to argue with

many of the points made in this book. Scalia begins his book with the lament that despite the importance of statutory (and constitutional) interpretation in American law today, there is a dearth of books and treatises which address the subject as compared to other fields of law. This book should begin to fill the void. Anyone concerned with interpreting statutes or the Constitution should read this very interesting and thought-provoking book.

• • •

With his passing, history will now be Scalia’s judge. Along with Marshall, Story, Holmes, Warren, Black, Brennan and others, Scalia will, no doubt, be considered one of the great justices and one of the most influential. Although not always on the winning side of a case, his turn of a phrase and memorable writing certainly ensures him a place in Supreme Court history. More than any vote he cast, though, Scalia will be remembered for his approach to cases — whether called “textualism” or “originalism,” Scalia focused on the meaning of the actual language used and what that language reasonably meant to those who adopted it. This focus on text was not quite so common thirty years ago, when Scalia was appointed to the Court and a “living Constitution” was still the rage; but, today, the phrase “living Constitution” is rarely if ever invoked, and many would regard textualism/originalism as the predominant mode of analysis. Scalia’s role in changing the way that text is approached will earn him a place in history more so than any of his writings or decisions.

Scalia will also be remembered for his friendships and his larger than life personality. That he was able to forge friendships off the bench with Justices Ginsburg and Kagan, despite their ideological divide, sets an example for all of us. Scalia could disagree without being disagreeable.

The irony with his passing is that Scalia sought to take politics out of the Court with a mode of legal analysis that focused on the text and not personal

preferences or politics. His untimely death, however, brings all the politics to bear in a way that he would have found distasteful and wrong for the Court.

Scalia came to Delaware several times and I was fortunate enough to be able to meet and speak with him on two of those occasions. During one discussion, I told him the story of how, over the years, when younger friends (or friends with children in college) wondered if they (or their children) should go to law school, that I would suggest the potential law student read *A Matter of Interpretation*. If they did not find Scalia’s book interesting and if it did not make them think, then maybe law school was not for them. The Justice looked at me, looked away for a moment in thought, and then looked at me again and said, “You know, that sounds about right.” ☯

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“*Scalia’s role in changing the way that text is approached will earn him a place in history more so than any of his writings or decisions.*”





## A PROFILE IN BALANCE

By James G. McGiffin, Jr., Esquire

# Kelley Huff

## Joy Expected, Joy Unexpected

*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

• • •

From a young age, Wilmington litigator Kelley Huff wanted to be a lawyer. Now, she is one and she loves the job. She was not always so sure she wanted to be a wife and mother, but she has discovered that she loves those roles just as much. In fact, she cannot imagine her life being any better.

Kelley was born in Wilmington and grew up in Northeast, Maryland. Having figured out in middle school that she would be a lawyer, she went directly from high school to college, attending Virginia Tech to study political science.

It is not that she is some sort of a single-minded drone. Kelley knows how to have fun, too. After her college graduation, she took a break from study and drove cross-country with two girlfriends in a “beat up Mercedes.” They spent two months exploring the country (often sleeping in the car or a tent) and for a long time Kelley could say it was the best thing she ever did.

She returned home and took on two jobs: data entry for J.P. Morgan (not fun) and bartending at a place in Elkton, Maryland called Casey’s Riverhouse (much fun). As fate would have it, it was at Casey’s that Kelley met her future spouse: Paul. It seems that Paul (a Wilmington Police Detective) is the best friend of Casey’s owner. Whether it was coincidence or a set-up, Kelley and Paul had an instant connection. And, that connection has lasted, as she remains, “passionately in love with him.” Kelley decided to limit her law school search to Widener University Delaware Law School, to remain close to Paul. Fortunately for all concerned, Kelley and Widener also made a connection (perhaps with a lesser degree of passion).

Kelley was busy during her law school years. She was a full time student and continued tending bar evenings and weekends. She was also a Moot Court participant and enthusiast. She served as the Judge G. Fred DiBona Moot Court Competition Chairperson, which gave her the responsibility of writing the competition fact pattern and organizing the event. Through this activity, Kelley met Superior Court (now President) Judge Jan Jurden, who was a volunteer for the competition. Judge Jurden was impressed with Kelley and hired her as a law clerk. Kelley then worked as a clerk for a second year, this time with Superior Court Judge Calvin Scott. After that, Kelley was ready for a new challenge.

Murphy & Landon hired Kelley as the sixth lawyer in the firm. As one of only two associates, Kelley sees a wide variety in her work. She does personal injury, medical malpractice, nursing home neglect, and even some insurance defense work. She also spends time in Dover as counsel to the Senate Majority Caucus. She likes the variety, challenge, and responsibility, and, most



Kelley with daughter Maggie. Photo is by Rebecca Harris.



*“Realizing her dream to be a lawyer turns out to be but a part of the dream. Experiencing the love and joy of family has completed the dream.”*

importantly, she likes the people with whom she works. Kelley also participates in the Rodney Inn of Court, the Superior Court Civil Rules Committee, and the Delaware State Bar Association (Litigation and Women and the Law Sections). She is a volunteer for the Office of the Child Advocate, as well.

As much as she enjoys her job, Kelley enjoys returning home at the end of the workday. Kelley describes the greeting she receives from Paul (now her husband), and from children Maggie and Owen, as awesome and completely fulfilling. She now says, without hesitation, that these children are, “the best thing I’ve ever done.” Part of her joy is that Paul is a true partner in the family, sharing household and parenting duties. And the children, well, they are “everything.” Maggie, at age three, is a “saucy spitfire,” and Owen, an infant, is just laid back and always smiling.

Kelley takes some time for herself, too. She has a bubble bath every night. And, she is a runner. Kelley has run two marathons and a dozen half marathons. She has been running for years with the same three friends, and she finds it mentally and physically restorative. Plus, it gives her the freedom to eat nachos or the occasional Rice Krispies Treat.

Realizing her dream to be a lawyer turns out to be but a part of the dream. Experiencing the love and joy of family has completed the dream. Kelley Huff finds her life in perfect balance and she could not be happier about it. ☯

**James G. McGiffin, Jr.** is a Senior Staff Attorney with Community Legal Aid Society, Inc. and a former President of the Delaware State Bar Association. He can be reached at [jmcgiffin@declasi.org](mailto:jmcgiffin@declasi.org).

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# Report: 2016 Mid-Year Meeting of the ABA House of Delegates

By William D. Johnston, Esquire

**O**n February 8, 2016, the ABA House of Delegates convened in San Diego, California, as part of the 2016 American Bar Association Mid-Year Meeting.

## The Delaware Delegation

The “Delaware Delegation” to the House comprised The Honorable William C. Carpenter, Jr., a member of the ABA Board of Governors; Benjamin Strauss, State Bar Delegate; and yours truly, State Delegate.

## Remarks Presented During the Session

The meeting of the House started with presentation of the colors, the Pledge of Allegiance, and an invocation (by Rabbi Laurie Coskey). As is customary, members of the House then heard from ABA President Paulette Brown, Chair of the House of Delegates Patricia Lee Refo, ABA Treasurer G. Nicholas Casey, Jr., and ABA Executive Director Jack L. Rives.

In addition, The Honorable David L. Gilbertson, President of the Conference of Chief Justices, presented remarks, as did ABA President-Elect Nominee Hilarie Bass.

The House also received the report of the ABA Nominating Committee, which included nomination of future ABA officers and members of the Board of Governors.

## Resolutions Adopted by the House of Delegates as ABA Policy

Resolutions adopted by the House, thereby becoming official policy of the Association, included the following (with the resolution number indicated in parentheses):

- Urging the Department of Justice and the Federal Bureau of Prisons to amend their policies with respect to monitoring emails between attorneys and their incarcerated clients to permit attorneys and their incarcerated clients to communicate confidentially via email and thereby maintain the attorney-client privilege (10A);
- Supporting constitutional equality for women, urging the extension of legal rights, privileges and responsibilities to all persons, regardless of sex, and reaffirming support of and affirmatively acting toward the goal of the ratification of the Equal Rights Amendment to the U.S. Constitution (10B);
- Urging lawyers and all interested parties to increase the use of alternative dispute resolution (ADR) processes to resolve health care disputes (100);
- Urging legislatures to review all statutes criminalizing consensual non-commercial sexual conduct, in private and between persons who have the legal capacity to consent, and, to repeal or amend such statutes to criminalize only sexual acts that are nonconsensual, commercial, public, or that involve individuals who lack the legal capacity to consent (102);
- Amending the black letter of Rule 5.5 of the ABA Model Rules of Professional Conduct and the *ABA Model Rule for Registration of In-House Counsel*, to include language specifying that the court of highest appellate jurisdiction may, in its discretion, allow foreign in-house lawyers who do not meet the ABA definition of foreign lawyer because they cannot be “members of the bar” to be able to practice as in-house counsel in the U.S. and to be so registered (103);
- Adopting the *ABA Model Regulatory Objectives for the Provision of Legal Services*, dated February, 2016 and urging that each state’s highest court, and those of each territory and tribe be guided by the Model Regulatory Objectives when they assess the court’s existing regulatory framework and any other regulation they may choose to develop concerning non-traditional legal service providers (105);
- Urging Congress to amend the rulemaking provisions of the Administrative Procedures Act (106B);
- Encouraging all state, territorial and tribal courts, bar associations and other licensing and regulatory authorities, that have mandatory or minimum continuing legal education requirements (MCLE) to modify their rules to include as a separate credit, programs regarding diversity and inclusion for the legal profession of all persons regardless of race, ethnicity, gender, sexual orientation, gender identity or disabilities, and programs regarding the elimination of bias (107);
- Opposing intellectual property laws and agency and court interpretations of intellectual property laws that impose the payment of the government’s attorneys’ fees on a party challenging a decision of the United States Patent and Trademark Office in federal district court, unless the statute in question explicitly directs the courts to award attorneys’ fees (108A);
- Supporting interpretation and application of the statutory six-year patent damages period (35 U.S.C. §286) as limiting availability of the judicially created laches defense as a bar to legal damages for patent infringement (108B);

- Urging bar admission authorities in each state and territory to adopt expeditiously the Uniform Bar Examination (UBE) in their respective jurisdictions (109);

- Urging bar admission authorities to consider the impact on minority applicants in deciding whether to adopt the UBE in their respective jurisdictions and to consider including subjects not included on the UBE, particularly Indian Law in each state or territory with sizable American Indian populations or trust land (117);

- Urging the United States Supreme Court to record and make available video recordings of its oral arguments (110);

- Urging state, local, territorial and tribal child welfare and juvenile justice agencies to provide adequate resources for assessing and treating emotional and behavioral disorders of children in their custody, including psychosocial and clinical interventions, recreational opportunities and supportive services that can reduce the need for prescribing psychotropic drugs (111);

- Adopting the *ABA Model Act Governing Assisted Reproductive Technology Agencies* (ART), dated February 2016, which provides model licensing legislation governing ART agencies, and recommending consideration and adoption of the Model Act by appropriate governmental agencies and legislatures (112A);

- Urging the United States Department of State to seek specific negotiations regarding a possible Hague Convention on private international law concerning children, including international surrogacy arrangements (112B);

- Approving the Revised Uniform Athlete Agents Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein (115A);

- Approving the Revised Uniform Residential Landlord and Tenant Act, promulgated by the National Conference of Commissioners on Uniform

State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein (115B);

- Approving the Uniform Commercial Real Estate Receivership Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein (115C);

- Approving the Uniform Home Foreclosure Procedures Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein (115D);

- Approving the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein (115E);

- Approving the Uniform Trust Decanting Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein (115F);

- Urging public companies in the United States to diversify their boards to more closely reflect the diversity of society and the workforce in the United States (116); and

- Urging Congress to enact legislation to encompass services provided by advanced practice providers within the locum tenens exception to the prohibition on reassignment of Medicare billing privileges (300).

For a report of all resolutions considered by the House, please see [www.americanbar.org](http://www.americanbar.org).

### **Joining (or re-joining) the ABA and One or More of its Sections, Divisions, and Forums**

As I have tried to trumpet on previous occasions in reporting on meetings of the House of Delegates, the ABA has much to

offer each of us as Delaware lawyers and judges. For all, the Association offers top-quality content that can be helpful to us on a daily basis. Also for all, the Association promotes collegiality, long-term relationships, and leadership development.

The Association does all of this principally through its sections, divisions, and forums and, in turn, through the numerous committees and task forces associated with each.

If you have never been a member of the ABA, please join. If you are a “lapsed” member, please come back! And, once a member of the Association, joining a section, division, or forum is either free (for law students) or at a nominal cost. In turn, joining as many committees as you’d like is free. Please check out the many opportunities at: [www.americanbar.org](http://www.americanbar.org).

### **ABA Meetings to Come**

The ABA House of Delegates will next meet at the 2016 ABA Annual Meeting, August 8 and 9, 2016, in San Francisco. In the meantime, there will be meetings of ABA sections, divisions, and forums (and of committees or task forces of each). In addition, in-between meetings, the ABA offers CLE programs to Association members — many of them for free. And, committee and task force members share practice-pointers via listserves, webinars, and otherwise.

If you have any questions or concerns, please let me know at [wjohnston@ycst.com](mailto:wjohnston@ycst.com) or (302) 571-6679. It continues to be my privilege and pleasure to serve as State Delegate to the House from Delaware. ☎

**Bill Johnston** is a partner with Young Conaway Stargatt & Taylor, LLP. He is a Past President of the Delaware State Bar Association and served for nine years as the DSBA’s State Bar Delegate to the ABA House of Delegates. Currently, he serves as State Delegate from Delaware to The House and as Chair-Elect of the ABA Business Law Section.



# Seven-Figure Verdict Upheld for Plaintiff in Case Involving Release of Protected Healthcare Information

By Antranig Garibian, Esquire

**T**he protection of confidential and private information has taken center stage as society places increased significance on privacy rights. The law protects individuals from having their private healthcare information negligently exposed or revealed and where those revelations take place and cause damages, individuals may be entitled to compensation. In *John Doe v. Infectious Disease Associates, P.C.*, Del. Super., C.A. No. N13C-12-218 MMJ, the Superior Court recently upheld a jury verdict in favor of a Plaintiff who sued Defendant for faxing a document which contained confidential information regarding Plaintiff's treatment for HIV. Plaintiff claimed that Defendant's negligence in revealing this protected healthcare information caused his employment to be terminated and resulted in damages. This opinion arises out of Defendant's post-trial motions and provides useful guidance on how Courts will handle post-trial motions for judgment as a matter of law, a new trial and remittitur.

In October 2015, trial in this case was held and ended with a jury finding that Plaintiff's termination from his employment was reasonably foreseeable and that due to Defendant's negligence, Plaintiff was entitled to \$86,526.76 for lost wages and \$1,050,000 for emotional pain and anguish. Defendant argued that Plaintiff's employer did not see any protected healthcare information and that Plaintiff was terminated for reasons

having nothing to do with any confidential healthcare information. Plaintiff, on the other hand, presented circumstantial evidence that after the fax was received, his colleagues treated him differently, his employer moved toward firing him and that as a result of the entire ordeal, his depression increased.

After the verdict, Defendant renewed its motion for judgment as a matter of law. In the alternative, Defendant also moved for a new trial and for remittitur. Defendant argued that there was no factual evidence to prove that Plaintiff's healthcare information was disclosed or that any disclosure caused Plaintiff's damages. The Court upheld the jury's verdict and denied all of Defendant's motions.

## **Defendant's Motion for Judgment as a Matter of Law/Defendant's Motion for a New Trial**

The Court denied Defendant's motion for judgment as a matter of law under Superior Court Civil Rule 50(b), which permits a motion for judgment as a matter of law after the entry of a judgment where the evidence "preponderates so heavily against the jury verdict that a reasonable jury could not have reached the result." *Himes v. Liu*, 2008 WL 4147579, at \*1 (Del. Super.) (citing *Storey v. Camper*, 401 A.2d 458, 465 (Del. 1979)). The Court considered whether under any reasonable view, the jury could have justifiably found for the Plaintiff.

With respect to Defendant's motion for a new trial under Rule 59, a different standard was applied. For this motion, the Court weighed the evidence "in order to determine if the verdict is one which a reasonably prudent jury would have reached." The Court emphasized that its power to grant a new trial was limited to circumstances where it is clear that the verdict was the result of passion, prejudice, partiality corruption or that the jury disregarded the evidence or law.

The Court denied both motions — denying judgment as a matter of law, as well as Defendant's request for a new trial. Noting that the evidence in this case hinged on the witnesses' credibility, the Court deferred to the jury's finding on the disputed facts. The jury had deliberated for a "reasonable amount of time" and answered the questions on the Special Verdict Form in a logical manner. The Court found no reason to disturb the jury's verdict.

## **Defendant's Motion for Remittitur**

Further, Defendant moved for remittitur, arguing that the verdict was against the great weight of the evidence and was the result of passion, prejudice and partiality "in direct contravention to jury instructions." Following Delaware's policy of giving enormous deference to jury verdicts, the Court held that jury's verdicts are only set aside when it is

Highlights (continued on page 31)

# The 2016 Blue-Gold High School All-Star Basketball Games

By Lawrance Spiller Kimmel, Esquire  
Chairman, Blue-Gold Board of Trustees

**W**hen my dad, Morton Kimmel, founded the Blue-Gold All-Star Basketball Games in 1999, he had two simple goals: to raise money to support individuals with intellectual and developmental disabilities (IDD), and to create an event that would have a positive impact on the Delaware high school basketball community.

Neither of us could have predicted how far the Games would come since then. At the 2015 Blue-Gold Basketball Games, 60 of the best male and female high school basketball players in the state competed before a crowd of more than 4,000 at the University of Delaware's Bob Carpenter Center. Members of the Philadelphia Eagles signed autographs at a VIP Reception and played in the annual Eagles–Local Celebrity Sponsors game, and the event raised over \$100,000 for the Best Buddies Delaware organization.

The 19th annual Blue-Gold All-Star Basketball Games promise to be just as exciting. Scheduled for Saturday, March 19, 2016, the Games start with another VIP Reception luncheon, followed by the Girls' game tip-off at 1:30 p.m., then the Eagles–Sponsors game, and concluding with the Boys' game at 4:00 p.m. Former Harlem Globetrotters referee Joe Richmond will once again officiate throughout the day, and we are very happy to announce that NBC10 reporter Tim Furlong will also be emceeding this year.

Blue-Gold Basketball would not be what it is today without support from the Delaware legal community. Through sponsorships and donations, attorneys contribute extensively to the total amount raised at the Games every year. Many lawyers have also played on the Sponsors' team in the annual Eagles and Local

Celebrity Sponsors game, including McCarter and English Chairman Mike Kelly, Young and McNelis Founding Partner Jeff Young, and Drew Dalton of Dalton and Associates. Superior Court Judge Jane Brady has coached the team every year since the tradition began, and we are all confident that she can finally lead the Sponsors to a victory this year.

Personally, I have had a great time playing on the Sponsors team over the years. My most vivid memory probably involves a run in with Jeremy Maclin, of all people. As I was driving towards the net, Maclin knocked the ball out of my hand, leaving me to race after it - right in step with former Eagles defensive end Daryl Tapp. Our shoulders met and — to probably no one's surprise but my own — Tapp won out. He got the ball, and I was left with a dislocated shoulder (but a pretty good dinner party story).

Along with the tremendous support we have received from the legal community, my father and I are lucky to be joined in our passion for Blue-Gold Basketball by a board that includes Vice President Joseph R. Biden, Jr., Governor Jack Markell, Attorney General Matt Denn, U.S. Senators Tom Carper and Chris Coons, U.S. Congressman John Carney, and Delaware State President Dr. Harry Lee Williams, among other prominent Delawareans. Blue-Gold Basketball also relies on the Best Buddies staff and the more than 200 police officers, high school coaches, local business people, students, and Best Buddies participants who volunteer their time every year to make sure the Games run smoothly.

With so many people working behind the scenes, Blue-Gold Basketball has become a vital source of annual funding for Best Buddies Delaware, supporting

the nonprofit's mission to enhance the lives of individuals with intellectual and developmental disabilities through one-to-one friendships. Every year, four high school students who are Best Buddies participants are also invited to attend all of the Blue-Gold Basketball related events as honorary "coaches," and many more buddies enjoy attending and volunteering at the Games.

The Blue-Gold Basketball board is committed to ensuring that the Games are an equally positive force for the Delaware high school basketball community. We invite more than 100 college coaches to the Games each year partly because we believe that Blue-Gold Basketball has the potential to help the student athletes to grow not only as players, but also as students and citizens. We are proud of the fact that over the years, a number of all-star team members have received scholarships and have made the decision to attend college specifically due to recruiting on game day.

In keeping with that philosophy, each year the student athletes and Best Buddies coaches are invited to attend a series of meetings with civic and business leaders in the week leading up to the Games. On Wednesday, March 16, the students will attend a Superior Court presentation led by Judge Robert Young, followed by a lunch with AJ Roop, the senior criminal strategist in Attorney General Denn's office, and a senate and house session at Legislative Hall. At the end of the day, the group will meet and take individual photographs with Governor Markell. More Delaware leaders will speak at the all-star game practices and at the Blue-Gold Basketball banquet at Dover Downs, where the student athletes and Best Buddies

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**Basketball** (continued on page 31)

# Time Flies When You Are Serving the Greater Good

An Update from Brian S. Eng, 2015 Recipient of the Roxana C. Arsht Fellowship

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**A**lthough I doubt it will catch on as an idiom, time flies when you practice public interest law at Community Legal Aid Society, Inc. (“CLASI”). I recently realized that it has been almost a year since I was awarded the Roxana C. Arsht Fellowship. My past year at CLASI has been challenging, exciting, frustrating, surprising, vexing, aggravating, humbling, and inspiring. More often than not, I experience several of these emotions at once. Most importantly, serving every single day at CLASI is a privilege, a chance to learn and grow as an attorney and to use my developing skills to serve CLASI’s clients both individually and on a systemic level. It is an honor to have the opportunity to serve Delaware at CLASI, and the Roxana C. Arsht Fellowship helps make that honor financially viable.

In my relatively brief time at CLASI, I have had the privilege of working on cases in every Delaware state court and the United States District Court for the District of Delaware. Although much of my practice involves our “bread and butter” cases such as special education, assistance with Social Security and Medicaid, and discrimination; there has been one very unusual, but not unwelcome, addition to my practice. As anyone who has spent more than five minutes speaking with me in the last year knows, I am now involved in a significant amount of manufactured housing rent justification litigation. It is a subject that I did not know existed eighteen months ago, but one with which I have become intimately familiar.

I have been informed, usually by my wife, that most people are not inter-


ested in a mini-treatise on manufactured housing and the Rent Justification Act. In short, CLASI, through community homeowners associations, is currently representing the residents of “55 and older” manufactured housing communities in rent increase disputes with the owners of those communities. Many of the residents of these communities are retirees on fixed incomes. Over time, rent increases can drive these residents from the homes that they own, but they are unable to move. In the past several months, we have won cases in both the Delaware Superior Court and the Court of Chancery. CLASI is involved in several other rent justification cases, including two pending before the Delaware Supreme Court. Because the Rent Justification Act is relatively new (it was originally enacted in 2013 and later amended), these cases are shaping the landscape in this area of law. I have very much enjoyed the intellectual challenge, and, more importantly, it has been a privilege to work on behalf of some of Delaware’s retirees in their fight to keep their rent affordable.

As I have said previously, the Roxana C. Arsht Fellowship is a symbol of the Delaware legal community’s commitment to ensuring that all Delawareans have access to justice through civil legal services. I follow in the footsteps of prior recipients who have made great contributions to our community. Although I am the one who directly benefits from the Roxana C. Arsht Fellowship, I know that the ultimate beneficiaries are CLASI’s clients, the people who come to CLASI for help. With the Roxana C. Arsht Fellowship’s investment in me, I strive to do all I can for every client who walks in my door.

• • •

Rabbi Eng is a 2013 graduate of the Widener University Delaware Law School where he graduated summa cum laude and served on the *Delaware Journal of Corporate Law*. He earned an honors bachelor’s degree in chemical engineering, with distinction, magna cum laude, from the University of Delaware in 2001. In the interim he trained as a chaplain, served as the leader of a synagogue and a school, and became a rabbi, a father, and a husband (but not in that order). Rabbi Eng’s position at CLASI is his first job as an attorney, and he states that he would be quite happy to never have to look for another one. He has been described by his supervisors and colleagues as “enthusiastic, positive . . . and passionate” as well as “disciplined, proactive, and conscientious.” They add that “most importantly, he has tremendous people skills. Clients respect his knowledge, but can easily gain rapport with him. He cares about his clients as people first, clients second.” As a result of the generosity of members of the Delaware community, the Fellowship will award Rabbi Eng over \$8,000 per annum through 2017.

• • •

Please support the Roxanna C. Arsht Fellowship by attending its Guest Bartender Night at the Brandywine Brewing Company Tavern & Grill on Wednesday, April 27, 2016 from 6:00 p.m. - 9:00 p.m. and its Second Annual wine dinner “Set Sail for Summer: Sip Wine and Dine” at Caffé Gelatto in Newark, Delaware, on June 9, 2016 beginning at 7:00 p.m. Tickets for the wine dinner must be purchased in advance online at the DSBA’s website ([www.dsba.org](http://www.dsba.org)). Look for more information about these events from the DSBA’s Listserv. 



“clear that the award is so grossly out of proportion to the injuries suffered, as to shock the court’s conscience and sense of justice.” Remittitur is *not* meant to replace the jury’s verdict with that of the Court — nor is it meant to reduce the award even to what an objectively reasonably jury might have determined. Rather, remittitur functions to reduce a verdict to the “high end of the spectrum of reasonableness.” The Court denied the motion for remittitur, finding that the damages were not grossly disproportionate to the injuries suffered. Further, the verdict did not shock the court’s conscience and sense of justice. ⚖

**Antranig Garibian** is the founder 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](mailto:ag@garibianlaw.com).

#### Basketball (continued from page 29)

participants will be honored in front of an expected crowd of more than 600 people.

The Blue-Gold Basketball Games are always good basketball, but more importantly, they make a huge difference in the lives of children and adults with intellectual and developmental disabilities, as well as the student athletes. Please feel free to join us at one or all of this year’s events — the full schedule and tickets are available at [www.bestbuddiesdelaware.org](http://www.bestbuddiesdelaware.org). There are also still spots available to play in the Eagles–Sponsors game — please feel free to contact Morton Kimmel at [mkimmel@kimmelcarter.com](mailto:mkimmel@kimmelcarter.com) for more information. If you would like to volunteer at an event or make a contribution, please contact Best Buddies Area Director Tom Waite at 302-691-3187 or at [TomWaite@bestbuddies.org](mailto:TomWaite@bestbuddies.org). Together, I know we can make 2016 the best year for Blue-Gold Basketball yet. ⚖

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# An Interview with *Rina Marks*

By James G. McGiffin, Jr., Esquire



*Resident Profile Columnist Jim McGiffin recently sat down with Executive Director Emeritus Rina Marks to discuss her 25-year tenure with the Delaware State Bar Association and to find out what is next for this multi-faceted leader.*

**T**he nominal leadership of the Delaware State Bar Association changes every year as Delaware lawyers work their way up the leadership ladder to become president. This year, however, DSBA is experiencing a major change in the actual leadership of the organization, and it is a change that most of the 3,200 members will not notice, despite the sea change that it is. Rina Marks, the Executive Director for 25 years, has stepped aside to allow Johnna Darby to assume that role.

I spent an afternoon with Rina talking about her tenure and her plans for the future. She is a woman I first feared, then admired, and for whom I have developed a profound fondness. Her personal story is simply remarkable, and her impact on the Delaware Bar and the practice of law in this state is inestimable, despite the fact that she is a (proud) non-lawyer.

## **The Road to Delaware**

Rina Racov was born in Jerusalem before the State of Israel was established in 1947. Her father was a lawyer under the British system. She attended the same school for the first 12 years of her education. A classmate, Reuven Revlin, currently serves as the President of Israel. After high school she entered the Israeli military to honor her two-year commitment. She chose the Air Force, because she looked better in blue than in the Army's khaki color. She was trained to be a flight instructor and worked as one during her service.

Upon completion of her military service, Rina set her sights on university. She had met many Americans tourists who were visiting Israel and she always asked where they went to college. Based on this less-than-scientific survey, Rina narrowed her college choices to Ohio State and the University of Michigan. She went with Ohio State and traveled across the globe to arrive in Columbus in December while the school was closed for the Christmas break. Rina was unfamiliar with the Christmas holiday. A taxi deposited her on campus, luggage in tow, with no signs of life in the area, in snow. Rina had never seen snow.

From a distance, Rina spied a woman walking toward her. When they met, the woman inquired of Rina if she had a place to stay. Rina did not. Fortunately this woman was Mrs. Watson, the head of the International Student Union. “I have often had the benefit of luck in meeting such people. I think of them as angels,” Rina explains. Mrs. Watson ran a rooming house and Rina found a home. The home had quite a diverse group of residents, with Christians, Muslims, and Jews living together, and they all got along.

She also found a job. She taught folk dancing on campus, and while so engaged she met a science student by the name of Steve Marks. Rina must have been a great teacher, as she and Steve married. The ceremony took place in Israel, and they lived in that country for seven years. Eventually they returned to the States and Steve found work at the University of Delaware. The Marks family settled in New Castle.

### The Delaware State Bar Association

In 1991, Rina and Steve ran a printing business. They did work for lots of people, including several lawyers and law firms. In this connection, Rina met a Delaware lawyer named Harvey Rubenstein. She and Harvey also worked on some community issues together with the Jewish Community Relations Council. The Executive Director job opened up when Harvey was the rising president of DSBA. Harvey brought Rina the *IN RE*: ad and encouraged her to apply. He had a vested interest in a quality hire and he knew Rina to be an imaginative and creative person who also appreciated tradition. He thought she would be perfect for the job. Rina applied.

When she was called to schedule her interview, she insisted on an 8:00 a.m. time. “I am an animated person,” she explained, “and by 10:00 a.m. I am all disheveled. I wanted to look good.” She recalls entering a conference room with “maybe 20 people” sitting around the large conference table. She felt prepared. Her brother-in-law had been President of the American Association of Orthodontists, and he had coached her.

Rina remembers Susan Del Pesco asking, “How will you deal with people who malign lawyers?” That was not a question suggested by her brother-in-law. So, Rina answered from the heart. “My father is a lawyer. I have cousins who are lawyers.” She stood up with a flourish. “I have many lawyers in my family, and I love these people!”

Rina thought she had sealed her rejection with this spontaneous and boisterous response. She was wrong about that, of course, and later learned that her passionate answer was the mark against which all other answers were measured. No other applicant had her fire.

When Rina began the job, she found the environment of the office somewhat hostile. The transition in Executive Directors was difficult, but Rina was assisted by other angels — some DSBA officers — who stepped in and smoothed the way for her.

Rina can talk for hours (and did) about the presidents with whom she worked over 25 years. She is grateful that Harvey Rubenstein was her first president, as he taught her so much. And, Harvey remains convinced that Rina “was born to do this job.” Rina genuinely enjoyed the terms of the presidents with whom she served. “They all taught me so much, each and every one of them.” In a course of three years in the tenure of DSBA presidents (their year as president-elect, the year of the presidency, and the following year when they serve as immediate past-president) she worked closely with each of them. “We traveled together to ABA and Mid-Atlantic conferences, learned about each other’s families, discussed issues ranging from bar matters to world politics, literature, philosophy, and even music.

For me, each Bar president was a mentor and a teacher and I was the beneficiary of their wisdom. I was also honored to have distinguished members of the judiciary and Bar members who stood by me and guided me throughout the years. Their good counsel enriched me and made me better. I owe them all my deepest gratitude.”

In 2006, Rina decided it was time for a change, so she announced she would leave the job. Although a committee was formed and candidates were interviewed, a series of presidents prevailed on Rina to stay “one more year.” Finally, last year,

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“For me, each Bar president was a mentor and a teacher and I was the beneficiary of their wisdom. I was also honored to have distinguished members of the judiciary and bar members who stood by me and guided me throughout the years.”

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Rina knew it was time to move on. She notified President Yvonne Takvorian Saville (2014-2015) that it was time to find a new Executive Director, and this time she really meant it.

### What is Next?

When Rina started with DSBA, the world of law practice was very different than it is today. The computer revolution had not yet begun. People communicated by speaking to each other over the telephone or by sending letters to each other through the United States Postal Service. No one, not even judges, expected immediate responses. Everything took a few days, at least. Rina is very concerned that the profession has become “sick” because, among other things, the speed of work is too much for many lawyers. Rina’s brother, a lawyer, died at the age of 57 a few years ago.

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Rina Marks (continued on page 35)



"In addition to her incomparable contributions as the administrative leader of the DSBA, Rina is one of those unique individuals who constantly amazed me with her energy to continue exploring, learning and contributing to her community. She has just been a wonderful human being to be associated with."

**Charles S. McDowell, Esquire, 2003-2004 DSBA President**

"Rina is a force multiplier. She works as hard as anyone I know, and it is often for the purpose of helping others to succeed. She keeps a team organized and its members in good spirits. I will miss her generosity, great humor, and sound advice."

**Danielle Gibbs, Esquire  
DSBA Executive Committee Member**

"Rina is my sort of person – extremely hard-working, constantly engaged, direct, plain-spoken and unequivocal. I think that's why we have always gotten along so well for all these years. That doesn't mean we always agree, but there isn't any bluster or pretense about Rina, it's all about the work, getting the job done. Rina is a great ally to have in any fight and she is a formidable opponent when on the other side, but you always know where Rina Marks stands. The Bar owes her a tremendous debt of gratitude, she has been a tenacious defender of the Bar Association and has done her job with energy – and with a very biting sense of humor. I've always enjoyed. I admire her tremendously."

**Michael Houghton, Esquire  
DSBA Vice President-at-Large**

"I have wonderful memories of all of the help that Rina provided to me prior to and during my tenure as President of the DSBA. But more than that, Rina has provided service to the Bar far beyond the call of duty. For that we offer our heartfelt thanks and wish her well in her well-deserved retirement."

**Joshua W. Martin, III, Esquire, 1997-1998 DSBA President**

"There is no question in my mind that Rina Marks has been the glue that kept the DSBA so consistently together for the many years I have known her, from new administration to new administration. Her resilience and steadfast enthusiasm for the Bar and people around her has been evident from day to day. For me she was a true motivating factor, eager to learn more, and even more eager to set new ideas into motion. The fact that the DSBA has remained so steady and consistent with little or no turn-over is a testament to Rina's skills in achieving balance and effectiveness. I shall miss her."

**Richard K. Herrmann, Esquire  
Chair, Commission on Continuing Legal Education,  
Co-Chair, Commission on Law and Technology**

## **Members of the DSBA share their thoughts on knowing and working with Rina Marks**

"Rina made everyone feel special. She recognized how important the Bar could be in making our community a better place. The Delaware Law Related Education Center and the students we serve benefitted greatly from her generous support and advocacy."

**M. Jane Brady, Judge, Superior Court  
and President of the Board of Trustees  
of the Delaware Law Related  
Education Center**

"RINA SERVED THE DSBA WITH DISTINCTION FOR MANY YEARS. SIMPLY PUT, RINA GOT THINGS DONE AND IT WAS ALWAYS A JOY TO WORK WITH RINA AND THE DSBA STAFF. BEST WISHES TO RINA IN HER RETIREMENT FROM THE DSBA AND IN HER FUTURE ENDEAVORS."

**Gregory B. Williams, Esquire, 2013-2014 DSBA President**

"In all seriousness, Rina is one of the most interesting people I have ever met. She's humble, and you would never know it from talking to her, but what she has gone through and overcome to get to this point is the stuff of fiction. I keep urging her to write a book. It would be fascinating, and we'd all learn what humility, perseverance, and true professionalism look like. I consider it a privilege to have had the honor of working with Rina."

**David C. Shelton, Esquire, 2014-2015 DSBA Executive Committee Member**

"Rina is the most positive person I've ever met. Her boundless energy, her 'can do' attitude, are both infectious and inspiring. Rina always gets the job done, and with a smile."

**Patricia C. Hannigan, Esquire, 2002-2003 DSBA President**


"I HAVE WORKED CLOSELY WITH RINA IN A NUMBER OF DIFFERENT CAPACITIES. RINA HAD A UNIQUE ABILITY TO RESOLVE ISSUES ON WHICH MEMBERS OF THE BAR DIFFERED WITHOUT LEAVING ONE SIDE OR THE OTHER FEELING THAT THEIR JUDGMENT WAS LESS THAN IT SHOULD HAVE BEEN. I THINK SHE LOVED THE BAR AND WAS WILLING TO INVEST HER PATIENCE TO PRESERVE NOT JUST THE REPUTATION, BUT WHAT SHE SENSED AS THE CAMARADERIE OF THE BROTHERHOOD."

**Victor F. Battaglia, Sr., Esquire  
1979-1980 DSBA President**

Rina has decided to become part of the solution to this problem. In recent years, she has earned degrees in Natural Health and Naturopathy. She is ready to devote herself to training lawyers, and others, about the importance of balance in life — i.e., keeping oneself well intellectually, spiritually, relationally, emotionally, and physically. She also advocates the use of drug-free medicine (“let your food be your medicine”). “This practice is based on 5,000 years of Chinese medicine that has been undone by Western medicine,” Rina explains. She is also studying Positive Psychology.

In recent years, Rina has offered Continuing Legal Education programs in these areas of her expertise. Her plan is to continue to offer programs in Delaware and to expand her influence into Maryland and New Jersey. She knows that her programs help lawyers become better lawyers and healthier people.

With Rina running the shop, DSBA has grown as the Bar has grown. DSBA remains a model of participation for a voluntary bar association. DSBA has provided superior programs and services to its members. It has stayed current with technology development and has partnered with the Lawyers Assistance Program to support lawyers in need and to help lawyers avoid getting into trouble.

Rina Marks has put together a staff of highly skilled (and just very pleasant) professionals who work together like a championship team. There is no doubt that this team will continue to be a credit to Rina and her remarkable leadership as the team works with new Executive Director Johnna Darby to continue Rina’s legacy. 

**James G. McGiffin, Jr.** is a Senior Staff Attorney with Community Legal Aid Society, Inc. and a former President of the Delaware State Bar Association. He can be reached at [jmcgiffin@declasi.org](mailto:jmcgiffin@declasi.org).

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**Timothy P. Cairns, Esquire**  
**Supreme Court No. 34, 2016**  
**Effective Date: February 5, 2016**

By Order dated February 5, 2016, the Delaware Supreme Court imposed the sanction of suspension for a period of 21 months upon Timothy P. Cairns, Esquire. The Court found Mr. Cairns engaged in professional misconduct in violation of Delaware Lawyers' Rule of Professional Conduct 8.4(b) by operating a motor vehicle while under the influence of alcohol, which resulted in an accident that caused serious physical injury to another motorist.

The Court determined the sanction of a suspension of 21 months, retroactive to the date of Mr. Cairns' transfer to disability inactive status, was appropriate after considering the facts of the case, the Rule violated, the *ABA Standards for Imposing Lawyer Sanctions* and the Court's relevant case precedent. The 21 month period of suspension was imposed with the goals of deterring other lawyers from similar misconduct and protecting the public, while also encouraging rehabilitative efforts and increasing awareness of available resources, including DE-LAP, for other lawyers suffering from addiction and dependency issues.

**SUSPENSION**

**Matthew M. Carucci, Esquire**  
**Supreme Court No. 50, 2016**  
**Effective Date: February 8, 2016**

By Order dated February 8, 2016, the Delaware Supreme Court suspended Matthew M. Carucci, Esquire for 18 months. The Court found Mr. Carucci engaged in professional misconduct in violation of Rules 1.1 and 1.3 (by failing to competently and diligently represent eleven clients), Rule 1.5(f) (by failing to retain unearned advance fees in a trust account); Rule 1.15(a) (by failing to safeguard client funds), Rule 1.15(d)

(by failing to maintain his law practice's books and records), Rule 8.4(c) (by misrepresenting the status of his books and records on his annual Certificate of Compliance) and Rule 8.4(d) (by engaging in conduct prejudicial to the administration of justice) of the Delaware Lawyers' Rules of Professional Conduct ("Rules").

In his defense, Mr. Carucci contended that an attorney need not deposit fees under \$2500 in a trust account based on Comment 10 to Rule 1.5. The Court rejected this argument and reiterated its prior holding in *In the Matter of Barakat*: "By their plain language, the Comments do not authorize an attorney to deposit any fee under \$2500 automatically into his operating account...By the Comments' own terms, if an attorney receives an advance fee of less than \$500.00, of which he owns a portion upon commencing work, the unearned portion of the advance fee must still be placed in a fiduciary account." *IMO Carucci*, Del. Supr., No. 50, 2016 (Feb. 8, 2016) (ORDER) (appending Report of the Board on Professional Responsibility, at 21).

The Court determined an 18 month suspension, retroactive to the date of Mr. Carucci's transfer to disability inactive status, was appropriate after considering the facts of the case, the Rules violated, the *ABA Standards for Imposing Lawyer Sanctions* and the Court's relevant case precedent. The Court found three mitigating factors applied: a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. The Court found seven mitigating factors applied: absence of prior disciplinary history, absence of dishonest or selfish motive, personal or emotional problems, effort to make restitution or rectify the consequences of misconduct, cooperative attitude towards disciplinary proceedings, character or reputation, and remorse. The Court determined a two year suspension was the

presumptive sanction based upon the serious nature of Mr. Carucci's transgressions including neglect of eleven client matters, failure to safeguard client funds and a misrepresentation to the Court on his Certificate of Compliance, but reduced the suspension to 18 months following the application of the mitigating factors. ☞

**Tighe & Cottrell P.A.**  
 attorneys at law

Tighe & Cottrell, P.A. is pleased to announce that Melissa L. Rhoads, Esquire and Patrick M. McGrory, Esquire are now shareholders of the firm. Ms. Rhoads practices in the areas of corporate law, business formation, insurance defense litigation, personal injury, estate planning, collections, labor, and employment law. Mr. McGrory practices in the areas of contract negotiations, residential and commercial construction litigation, risk management, and professional liability defense. Both are members of the DSBA, NCCC and MACC as well as many other associations in the New Castle County area.

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## LOST WILL

**SEARCHING FOR LAST WILL & TESTAMENT** of Edward M. Sharkey of Wilmington, DE. DOD 11/23/2015. Contact William W. Erhart, Esq. (302) 651-0113 or Bill@EstateAndElderLawServices.com.

**SEARCHING FOR LAST WILL & TESTAMENT** of William J. Henry, of Millsboro, DE, D/O/D 11/10/09. Contact Michael Dautrich, Esq. (610) 375-9455 or mdautrich@comcast.net. Ⓜ

## OF NOTE

Condolences to **David R. Batman, Esquire**, on the death of his father, Richard Franz Batman, who died on February 5, 2016.

Condolences to **Walt F. Schmittinger, Esquire**, on the death of his mother, Susan Fritz Schmittinger, who died on February 17, 2016.

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



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# Focaccia ON THE RISE

Last fall, Wilmington's finest bakery shut down its ovens. Black Lab occupied the corner of Union and Howland Streets in Little Italy for over ten years and specialized in artisanal breads, Epi baguettes, tomato pies, and my favorite – focaccia. I especially enjoyed the olive and sage, as well as the goat cheese, caramelized onions, honey, and walnut. Due to this void in the focaccia market, I decided to start making my own.

I tested several online recipes, but the best is from a book in my personal cookbook library, Jim Lahey's *My Bread: The Revolutionary No-Work, No Knead Method* (New York: W. W. Norton & Company, Inc., 2009. Print.) The below instructions are quite simple and can be completed during a Saturday afternoon.

This recipe yields one 13 by 18 inch focaccia.

## Ingredients:

- 1 cup peeled Yukon Gold potato, cut into 1 inch chunks
- 2 1/2 cups cool (55 to 65 degrees F) water
- 4 1/2 cups bread flour (I use all-purpose)
- 2 1/2 teaspoons instant or other active dry yeast
- 1 teaspoon sugar
- 1 1/2 teaspoons table salt
- 1/4 cup extra virgin olive oil

Put the potatoes and water in a small saucepan, cover, and bring to a boil over high heat. Cook until the potato chunks fall apart when pierced with a fork or knife tip.

Use a blender, an immersion blender, or a food mill to puree the potatoes with the cooking water until smooth. Let the mixture cool to 120 degrees F; it will feel very warm to the touch but not scalding.

In a large bowl, stir together the flour, yeast, sugar, and half the salt. Add the potato puree and, using a wooden spoon or your hands, mix until you have a wet, sticky dough, about 30 seconds. Cover the bowl and let sit at room temperature until the dough is tripled in size, two to three hours.

Lightly oil a 13 by 18 inch rimmed baking sheet. Use a bowl scraper or rubber spatula to scrape the dough onto the baking pan; it will still be quite loose and sticky. Gently pull the dough and stretch it across the surface of the pan, then oil your hands and press the dough evenly out to the edges. Drizzle with three tablespoons of the oil and sprinkle with the remaining salt. Use your fingertips to create dimples all over the surface of the dough. Let the dough rise in a warm, draft-free spot until it has risen just over the edges of the pan, 45 minutes to 1 hour.

Half an hour before the end of the second rise, preheat the oven to 400 degrees F, with a rack in the center.

Gently place the focaccia in the oven on the center rack (the risen dough is delicate; a bump going into the oven could collapse it) and bake for 30 to 45 minutes, until the top is evenly golden brown. Transfer the pan to a rack to cool, and give it at least a few minutes before slicing and serving warm or at room temperature.

The potato may sound like a strange addition, but it allows for less flour resulting in an airier bread. The olive oil also contributes to the crusty texture.

Some recipe modifications I recommend (be creative!):

For a simple preparation, add additional coarse sea salt and pinches of fresh rosemary.

For a meal in and of itself, recreate the focaccia from Amaranth – a New York restaurant on the Upper East Side. Amaranth serves a thin, crispy focaccia, filled with Robiola cheese, small chunks of tomato, and arugula and is drizzled with white truffle oil. Instead of forming the above recipe into one large focaccia, divide it into two and form into flat rounds, about ten inches in diameter. Bake each for about 25 minutes, then slice the focaccia as you would a sandwich roll. Carefully remove the top half and sprinkle the bottom half with slices of Robiola, diced tomatoes, and arugula to your liking. Return the top half and bake for an additional few minutes until the cheese is melted.



Slices of crusty, airy focaccia.

Top with an assortment of sautéed exotic mushrooms, and bake for an additional few minutes.

Top with whole, peeled San Marzano tomatoes and dollops of ricotta cheese, and return to the oven for a few more minutes. Ⓢ



**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](mailto:spoppiti@hotmail.com). Other recipes and cooking tips are available on Susan's food blog at [www.cucinadipoppiti.com](http://www.cucinadipoppiti.com).



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