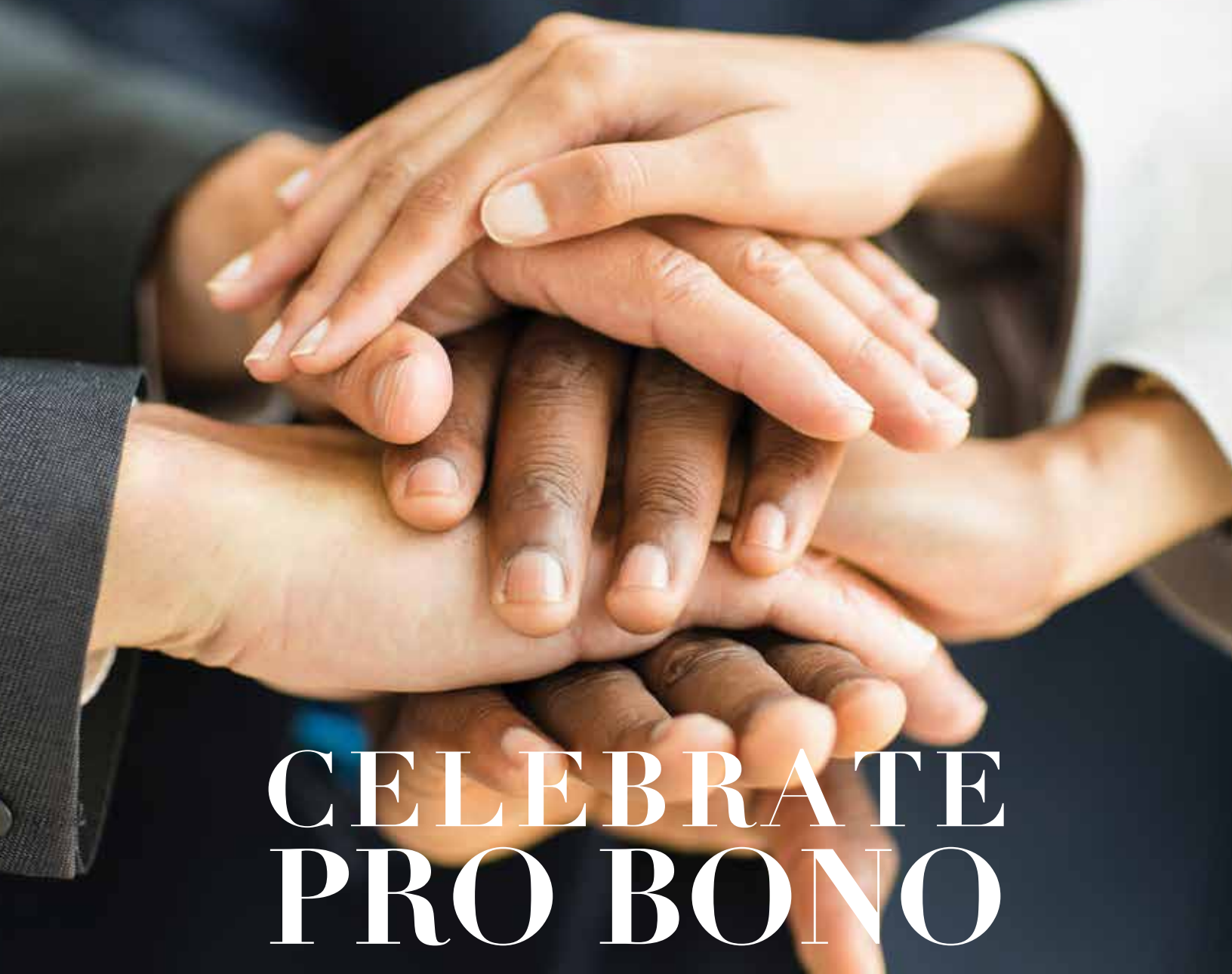


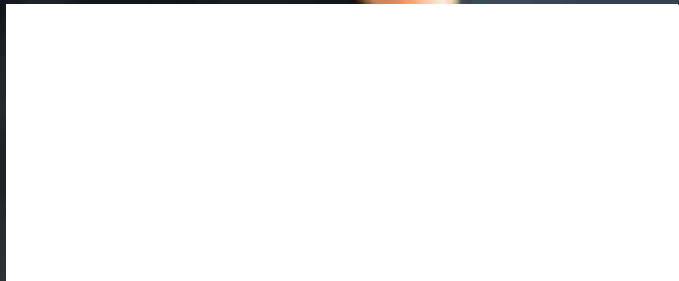


# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION



## CELEBRATE PRO BONO



THE DELAWARE STATE BAR ASSOCIATION PRESENTS

# DR. MARTIN LUTHER KING, JR.

## Annual Breakfast & Statewide Day of Service

### SAVE THE DATE

#### DATE/TIME

Monday, January 16, 2017  
Breakfast: 8:00 a.m.

#### LOCATION

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

#### TICKETS

**\$35.00/person**

*R.S.V.P. Deadline: January 9, 2017*

More information about the Keynote Speaker, Breakfast, and Service Projects will be forthcoming. Sponsorships, ads, and tables will also be available.



*“The time is **always** right  
to do **what** is right.”*

- Dr. Martin Luther King, Jr.

## DSBA BAR JOURNAL

OCTOBER 2016 | VOLUME 40 • NUMBER 3

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

405 North King Street, Suite 100

Wilmington, DE 19801

P: 302-658-5279

F: 302-658-5212

www.dsba.org

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

All correspondence regarding circulation, subscriptions, or editorial matters should be mailed to:

Editor, DSBA Bar Journal  
Delaware State Bar Association  
405 North King Street, Suite 100  
Wilmington, DE 19801  
or emailed to: rbaird@dsba.org

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OF THE DELAWARE STATE BAR ASSOCIATION

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## PRESIDENT'S CORNER

By Miranda D. Clifton, Esquire

# I Give Because...

Whenever I am in a gathering where the phrase “*pro bono*” is mentioned, I find it fascinating to watch the play of reactions on people’s faces. Some are hopeful, some experience pangs of guilt, and some grimace smugly. *Pro Bono* is one of those areas of our lives that no matter how much we contribute, we never feel the satisfaction that our efforts are “enough.” During the month of October, as we focus on *pro bono* excellence, I want to more closely examine why we do what we do for others.

Maybe I am generalizing too much, but in its simplest form, *pro bono* work is simply giving. So, I have to ask, why do we give of our most valued resources (time and energy) for the benefit of others?

The first reason we, as professionals, give, is to enhance our own lives with additional meaning and purpose. I know, that reasoning sounds so “pixie dust and unicorn,” but there is truth to it. If everything we do in our lives benefits only us and those we love (which also benefits us), then we become very self-absorbed. We also become engaged in tunnel vision only dealing with issues that affect us and not the collective society that we are privileged to live within. However, something amazing happens when we reach beyond ourselves and our comfort

level. Inadvertently, we open our thinking to benefit society as a whole rather than just people who look and think like we do. By just reaching out to others and giving our time, we are investing in something bigger than us and the satis-



faction of giving is a reward that cannot be quantified.

Another reason we give is the gratitude. I know, on its face, it sounds self-serving to do something for others expecting them to be grateful for our efforts. However, frankly, sometimes the need to be needed and appreciated is a balm for our daily stressed lifestyles. We function seamlessly in a legal system that is intimidating and confusing to the majority of Americans. Most people are extremely grateful for any help in navigating through the labyrinth of confusing terms and procedures they are thrust into when facing a legal problem.

The gratitude that is shown by individuals after our smallest effort is extremely gratifying. Still another unintentional byproduct of giving will be the gratitude we will find growing within ourselves after helping someone else. When looking through the world through someone else’s eyes, we become more grateful for the things we take for granted on a daily basis.

Finally, sometimes we give merely out of guilt. Most of our upbringing, regardless of culture or religion, has a good, healthy dose of what we “should be” doing because “it is the right thing to do.” Giving to others truly is the right thing to do. However, do not get caught in the

guilt trap. Use guilt as a motivator to get involved, but once you are involved in giving, do not let guilt consume you. Do your part, but do not make yourself responsible for singlehandedly changing the entire world. Take time to reflect and give yourself credit for what you have given. We are accomplishing some pretty amazing things. If every attorney reached out and gave time towards *pro bono* initiatives, Delaware would be miles ahead, one effort at a time.

So, whether you are a *pro bono* warrior or someone looking for an opportunity to get involved, the most important consideration is finding a way to give to



others that you truly enjoy. Our state has children, veterans, seniors, and low income residents that need a little help. These groups alone provide so many opportunities for giving.

Some of the Delaware State Bar Association's upcoming *pro bono* opportunities include a Wills for Seniors event coming up on Sunday, October 23, 2016. Also, we have a dedicated day of service following our Martin Luther King's Annual Breakfast event with several different service opportunities for that day only.

In addition to these one-day events, there are several opportunities through our state in which you can get involved in cases in several different areas. If you need a little help to learn what opportunities are available or who to call in order to get involved, contact Susan Simmons at the Delaware State Bar Association. She is an excellent resource for putting you in contact with an organization or agency that could use your help.

So, why do we give? Because it is an essential part of who we are as human

beings, legal professionals, and individuals privileged to be part of the greatest occupation. So, join the army of individuals who are working to make Delaware a better place for everyone. In addition to working together to make our state greater, we also like to honor those annually who are doing an excellent job in giving. Please join us at the Chase Center on October 25, 2016 at 8:00 a.m. for the Christopher W. White Distinguished Access to Justice Awards Breakfast where we honor some true *Pro Bono* Superstars. Ⓢ

**Miranda "Mindy" Clifton** has graduated from every college and university beginning with a "W" including Wesley (BS), Widener (JD) and Wilmington (MBA). She is the current President of the Delaware State Bar Association. In her spare time, Mindy is a Trial Attorney for Nationwide Mutual Insurance Company and represents its customers in almost every court in all three counties throughout the State. Mindy is also an adjunct professor for Wilmington University in their Graduate Business Studies. She can be reached at [cliftonm2@nationwide.com](mailto:cliftonm2@nationwide.com).

## OFFICE AND TRIAL PRACTICE 2016

Co-Sponsored by the Delaware State Bar Association and the Delaware Bar Foundation

**FRIDAY, OCTOBER 28, 2016**  
**8:20 A.M. - 4:30 P.M.**

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## EDITOR'S PERSPECTIVE

By Benjamin A. Schwartz, Esquire

# Flat Fees and the Rules of Professional Conduct

## Ten Things You Need to Know in Delaware

One of the great things about being an Editor of the *Bar Journal* is that there is very little guidance concerning our topics. Essentially, I can write about whatever I please, within reason. So, rather than regale you with stories of my summer vacation to St. Michaels, Maryland (it was great — I sailed on a skipjack), I want to use this month's "Editor's Perspective" to get some stuff out of my head and onto paper where — if you have any interest, or if you need a sleep aid — you can read it.

There has been much talk in recent years regarding lawyers and law firms moving away from the billable hour model of reimbursement in civil cases. Alternative fee arrangements seem to be very popular these days. The simplest form of alternative fee arrangement is the flat fee. Not only is the flat fee becoming increasingly popular in civil cases, but in private criminal cases, too, defense attorneys generally charge flat fees for their services. In my view, as the Managing Partner of a small law firm that handles both civil and criminal cases, the use of flat fees is on the rise.

There are some ethical requirements you need to keep in mind if you are charging a flat fee for your legal services. By my count, there are ten important ethics rules. Some of these rules apply to all fee arrangements, and some only to advance

fees. But, if you are charging flat fees for representation in Delaware, here is my top ten list of things you ought to consider:

### **1 Always charge a reasonable fee.**

All attorneys' fees must be reasonable in Delaware. Delaware Lawyers Rules of Professional Conduct (DLRPC) 1.5(a) states:

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

### **2 When mixing fee types, be wary of turning your flat fee into a contingency fee in violation of DLRPC 1.5(d).**

DLRPC 1.5(d) prohibits two types of fee arrangements. It states:

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
- (2) a contingent fee for representing a defendant in a criminal case.

So let's say you have a client who needs legal help with her car accident case. She was driving in Wilmington, and entered the intersection at 4th and Orange. When she entered the intersection, she collided with another vehicle that also entered the intersection. The investigating officer gave your client the ticket for running a red light. She claims the other driver had the red light. She wants to hire you to fight the

*“Not only is the flat fee becoming increasingly popular in civil cases, but in private criminal cases, too, defense attorneys generally charge flat fees for their services.”*

ticket and also to represent her in her personal injury case against the other driver. The only problem is she cannot afford your \$1,000 fee for the traffic ticket. You might be inclined to lump that \$1,000 fee in with the contingency fee you plan to take when the personal injury case settles, but you should resist the urge! Arguably, doing so would violate the prohibition on contingency fees in criminal cases.

### **3 Use a written fee agreement whenever you take a fee from a client in advance of providing legal services.**

DLRPC 1.5(f) contemplates a written fee agreement, even though it does not say “use a written fee agreement.” It talks about a written statement. Close enough. Use a written fee agreement and stay out of trouble with the ODC.

### **4 Include a statement in the written fee agreement that all advance fees are refundable unless they are earned.**

DLRPC 1.5(f)(1) states specifically that “The lawyer shall provide the client with a written statement that the fee is refundable if it is not earned.” Talk the talk.

Furthermore, actually (and promptly) refund any unearned fees to the client (or third party payor) at conclusion of representation. DLRPC 1.15(b) provides in pertinent part “... a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive...” Walk the walk.

### **5 Deposit all client advance payments in your law firm’s trust account.**

DLRPC 1.15(a) states, in pertinent part, “[a] lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own

property. Funds shall be kept in a separate account designated solely for funds held in connection with the practice of law in this jurisdiction.”

Some folks are going to chafe at this suggestion. I know there are a lot of lawyers who believe there is a \$2,500 rule — a rule that says if a fee is less than \$2,500, you can just deposit it into your operating account. There is no such \$2,500 rule.

The so-called “\$2,500 rule” comes from Comment 10 to DLRPC 1.5. This is what Comment 10 says:

[10] Some smaller fees — such as those less than \$2,500 — may be considered earned in whole upon some identified event, such as upon commencement of the attorney’s work on that matter or the attorney’s appearance on the record. However, a fee considered to be “earned upon commencement of the attorney’s work on the matter” is not the same as a fee “earned upon receipt.” The former requires that the attorney actually begin work whereas the latter is dependent only upon payment by the client. In a criminal defense matter, for example, a smaller fee — such as a fee under \$2,500 — may be considered earned upon entry of the attorney’s appearance on the record or at the initial consultation at which

substantive, confidential information has been communicated which would preclude the attorney from representation of another potential client (e.g. a co-defendant). Nevertheless, all fees must be reasonable such that even a smaller fee might be refundable, in whole or in part, if it is not reasonable under the circumstances.

Comment 10 is telling us that you can never deem a fee to be earned “on receipt.” That is the point of the comment. Instead, it is telling us that you can deem a fee or a portion of a fee to be earned upon the happening of an event. For example, you could deem \$2,500 earned upon commencement of your work on a case.

Let’s put that into perspective. Let’s say you took a \$50,000 fee for representing a client in a felony case. Your agreement with the client permits you to deem a reasonable amount of that fee — let’s say \$2,500 — as earned upon commencement of your work on the case. If you open a file, enter your appearance, issue a discovery request, call opposing counsel, and stop by the Prothonotary’s office while you are in court and retrieve a copy of the Indictment, then you have done something of value. You have commenced your work. You have also bound yourself to represent the client — only the judge can let you out now. And, you have likely precluded yourself and any others in your firm from representing any of the codefendants or alleged victims. Finally, you have spent time working on the case. You are justified in taking a small portion of the fee for yourself. That’s what Comment 10 means.



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## **6 Structure the fee over the events of the case so as to provide a reasonable basis for determining when the fee (or portion of the fee) is earned.**

DLRPC 1.5(b) states that the basis for your fee must be communicated to the client in writing, and DLRPC 1.5(f) (2) more specifically requires that “[t]he written statement shall state the basis under which the fees shall be considered to have been earned, whether in whole or in part...”

In the scenario set out in the previous section, you would need to structure the \$50,000 flat fee so that portions or increments of the fee are deemed earned upon reaching milestones in the case. Portions could be deemed earned upon filing a motion for review of bail, upon appearance at a preliminary hearing, upon appearance at an arraignment, upon appearance at the initial Case Review in Superior Court, etc. The point is that the fee could be deemed earned in increments tied to the progress of the case.

Of course, the increments would need to be reasonable. DLRPC 1.5(a). You would not expect to be paid \$47,500 at the preliminary hearing.

## **7 Sweep the earned fees out of trust and into your operating account within a reasonable time after they are deemed earned.**

Holding earned fees in trust is called “commingling.” DLRPC 1.15(a) states that only funds of the lawyer that are sufficient to cover bank fees and charges may be held in trust. Once fees are identified as earned, they need to be swept out of your trust account.

At that time, the client should receive written notification that the fee was earned and transferred out of trust. DLRPC 1.5(f)(3) (“All unearned fees shall be retained in the lawyer’s trust account, with statement of the fees earned provided to the client at the time such funds are withdrawn from the trust account.”).

If you are handling a volume of cases where clients pay advance fees, you

should set an appointment to review your client files and their accounts monthly for this purpose. Comment 13 to DLRPC 1.5 states as follows:

[13] It is not acceptable for an attorney to hold earned fees in the attorney trust account. See Rule 1.15(a). This is commingling. Once fees are earned, those fees must be withdrawn from the attorney trust account. Typically, it is acceptable to draw down earned fees from an attorney trust account on a monthly or some other reasonable periodic basis. Similarly, monthly/periodic statements are considered an acceptable method of notifying one’s clients that earned fees have been withdrawn from a trust account. For those attorneys earning fees on a percentage basis, wherein the fee would be considered earned upon the completion of an identified portion of the work, a statement to that effect upon completion of that work would satisfy this requirement.

## **8 Limit the scope of representation in the fee agreement.**

DLRPC 1.2(c), DLRPC 1.5(b) permit you to limit the scope of representation, as long as the limitation is reasonable. If you are charging a flat fee, you must limit the scope of representation to the case or matter; otherwise, you simply cannot charge a capped, flat fee. Sample language: “The fee will be for representation during pretrial and trial (one trial, no retrial) in the Court of Common Pleas in the case identified above. Any retrial, appeal, ancillary matter, or other case or legal issue will be outside the scope of this fee agreement”.

## **9 What if the client isn’t the one paying for the representation? Do these three things.**

If the fee is paid by someone other than the client, you must do three things: (a) Advise the payor that the duty of confidentiality is to the client. This means they may find themselves paying you to keep secrets from them. DLRPC 1.8(f) (3). (b) Advise the payor that their opinions, interventions, desires, and goals


must have “no interference with [your] professional judgment or the client-lawyer relationship.” DLRPC 1.8(f)(2). So, if the payor (oftentimes parent) says take the plea but the client (oftentimes child) says go to trial, you are going to trial. If they are not comfortable with these things, then they should not hire you. Finally, (c) have the client give informed consent in writing that the other person is paying for their representation. DLRPC 1.8(f)(1).

## **10 Keep a ledger for each client that pays you a flat fee in advance of representation.**

You must keep a ledger for each client that pays you a flat fee in advance of undertaking representation. This is called a “client subsidiary ledger.” 1.15(d)(9) (A) states “[w]ith respect to all fiduciary accounts: A subsidiary ledger must be maintained and preserved with a separate account for each client or third party in which cash receipts and cash disbursement transactions and monthly balances are recorded.”

### **In conclusion**

If you are practicing law or managing a law practice that involves charging flat fees, whether in civil or criminal cases, I hope this article will give you a punch list of items to be considered, and to be checked against your office practices.

If you made it this far, all the way to the end of this article, I would be very interested in your thoughts on these ten items. What did I miss that should be taken into consideration? Do you also practice in other states? How do the rules differ from state to state? What do you think about the \$2,500 rule? Email me and let me know your thoughts. My email address is [ben.schwartz@schwartzandschwartz.com](mailto:ben.schwartz@schwartzandschwartz.com). 

*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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## Sharing Knowledge

In Danny Kristol's article in "Views From The Senior Lawyer," he offered a lot of sage advice. I am Danny's age and I have opted to remain in practice as Of Counsel to Werb & Sullivan. I no longer try cases or get involved in stressful situations. I am more like a Solicitor than a Barrister. I guide clients through their applications to banking regulators and provide advice on legal issues. To be able to do this, I must stay up to date on banking legal and regulatory issues. Danny's suggestion that senior lawyers pursue life long learning resonated with me. I do not have the time to take classes at Osher, but my wife does, and finds the experience very fulfilling. I pursue lifelong learning in two ways. I am an avid reader, currently occupied with T.S. Eliot's plays and essays. In addition, I follow banking legal and regulatory developments every day.

Danny also mentioned sharing knowledge and experience through mentoring and writing articles. Over the years, I have had numerous articles on banking topics published. In addition, I have authored a 70-page handbook, titled *Directors and Senior Management Guide to Banking Laws and Regulations*.

I have not done much mentoring to young lawyers on a one-on-one basis,

but I have written a paper titled "The Compleat Bank Lawyer," that should be helpful to aspiring young bank attorneys. (The spelling "Compleat" was derived from Izaak Walton's book on fishing, first published in 1653 and widely read today by avid fishermen.) In addition to having broad based knowledge of areas of the law relevant to bank operations, the bank lawyer should be able to handle the unexpected.

I was once a partner in a three lawyer firm on Long Island that served as General Counsel to a 30-branch commercial bank. The bank developed the nation's first electronic fund transfer system, that was successfully operated on a pilot basis in Syosset, New York. This raised a host of legal issues not usually associated with a community bank. Among other things, it necessitated my meeting with a senior lawyer in the Anti-Trust Division of the DOJ to discuss anti trust legal issues relating to licensing the system to other banks. The old Boy Scout motto "Be Prepared," is good advice for bank lawyers. If any young (or maybe even not so young) lawyer wants to learn about what it takes to become a bank lawyer, I would be happy to send a copy of "The Compleat Bank Lawyer" to him or her.

*William M. Aukamp, Esquire*

## WHY I BELONG



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*Illustrations by Mark S. Vavala*

Would you like to share why you belong to DSBA? Please let us know what DSBA membership means to you! Email Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org).

## CALL FOR BAR JOURNAL PARTICIPATION



The DSBA Bar Journal is looking for brief announcements about DSBA Members for a new feature called **DSBA Happenings**. We welcome brief news items and photos about your activities and accomplishments — examples include **Honors, Appointments, Marriages, and Births**. Notices are printed at no cost and must be submitted by email to Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org). If sending a photo, please send a high resolution photo (300 dpi).

*Talks, speeches (unless they are of national stature), CLE presentations, political announcements, and announcements for new associates or firm changes are not accepted. In addition, the DSBA Bar Journal will not print notices of honors determined by other publications (e.g., Super Lawyers, Chambers USA, etc.). Paid professional announcements are also available. Contact Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org) for a rate sheet.*

## Professional Guidance Committee

This committee provides peer counseling and support to lawyers overburdened by personal or practice-related problems. It offers help to lawyers who, during difficult times, may need assistance in meeting law practice demands. The members of this committee, individually or as a team, will help with the time and energy needed to keep a law practice operating smoothly and to protect clients. Call a member if you or someone you know needs assistance.

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## CALENDAR OF EVENTS

### October 2016

**Wednesday, October 12, 2016**

#### **The Best Practices for Pro Bono Programs at Law Firms and Corporate Law Departments**

1.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE  
Webcast to Kent County Courthouse, Dover, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

**Tuesday, October 18, 2016**

#### **Teddy Roosevelt for President 2016**

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE  
Webcast to Kent County Courthouse, Dover, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

**Thursday, October 20, 2016**

#### **Revlon at 30: Is There Still Poison in the Pill?**

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

**Friday, October 28, 2016**

#### **Office and Trial Practice 2016**

7.0 hours CLE credit (including 3.0 hours ethics)

Chase Center on the Riverfront, Wilmington, DE

### November 2016

**Tuesday, November 1, 2016**

#### **Life Expectancy Set Asides and Reverse Mortgages**

2.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE  
Webcast to Kent County Courthouse, Dover, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

**Thursday, November 3, 2016**

#### **The Court and the World: American Law and The New Global Realities: A Conversation with Justice Stephen Breyer**

1.0 hour CLE credit

Gold Ballroom, Hotel DuPont

**Wednesday, November 9, 2016**

#### **Recent Developments in Data Security**

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE  
Webcast to Kent County Courthouse, Dover, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

**Thursday, November 10, 2016**

#### **Serving Those Who Serve**

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

**Tuesday, November 15, 2016**

#### **Seize the Data: Effectively Communicating About E-Discovery**

1.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE  
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**Tuesday, November 29, 2016**

#### **This Land is Whose Land? Can the Government Really Do That?**

2.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE  
Webcast to Kent County Courthouse, Dover, DE  
Webcast to Tunnell & Raysor, Georgetown, DE

# SECTION & COMMITTEE MEETINGS

## October 2016

**Tuesday, October 11, 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

**Wednesday, October 12, 2016 • 4:00 p.m.**

**Real & Personal Property Section Meeting**

The Kirsh Law Firm, 910 South Chapel Street, Suite 202, Newark, DE

**Thursday, October 20, 2016 • 4:00 p.m.**

**Elder Law Section Meeting**

Doroshow Pasquale Krawitz & Bhaya, 1202 Kirkwood Highway, Wilmington, DE

**Monday, October 24, 2016 • 12:00 p.m.**

**Litigation Section Meeting**

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

**Monday, October 24, 2016 • 4:00 p.m.**

**Taxation Section Meeting**

Cooch and Taylor P.A., 1000 West Street, 10th Floor Wilmington, DE

**Tuesday, October 25, 2016 • 12:30 p.m.**

**Labor & Employment Law Section Meeting**

Connolly Gallagher LLP, The Brandywine Building, 1000 North West Street,  
14th Floor, Wilmington, DE

**Thursday, October 27, 2016 • 12:00 p.m.**

**Executive Committee Meeting**

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

## November 2016

**Tuesday, November 1, 2016 • 3:30 p.m.**

**Estates & Trusts Section Meeting**

Connolly Gallagher LLP, The Brandywine Building, 1000 West Street,  
14th Floor, Wilmington, DE

**Wednesday, November 2, 2016 • 12:30 p.m.**

**Women and the Law Section Meeting**

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

**Monday, November 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, November 8, 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

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

**Real & Personal Property Section Meeting**

The Kirsh Law Firm, 910 South Chapel Street, Suite 202, Newark, DE

**Monday, November 14, 2016 • 12:00 p.m.**

**Litigation Section Meeting**

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

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

**Executive Committee Meeting**

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

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

**Elder Law Section Meeting**

Doroshow Pasquale Krawitz & Bhaya, 1202 Kirkwood Highway, Wilmington, DE

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

## EXECUTIVE COMMITTEE

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Mark S. Vavala

**Interim Executive Director**

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# Mark S. Vavala, Esquire

## Drawing on the Strengths of the DSBA

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By James G. McGiffin, Jr., Esquire

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**T**here is a new face at the Delaware State Bar Association, and that face belongs to someone who specializes in faces.

Mark Vavala is the new Interim Executive Director of DSBA, and he is delighted to be here. The Honorable Mark S. Vavala is a recently retired Commissioner of the Superior Court of the State of Delaware, but he is not interested in standing on ceremony. He is excited about the prospects of serving our Association in the DSBA tradition and he is looking forward to introducing some new features, as well.

Mark's path to the law was a familiar one to many lawyers who are both male and Catholic. He was educated at St. Anthony's grade school and Salesianum High School. He then enrolled in the Wharton School of the University of Pennsylvania, but after three semesters he decided that a business degree was not appealing. His interests were turning toward law. Reasoned argument seemed a worthy discipline, and he liked to write. So, he graduated with an English degree in anticipation of law school.

College graduation was an end and a beginning for Mark. It was the end of his care-free youth and the beginning of his need to make a living. Mark put aside the idea of law school and put his English degree to work, teaching that discipline at Padua High School. That suited him for a few years, but he knew that he would someday start a family, though he did not have a particular partner in mind, and he recognized his need for a job with greater earning potential and a chance for advancement. He went to work with the Prothonotary's Office at the New Castle County Superior Court. He started as a Court Clerk, then moved up to Assistant Deputy Clerk, then to Jury Manager, to Chief Deputy Prothonotary and finally to Technology Director. The employment part of his plan was working out well.

In the meantime, Mark realized the other part of his plan, the romantic part. He met Vanessa through mutual friends and the magic happened. They married. When Mark began his law school studies in Widener's evening program, baby Victoria had already joined the family. By graduation, baby Amalia was part of the household, and not so very long after graduation, baby Lucy made the family complete.

Victoria, now 25 years of age, is a medical student. Amalia (23 years old) is a sophisticated New York City dweller and works for the Episcopal Charities. Lucy (20 years old) is a student in the Women and Gender Studies program at the University of Delaware. The family remains close. They vacation together, often visiting various states in the United States, as Mark pursues his goal of visiting all 50 (he has 4 to go).

Mark continued to work with the Superior Court for a few years after his admission to the Delaware Bar, but he eventually broke the news to Resident Judge Vincent Bifferato that he had decided to take a job with a law firm. Biff would have none of that. He convinced Mark to accept a Master's position, which was later converted to a Commissioner's position. Mark retired from the Superior Court in June of this year and started with

Photo Credit: Antonio Byrd



DSBA in July as the Director of Continuing Legal Education.

Our new interim Executive Director is excited to help lead DSBA forward, developing the ideas he inherited from departing Executive Director Johnna Darby, and adding his own ideas to the mix. Mark is also very impressed with the competence and graciousness of the DSBA (a common reaction, in this writer's opinion). He expects to explore new ways of serving DSBA members and hopes to attract more Delaware lawyers to membership, particularly those lawyers in the employ of government. Mark added, "Johnna had some amazing ideas and a vision for DSBA which I will miss, but she is also a great lawyer and we all wish her well as she returns to her practice."

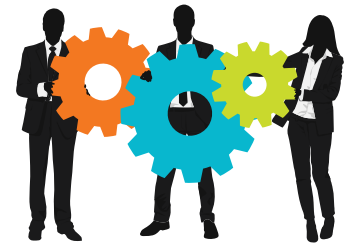
Mark is off to a great start, if the recent CLE program on the Death Penalty and the upcoming Revlon at 30 program (featuring former Supreme Court Justice Andrew G. T. Moore) on October 18 are any indication of what is to come.

In addition to all of the skill and experience Mark brings to DSBA, he has a particular gift that is unique in the Bar. Mark draws caricatures. Anyone who has visited the New Castle County Courthouse jury room has seen his work in the Superior Court Hall of Fame which adorns a wall there. His caricatures have graced the covers of all of the programs for the bi-annual musicals presented by that band of lawyer-troubadours now known as Pro Fundo Bono who raise good money for the annual Combined Campaign for Justice while delighting audiences with their amazing talents (or amazing lack thereof).

Mark Vavala's skills are evident in his drawing and his interpersonal interaction, both of which come naturally to him. His contributions to DSBA will enrich the organization and the members who take advantage of the opportunities to come together for professional development and for fun. ⚖️

**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).

# SECTION CONNECTION



Our new feature, **Section Connection**, will highlight DSBA's Sections each month. Sections cover a wide array of practice areas and membership in DSBA Sections provides networking opportunities, social events, and CLE opportunities. Learn what your Sections are up to here at the Section Connection!

## SMALL FIRMS & SOLO PRACTITIONERS SECTION

### Chair

Denise D. Nordheimer  
The Law Offices of  
Denise D. Nordheimer, Esquire, LLC  
[denise@nordheimerlaw.com](mailto:denise@nordheimerlaw.com)

### Regular Meeting

Second Tuesday of each month, beginning at 12:15 p.m. until January, then we will switch to a start time of 4:00 p.m. for the remainder of the year. This is in response to a number of members who cannot make a mid-day meeting.

### Goals

To give the small firm or solo practitioner a collegial forum where they can ask questions, get assistance and support and generally help them as they try to navigate the challenges of being a lawyer and running a business. What can members expect? A meeting that runs about 35 minutes and then a guest speaker on a topic that relates to our businesses or our law practices. We try and change it up — Social Media, Real Estate, Insurance, Cyber Security, are examples of topics past and upcoming. We also have become

known for our lunches, which tend to feature some home cooking and encourage everyone to stay and get to know one another. Eat and run is fine too, but folks tend to stay and talk shop.

### Upcoming Events

Along with a lot of help from the DSBA, we are planning our second annual retreat on March 24, 2017. Last year's event in Rehoboth was a big hit and we are looking forward to working with everyone at the DSBA to make it even better this year. Hint: stay the night before and plan on making a weekend of it afterwards!

### Recent Events

Spring Break for Small Firms and Solos  
April of 2016.

### Previous Events

A trip to NYC to see "A Gentleman's Guide to Love and Murder" on Broadway in October of 2015. A wonderful time was had by all and we are hoping to work with the DSBA to plan a similar event later this year.

## Section Membership is a great way to connect at DSBA!

For information on how to join a Section, contact Janice Myrick, Director of Bar Services & Membership, at [jmyrick@dsba.org](mailto:jmyrick@dsba.org).



## TIPS ON TECHNOLOGY

By Kevin F. Brady, Esquire

# Bitcoin, Blockchain, and the Delaware Blockchain Initiative

**D**igital currency, like Bitcoin, has been around for almost ten years but its acceptance as an alternate currency has not materialized, unless you count Bitcoin's recent notoriety as the "currency of choice" for ransomware attacks. However, investors, startups, and even law firms from Silicon Valley to Wall Street are very excited about the business world opportunities to leverage the technology underlying Bitcoin, known as blockchain. Indeed, in a recent *Forbes* article, authors Don and Alex Tapscott proclaimed that blockchain will revolutionize the world more than the Internet.<sup>1</sup>

For technology that just started to gain mainstream traction in the summer of 2015, that seems like a very bold statement. However, in just one year, 60 of the world's largest financial institutions have joined a consortium to explore how blockchain technology can lower transactional costs, speed up manual processes, and reduce fraud. In May 2016, Governor Jack Markell announced the Delaware Blockchain Initiative, stating that the State of Delaware was embracing blockchain and smart contract technology to help Delaware companies streamline record-keeping, lower transaction costs, and automate processes including share registry, capital table management, and shareholder communications. What exactly is blockchain and how does it work? The short answer: it's complicated, but here is a high-level overview.

### Blockchain Technology is Based on Digital Currency

Blockchain technology starts with digital currency. The developer of Bitcoin, the first digital currency, created the product in 2008 after the financial crisis eroded trust in the banking and securities industry. Bitcoin was intended to serve as a new electronic cash system — without a "trusted third-party" like a bank or a credit card company — using blockchain technology to create a peer-to-peer network. Thus, instead of the finan-

cial information about the currency being stored in a private, centralized database, it is stored in a "blockchain" or a public ledger that anyone can view. (See <https://blockchain.info/>)

Another way to understand blockchain is as a cloud-based repository of transactions that is managed by a global community of confidential users, who verify each transaction before it is officially added to the blockchain repository. For example, when a financial transaction using Bitcoin occurs between two merchants, the transaction is broadcast to the community of blockchain users. Special users called "miners" then use algorithms to confirm or validate the transaction. Miners follow an established protocol to analyze the transaction to determine whether the input (bitcoin address used to send the bitcoin) and the output (bitcoin address used to receive the bitcoin) are valid, the amount of digital currency is available in the purchaser's Bitcoin wallet and has not been used already, and the output does not exceed the input. The first miner to authenticate the transaction is rewarded with digital currency (an incentive to serve as a miner), and the new transaction or "block" is added to the blockchain. Thousands of miners (estimates run as high as 100,000) work constantly to process and verify transactions. Following the verification of a transaction, the other miners are notified of the completed block in the chain, and the ledger is updated to reflect the new block.

### Who Owns Blockchain?

The community of blockchain users, not a single person or entity, maintains possession and control of the blockchain ledger. The ledger is stored in many locations called "nodes" (which are computers connected to the Bitcoin network on which a user works to validate transactions), with each node containing an updated copy of the validated blockchain ledger. The system is self-regulating, so there is no need for a central bank or clearinghouse for transactions. The system is also secure in that the confidential users can add transactions to the block but cannot delete information or transactions once a block is attached to the blockchain ledger. Only with the

1. Shin, L. (2016, May 26). How The Blockchain Will Transform Everything From Banking To Government To Our Identities. Retrieved from <http://www.forbes.com/sites/laurashin/2016/05/26/how-the-blockchain-will-transform-everything-from-banking-to-government-to-our-identities/#4bdab66865d9>.

approval of a majority of the community of confidential users may a change be made to existing blocks. Moreover, any attempt to make an unapproved change to an existing block would require the alteration of thousands of copies of the blockchain located on separate nodes at the same time.

### Advantage and Limitations

Because transactions do not require a trusted third-party intermediary to complete a transaction, the blockchain process offers faster validation and lower transaction costs. The system is decentralized, transparent, and anonymous so there is no “weak link” (e.g., single centralized database) to attack the integrity of the system. The confidential users are empowered and incentivized (e.g., via an award of Bitcoins to validating miners) to follow the rules and insure that the system is complete and accurate.

However, some companies are reluctant to embrace and trust this nascent technology that lacks a significant track record. For example, a rogue group comprising more than 50% of the available miners could introduce a forged block to the chain. While that is theoretically possible, it is highly unlikely given the large-scale implementations of blockchain (the number of miners required to reach the 51% threshold would be quite large). Nonetheless, concerns about the potential for such an attack persist. Moreover, there is no regulatory framework for blockchain, although the federal government (including the SEC) and certain states are exploring possible regulations. Finally, concerns remain over the costs and practicality of integrating this technology with existing corporate infrastructures and procedures. ⚖️

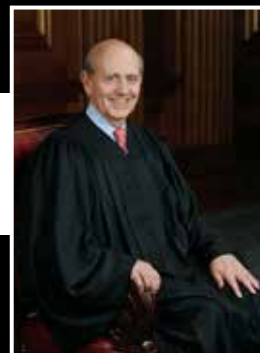
**Kevin F. Brady** is Of Counsel at Redgrave LLP in Washington D.C. and can be reached at [kbrady@redgravellp.com](mailto:kbrady@redgravellp.com).

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

## The Supreme Court of Delaware and The Delaware State Bar Association present

**Justice Stephen Breyer**  
*Supreme Court of the United States*

on  
***The Court and the World***



Thursday, November 3, 2016

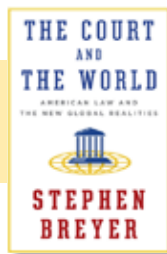
Lunch: 12:00 noon - 1:00 p.m.

Justice Stephen Breyer: 1:00 p.m. - 2:00 p.m.

*Introduction by Justice Randy J. Holland*

Gold Ballroom, Hotel du Pont,  
11th and Market Streets, Wilmington, DE

1.0 hour CLE credit for  
Delaware and Pennsylvania attorneys



A copy of the book, *The Court and the World: American Law and the New Global Realities*, will be provided to all attendees.

Stephen Breyer, born in San Francisco in 1938, is a justice on the Supreme Court of the United States. He is a graduate of Stanford, Oxford, and Harvard Law School. He taught law for many years as a professor at Harvard Law School and at the Kennedy School of Government. He has also worked as a Supreme Court law clerk (for Justice Arthur Goldberg), a Justice Department lawyer (antitrust division), an Assistant Watergate Special Prosecutor, and Chief Counsel of the Senate Judiciary Committee (working closely with Senator Edward M. Kennedy to pass the Airline Deregulation Act). In 1980 he was appointed to the United States Court of Appeals for the First Circuit by President Carter, becoming Chief Judge in 1990. In 1994 he was appointed a Supreme Court Justice by President Clinton. He has written books and articles about administrative law, economic regulation, and constitutional law, including *Regulation and Its Reform*, *Breaking the Vicious Circle: Toward Effective Risk Regulation*, *Active Liberty*, *Making Our Democracy Work: A Judge's View* and, *The Court and the World* which was recently published. His wife, Joanna, was born in Great Britain and is a retired clinical psychologist. They have three children (Chloe, Nell, and Michael) and five grandchildren.

Visit [www.dsba.org](http://www.dsba.org) for registration information.

# Courtroom Technology

## Doing Old Things with New Tools

By Diane M. Coffey, Esquire, Kyle Evans Gay, Esquire, and Sean P. Lugg, Esquire

It is imperative that advocates employ technology to advance their cases. The proper use of technology, though, is tempered by extant legal and ethical paradigms. Delaware Courts have grappled with the use of presentation software in trial, such as Microsoft's PowerPoint. Recently, in *Spence v. State*,<sup>1</sup> the Delaware Supreme Court squarely addressed the issue in the context of a murder prosecution; this decision, however, offers more general guidance to litigators of all disciplines.

"As a general matter, PowerPoint presentations are not inherently good or bad."<sup>2</sup> Of course, we have all experienced some horrifically bad PowerPoint presentations; the point here is that presentation software is inherently value neutral. That neutrality shifts with the creation of the first slide and, while it is a lawyer's duty to advocate on behalf of her client, the presentation software employed may not present any otherwise objectionable argument. Thus, "[t]he content and application [of the presentation] determines its propriety."<sup>3</sup> It is appropriate for Delaware lawyers to use technology to present and summarize evidence. It is not appropriate to use software to make an argument that could not otherwise be made orally.<sup>4</sup> Slides must be tied to "properly admitted evidence" and the content of the slide must be limited to "reason-

able inferences or conclusions that can be drawn" from the evidence adduced at trial.<sup>5</sup>

In *Spence*, the jury was presented a slide displaying the "bloody body" of a murder victim "with the words 'Terror,' 'Fear,' and 'MURDER' in red lettering."<sup>6</sup> The Court concluded that this slide, as presented, "served no purpose other than to attempt to inflame the jury."<sup>7</sup> Other slides sought to simplify complex legal theories, but in so doing presented inaccurate statements of the law and "created the potential for

judicial process,"<sup>10</sup> thus reversal was not warranted.

Oral advocacy may be dramatically enhanced with the use of technology. But, *Spence* teaches that technology may only enhance an attorney's presentation and, importantly, the content of any technological enhancement must be firmly tied to the evidence. When crafting a presentation to complement an opening statement or closing argument, dedicate time to review each slide and ask (1) how does this relate to my case, (2) is this supported by evidence

*"Of course, we have all experienced some horrifically bad PowerPoint presentations; the point here is that presentation software is inherently value neutral."*

confusion."<sup>8</sup> Additional slides summarized the evidence with an unqualified statement that "*The defendant is guilty of all the charges against him*[" Here, the failure to qualify this conclusion with a link to the evidence — i.e. "the evidence demonstrates" — constituted improper vouching. Because the acceptable use of presentation software presented "a novel issue in this State,"<sup>9</sup> the Court defined the boundaries and provided "guidance to the Bar" for future cases. Despite the identified issues in *Spence*, the evidence was overwhelming and the slides "did not cast doubt on the integrity of the

admitted (closing argument), or reasonably likely to be admitted (opening statement), and (3) what is the purpose of the slide (explain, emphasize, inflame)? In the calm quiet of your office be unfailingly honest as you answer each question. The frenetic pace of trial affords little time for this deliberative process; however, the time spent may be the difference between a winning argument and a retrial. ⚖️

10. *Id.* at 230.

1. *Spence v. State*, 139 A.3d 212 (Del. 2015).

2. *Id.* at 223.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 228.

9. *Id.* at 220.

This article was written by the Courtroom Technology Working Group of the Delaware Commission on Law and Technology: **Sean P. Lugg**, **Diane M. Coffey**, and **Kyle Evans Gay**.



# SAVE THE DATE | Sunday, October 23

## Wills for Seniors

10:00 a.m. - 4:00 p.m.  
Elsmere Fire Hall  
1107 Kirkwood Highway  
Elsmere, DE 19805

Call for Volunteers! Volunteers offer, at no cost, estate-planning services such as wills, advance health care directives, and financial powers of attorneys. Contact Jacki Chacona at (302)478-8680, x212 or [jchacona@dvls.org](mailto:jchacona@dvls.org) to volunteer and to schedule time slots at the event.

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By Charles Slanina, Esquire

# Billing Clients for the Work of Unpaid Interns and Law Clerks: Can you? Should you?

A recent ethics opinion from the Committee on Professional Ethics of the New York State Bar Association stirred considerable controversy. **Ethics Opinion 1090** dated March 31, 2016, concluded that a law firm may bill a client for work performed by a student-intern who receives academic credit for the work despite the fact that the law firm does not pay the intern because the intern receives academic credit for the work, as long as (i) the internship program complies with applicable law, (ii) the educational institution does not object to the client charges, and (iii) the charge is not excessive or illegal. The Opinion also provided that the client must be advised of the firm's intent to charge for the intern's services and the basis of the charge (e.g., per task or per hour or some fraction thereof).

The facts presented were that an unnamed New York law school has a student-intern program in which students work for local law firms and receive academic credit for their work instead of monetary compensation. A law firm inquired as to whether or not firm clients could be billed under those facts. In reaching their conclusion, the Committee relied on **Rule 1.5(a)** of the New York Rules of Professional Conduct which prohibits an attorney from making "an agreement for, charge, or collect an excessive legal

fee or expense." Under that Rule, the test of whether a fee is excessive is whether "a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive. Delaware's Rule 1.5(a) is similar, although it provides enumerated factors to be considered in determining the reasonableness of a fee including the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

The Committee also relied on **Rule 1.5(b)** in concluding that the practice is permissible. That Rule in New York requires a lawyer to communicate to a client not only the scope of the representation but also "the basis or rate of the fee and expenses for which the client will be responsible." Delaware's Rule 1.5(b) contains the same requirement.

The Committee noted that the opinion was only based on the applicable Professional Conduct Rules. It did not conclude whether or not the practice complied with applicable laws while citing the 2010 Standards of the U.S. Department of Labor concerning internship programs which prohibit a private sector employer from deriving an immediate advantage from the activities of interns. The Committee acknowledged that the standard was rejected by the Second Circuit Court of Appeals in *Glatt v. Fox Searchlight Pictures, Inc.*, 791 F.3d 376 (2d Cir. 2015). In that case brought by interns who worked on Fox's *Black Swan* movie, the Court ruled that the proper test for determining whether interns should be paid was whether the internship primarily benefited the employer or the interns while conceding that the Supreme Court has yet to address the difference between unpaid interns and paid employees under the Fair Labor Standards Act.

The New York ethics opinion met significant criticism. The American Federation of State, County, and Municipal Employees; the NYU Black Allied Law Students Association; the NYU Latino Law Students Association; the NYU Law Students for Economic Justice; and the National Employment Law Project all signed a letter to the *New York Law Journal* complaining that Opinion 1090 was “fundamentally flawed” and asking the Ethics Committee to reconsider or recall the advice. The letter argued that law firms billing for unpaid interns derive “a substantial and direct economic benefit” and that the practice of using uncompensated interns in these circumstances probably would not comply with either the DOL standards or the opinion in *Glatt*. The joint letter went on to address the “Should you?” consideration beyond the “Can you?” consideration stating:

More broadly, the opinion fails to consider the circumstances of most unpaid legal internships and the important moral questions they raise.

As many have documented, law students today are burdened with enormous debt, stemming from the unprecedented cost of undergraduate and law school education. At the same time, entry level, paid jobs are scarcer than ever. Students who cannot afford to work for free, including many students of color, either must forego unpaid internships and lose out on the networking opportunities they offer, or take on more debt in order to intern unpaid... Private law firms, which undoubtedly have the resources to pay the interns the minimum wage (currently \$9/hour in New York), should not contribute to these hardships.


While I am not aware of any firms in Delaware who bill clients for the work of unpaid interns or law clerks, both newly minted J.D.’s and seasoned attorneys who apply to the Delaware Bar are required to perform a five-month clerkship in Delaware under the supervision of a Delaware attorney. Assuming that the

client is informed and does not object, there is probably nothing in the Delaware Professional Conduct Rules that would prohibit billing the client for such services even if the clerkship is unpaid for the reasons given by the New York Opinion. However, as the title of this article suggests, just because you *could* does not mean that you *should*.

*“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 three 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).



Friday, November 4, 2016 at 5:30 pm  
Gold Ballroom • Hotel du Pont •  
Wilmington, DE

**\$75 per person**  
\* Black – Tie Optional

**RSVP by October 21, 2016**

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FRIDAY, NOVEMBER 4, 2016 AT 5:30 PM

*Louis F. Redding*

**BENEFIT & AWARDS GALA**

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# BENEFITS

## Does Your Firm Offer CBE (Continuing Benefits Education)?

Presented by Aaron W. Mitchell, REBC

**W**e have enjoyed our partnership with your firms to provide Employee Benefits over the last 12 years. If there is one overwhelming theme in your benefits, it is that you do everything you can to provide programs that will offer the greatest coverage to your staff and their families. You try to keep the lowest copays, the best networks, and the greatest coverage limits, while asking the employees to contribute as little as possible. We hope that they appreciate the value of your efforts and your dollars.

During that same time frame, we have seen that same drive to support others applied in *pro bono* work in our communities. We applaud the donations, the education, and time that you put into these endeavors. I have taken calls from attorneys with questions for their *pro bono* clients on disability benefits, health insurance contracts, and program entitlements. The lengths that you go to for your clients (even those not paying an hourly rate) is inspiring. Before I go on, I want to thank you for this service to our community.

We recognize that *pro bono* representation is not about telling someone they need an attorney or giving them instructions on how to be a lawyer. Your work helps them to obtain the financial benefits, rights, or representation to which they are entitled. Obtaining a result or closure is what creates countless testimonials from grateful clients and the community as a whole.

I assure you that I have no advice on how to improve *pro bono* legal services, but I can provide some free advice on the benefits you provide to your staff and attorneys. You are paying a lot of money for useful services that employees (at one time or another) will need to access. Just like that *pro bono* client, you want your employee to obtain the benefits and assistance to which they are

entitled. Education on the benefits and the tools for support is an ongoing process that does not start and end with an open enrollment meeting 30 days before your health plan renews.

For example, we had an attorney who never knew what an Employee Assistance Program offered. They contacted us after months of dealing with trying to find support for a child with chemical dependency. They could have benefited from the advocacy and coordination of care provided for free by their life insurance carrier.

We have seen numerous examples of employees covered on HSA plans complaining about the costs of prescription drugs. Every one of them is surprised when we show them resources to help show them that a drug filled at Rite Aid will have a different cost than Walgreens or CVS.

The worst scenario is when we hear a partner say that they have spent countless hours arguing a bill with the insurance company or the doctor's office. They might not be aware that there are resources they can call who will advocate on their behalf. Someone else could be sitting on the phone having that conversation with the insurance company. They can be spending time creating billable hours or spending time with their families.

These are just examples of the types of programs that many firms provide, yet go underutilized. It is worthwhile to consider having a brief partner benefits meeting every year to cover the benefits available to their families (or better yet, invite the covered spouse to a meeting).

In almost every open enrollment meeting, we hear a comment on something that was not covered properly. While it is a good feeling when we can explain how we can resolve the issue,



that employee has been sitting on that issue for months, feeling like their benefits are worth less than they expected. The worst thing you can ever hear in Employee Benefits is “I did not know we had that benefit.”

If your firm has programs to help employees with personal issues or claim problems, make sure employees know how to access those resources. The most effective employee benefit programs we find are not automatically those with the lowest copays or the smallest deductible. The most effective plans are those which are well explained, those which offer choices, and those which help employees when life does not go according to plan.

We understand that employees cannot devote five hours a week learning about their benefits, but offering an hour of education every three months on a different benefit program can do wonders to make your employees self-sufficient. Better yet, when an employee has a good experience, finds a way to resolve a claim, or learns about an “app” that will save them money, they are going to spread the word.

The premium you pay for these programs is the investment. The hour away from their desk (not doing work) that you allow is a service to your staff. However, that hour pays dividends, in addition to the feeling that you helped someone on your team make the most of your programs.

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

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By Susan Simmons



I would like to congratulate all the winners of the 2016 Christopher W. White Distinguished Access to Justice Awards (See form on page 23). We are pleased to report that there were multiple nominees for each award that reflects well on the contributions members of our Bar make to fulfill their *pro bono* obligations.

You may ask: How do I go about making my contribution to *pro bono* and Access to Justice as a member of the Bar?

One way is to join a Section of the Delaware State Bar Association and initiate a *pro bono* project. The very successful Wills for Seniors event, this year on Sunday, October 23, 2016, as part of the 2016 Celebrate *Pro Bono* Week, was just such a project started by the Multicultural Judges and Lawyers Section.

I have listed a few ideas, borrowed from sections of other bar associations, to help jump start some ways of moving forward with your own projects. Take a look and remember that the DSBA wants to help and encourage your participation in *pro bono*.

All of the following suggestions for *pro bono* participation can and should partner with our legal services organizations, specifically DVLS, to ensure that all procedures and training are part of the process. ⚖️

**Susan Simmons** is the Director of Development & Access to Justice Coordination at the Delaware State Bar Association and can be reached at [ssimmons@dsba.org](mailto:ssimmons@dsba.org).

## Alternative Dispute Resolution:

Support implementation of peer-on-peer high school mediation program like that at Mt. Pleasant HS; should look to expand this program into other high schools. In addition to Mt. Pleasant HS, peer-on-peer mediation has been in place in high schools in other states for a number of years and has proven successful at, among other things, resolving student conflicts and defusing situations. DELREC may also be able to expand and move this forward.

## Bankruptcy Law:

Debtor Counseling and Adversary Programs that are already in place through the ABI.

## Commercial Law and Corporate Counsel:

Create an Access to Justice newsletter furnished to low income Delawareans, informing them of their rights and responsibilities.

## Corporation Law:

Entity Selection and Formation: Determining the appropriate legal structure (e.g. LLCs, corporations, partnerships), drafting owners' agreements, and assisting with regulatory compliance and permitting issues (for Non-Profit organizations).

## Criminal Defense Law:

Prisoner Reentry Project - provide legal education to prisoners on issues that will impact their reentry including how to find housing, employment and seek benefits.

## E-Discovery & Technology Law:

Create a *Pro Bono* Opportunities Guide to be offered on the DSBA web site.

## Elder Law:

Volunteer and get 100% participation by section members, for Wills for Seniors, offered three times per year, in all counties, through DSBA/DVLS. Volunteers needed in Kent & Sussex Counties.

## Environmental Law:

Lawyers can teach courses and supervise student participation in environmental projects at the local schools. Identify programs and initiatives that benefit sustainability and green living. Create a legal services network that will provide *pro bono* services to lower income farmers, food entrepreneurs and food-related organizations/groups (Food Bank of Delaware).

## Estates & Trusts:

Volunteer and get 100% participation by section members, for Wills for Seniors, offered three times per year, in all counties, through DSBA/DVLS. Volunteers need in Kent & Sussex Counties.

## Family Law:

Provide training and mentoring support for lawyers taking difficult domestic violence family law cases. Volunteer and get 100% participation by section members, for Wills for Seniors, offered three times per year, in all counties, through DSBA/DVLS.

## Government & Consumer Law:

Small Business Legal Academy; meet with small business owners and non-profits from all 3 counties to provide free legal consultations and workshops on legal and financial issues for entrepreneurs.

## LGBT & Health Law:

Provide free legal services to the LGBT and HIV/AIDS communities in the state, on matters related to access to health care, providing assistance on matters involving discrimination, insurance, immigration, medical debt, public benefits (Medicare/Medicaid, etc.), estate planning, and elder and transgender rights. Health Law partnership to develop an interdisciplinary community collaboration between healthcare providers and lawyers to improve the

health and well-being of low-income children and their families by addressing the multiple determinants affecting children's health; also an educational partnership to promote the public's health through inter-professional teaching and learning.

## Labor & Employment Law and Worker's Compensation:

Employment Counseling - Including retaining or terminating employees, drafting employee handbooks, employment agreements, and independent contractor issues.

## Litigation:

Litigators partner with homeless shelters or similar organizations which serve the homeless population and mobilize volunteer attorneys to provide regularly scheduled, one-hour, free legal clinic at the shelter.

## Multicultural Judges & Lawyers:

Commitment to diversity through its support of, and participation in, recruiting and mentoring programs, associations, and organizations whose mission is to enhance diversity in the legal profession and the community.

## Real & Personal Property:

Initiation of a Landlord/Tenant *pro bono* project working with the JP Court system providing advice for landlords and tenants in cases involving rental disputes.

## Small Firms & Solo Practitioners:

Create training or a newsletter to contribute to the knowledge and interests of the attorneys so engaged in such practices; disseminate information regarding potential legislation and/or litigation that might affect such attorneys. Small Business Legal Academy; meet with small business owners and non-profits from all 3 counties to provide free legal consultations and workshops on legal and financial issues for entrepreneurs.

## Social Security Disability:

Create a Social Security FAQ for low-income clients.

## Taxation:

Serves as a catalyst and facilitator for *pro bono* activities in tax return preparation for low-income taxpayers.

## Torts & Insurance Practice:

Hold a clinic on Litigation Involving Shelters; The Law of Animal Ownership: Resolving Title Disputes Over Companion Animals; Dangerous Dog Classifications.

## Women and the Law:

Become involved in the CHILd, Inc. Domestic Violence Advocacy Program. This program helps to empower victims of domestic violence by guiding them through the Family Court system as they seek protection from their abusive partners. CHILd, Inc. staff and volunteers are based in each of the Family Court buildings.

## Young Lawyers:

Assist newly-admitted members of the Bar in their transition into practice. Focusing on a wide range of topics, networking events also attract experienced lawyers who want to learn the nuts and bolts of unfamiliar areas of the law. Create a Credit Issues Project, preparing a publication that focuses on educating teenagers, especially senior high school students who are preparing to enter college or the work force, about the importance of responsible credit and debt management and the federal and Delaware laws available to protect their rights as consumers. The publication will provide information on the various credit options available to consumers and the pitfalls surrounding the misuse of credit.

# 2016 Christopher W. White Distinguished Access to Justice Awards Breakfast



**Tuesday, October 25, 2016**

Chase Center on the Riverfront, Wilmington, DE

Breakfast at 8:00 a.m.

\$37 Per Person • Please RSVP by October 18, 2016



## AWARDS PRESENTATION

**MICHAEL R. NESTOR, ESQUIRE**

*Young Conaway Stargatt & Taylor, LLP*

Achievement Award

**DENISE DEL GIORNO NORDHEIMER, ESQUIRE**

*The Law Offices of Denise D. Nordheimer, Esquire, LLC*

Commitment Award

**DOROSHOW PASQUALE KRAWITZ & BHAYA**

Service to Children Award

**LAW OFFICES OF BLAKELY, GREGORY & PAPPOULIS**

Leadership Award

**ROSE GREEN**

*Pro Bono Director/Delaware Paralegal Association*

*Cooch and Taylor P.A.*

Legal Professional Pro Bono Service Award

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### PROGRAM WILL ALSO INCLUDE:

Presentation of the DSBA Access to Justice Recognition to Miranda D. Clifton, Esquire

*President, Delaware State Bar Association*

and

Presentation of Pro Bono Celebration Week Proclamation to Delaware Volunteer Legal Services

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## 2016 Distinguished Access to Justice Awards Breakfast • October 25, 2016

Please RSVP by October 18, 2016

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

Name: \_\_\_\_\_ DE Bar ID No.: \_\_\_\_\_

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Check/Charge in the amount of \$ \_\_\_\_\_ enclosed. (\$37 per person) *Please make checks payable to DSBA.*

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# views from the SENIOR LAWYER

By B. Wilson Redfearn Esquire

I moved to Delaware in October of 1961, the year that I graduated from Northwestern Law School, which is in my hometown of Chicago, Illinois. I had just been hired by Joseph Bancroft & Sons Company, then an ancient pillar of Delaware's industrial community. My office was in one of the old mill buildings on the south bank of the Brandywine Creek. These structures date back to the 18th Century. It felt like I had moved to a different world.

Robert Richards, Jr. (Richards Layton & Finger<sup>1</sup>) was the outside counsel for Bancroft. For intellectual property matters, we worked primarily with Ralph Chapell, a New York patent attorney. Mr. Chapell had been Bancroft's lawyer since the 1930s. When we met, he talked about Delaware's "unusually close" Bar. Chapell swore that in one of his early cases, Robert Richards represented Bancroft, Aaron Finger<sup>2</sup> was the opposing attorney... and Judge Layton handled the matter.<sup>3</sup>

In 1961, all of the lawyers in New Castle County were listed on one page of the phone book. The Bar Association had neither an office nor a phone. When I took the bar in 1962, there were about 30 male applicants. Before you could take the bar, you had to pass an oral test based on John Zane's *Story of the Law*, copyright 1927. This included chapters on: The Law Among Primordial Men, The Aryan Law, Babylonian Law, and so on. Select members of an appointed board questioned all bar applicants to determine if they were "temperamentally and morally qualified." One of the questions that I was asked was: "Who wrote the Introduction to the book?" I have never been clear on how this aided the examiners' evaluation. Perhaps, I should not have been troubled. The state archives reveal that Chief Justice George Read flunked Caesar Rodney on his first attempt.

Compared to Chicago, Wilmington's racial attitude was anachronistic to say the least. The bus station had a separate waiting room for "Coloureds," as well as separate drinking fountains. Blacks were not allowed in most of Wilmington's movie theaters. One of my first friends at the Bar was Leonard Williams,<sup>4</sup> one of the three judges who sat on the Wilmington Municipal Court. Lenny was the first black football player at the University of Delaware in the mid-50s. When I talked to him about the waiting room at the bus station, he told me that the team sometimes departed from that station for its "away" games. When the team traveled, he was frequently asked to eat in a separate dining room apart from the rest of the team.

The judges in both the Municipal Court and the Court of Common Pleas were permitted to sit on the Bench while also carrying on private law practices. Judge Williams' law partner was Louis L. Redding, Delaware's first black lawyer.<sup>5</sup> Not only was Mr. Redding a highly respected civil rights

attorney, he was the attorney in *Gebhart v. Belton*, which was decided in the Court of Chancery (and affirmed by the Delaware Supreme Court) in 1952.

*Gebhart* was initially decided by Chancellor Collins J. Seitz.<sup>6</sup> It was one of four consolidated cases combined in the *Brown v. The Board of Education* decision. Significantly, *Gebhart* was the only one of those cases where the trial court ordered that black children be admitted to a state's white-only school. In the other cases, the federal district courts involved found segregation to be constitutional.

Bias was not just on the basis of color. In 1961, Delaware had but four female lawyers. Between 1923 and 1969, only twelve women were admitted to the Delaware Bar. Perhaps this was why the restrooms at Morris James Hitchens and Williams were designated: "Lawyers" and "Ladies."

In 1962, I joined the law firm of Prickett Prickett & Tybout as an associate. Associates were paid about \$6,000 a year and bonuses were a few hundred dollars more. Mr. Prickett, Sr. also gave the firm's associates who had performed satisfactorily a fruitcake on Christmas Eve. Starting in 1963, I also worked for the Attorney General's Office. In the 60s, one could be employed as a Deputy Attorney General and also maintain a position with a private law firm.

The Attorney General's Office then had nine deputies and a staff of about fifteen (as compared with about 400 today). My first assignment was a matter on remand in a case where Judge Stewart Lynch had sentenced Talmadge Balser to 20 lashes at the whipping post. In that case, Chief Justice Charles Terry (later Governor) found that such punishment must be fixed and certain, but was neither cruel nor unusual.

There were several downtown restaurants where attorneys met. Vicky's Luncheonette, at the corner of Twelfth and King, was a frequent hangout for lunch. While there were only four or five black lawyers in Delaware, none of them could get served at Vicky's. The restaurant was eventually forced to close because it would not comply with recently enacted civil rights laws. Many of you will recall the seminal U.S. Supreme Court case of *Burton v. Wilmington Housing Authority* (1961) which was the major precedent at the time compelling equal protection for minorities when using public facilities.<sup>7</sup>

Such were the 60s; our practice was a bit more casual. But, more importantly, these lawyers were an integral part of the procession of the legal civil libertarians who slowly but steadily crafted and improved the moral and cultural rules for the treatment of minorities. While we have not overcome bias, our achievements are considerable. Good for us. ☮

*Wil Redfearn is a founder (1968) and the former managing partner of Tybout Redfearn & Pell. He also founded and was President of the Defense Counsel of Delaware (1988). He was the Delaware Chairman of the Defense Research Institute and Trial Lawyers Association from 1988 to 1997 and was elected President of the Delaware Chapter of the American Board of Trial Advocates in 2001. He is also a member of the ACLU.*

1. Richards Layton & Finger then had approximately 10 lawyers, compared with 150 today.

2. Aaron Finger was the first Jewish member of the Delaware Bar. He left school after the tenth grade and neither went to college, nor law school. He became an attorney in 1912 after "reading" the law for Robert Richards, Sr., for whom he was a legal secretary. Eligibility to sit for the Delaware bar exam by "reading law" in lieu of a law school degree was determined to be "unworkable" and discontinued in 1974.

3. Should Chapell's recollection be accurate, the Judge would apparently have been Chief Justice Daniel J. Layton.

4. The name of this staunch civil rights advocate now graces the New Castle County Courthouse.

5. Louis Lorenzo Redding graduated from Howard High School, which was the only Wilmington high school for African Americans at the time. He went to Brown University and then Harvard Law School and became a member of the Delaware Bar in 1929. He was Delaware's only admitted black lawyer for 27 years. In fact, Delaware almost went longer without a black lawyer because in 1928 not one Delaware lawyer was willing to act as his preceptor. He was not granted membership in the Delaware State Bar Association until approximately 1949.

6. Chancellor Seitz also handed down the ruling that opened the University of Delaware to black students.

7. In this case, "Dutch" Burton, a flamboyant black Wilmington politician, brought suit against the Wilmington Housing Authority because it leased to a "white only" restaurant in the city parking authority building.



## Early Bird?



## Night Owl?



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## SUCCESS SECRETS

### DELEGATION: THE ART OF LETTING GO

By LeaNora Ruffin, Esquire, Assistant Dean, Career Development  
Widener University Delaware Law School

**G**oogle the word "delegation" and you'll get no fewer than 83 million search results. Predictably, most of the top results outline neat recipes for delegation success: define the task well, give clear instructions, provide on-going support, and communicate the desired outcome. While this may be sound advice, it often falls flat because, despite following these textbook instructions, it is not uncommon for lawyers to experience spotty results. The truth is delegating can be hard. It is not a science with clear cut procedures and steps. Rather, because delegation involves people, it is often unpredictable, messy, and takes time to perfect. In this way, delegation is more like art. It is a combination of skills that must be practiced and refined.

And, the very first delegation skill that must be mastered is the ability to let it go.

#### Let Go of the Lone Ranger Mentality

From an early age, we are rewarded with badges and gold stars for individual performance. As we mature, the gold stars become promotions, merit raises, and bonuses, but the underlying message is still the same. Good things happen when you do it yourself. This Lone Ranger thinking, however, goes against all the research that says the best outcomes come from collaboration. To change this mindset and get the best results for clients, reframe your perspective. Instead of viewing delegation as giving work away, think of it as getting your work done with others. This subtle but necessary shift will allow you to reap the benefits of collaboration and your team's talents. At the same time, your inner drive to excel will be satisfied knowing that, ultimately, you maintain ownership of the final outcome.

Further, in a profession where being super busy is the norm, it is easy to fall into this Lone Ranger mindset by default. You simply must get the work done and there is no time to waste. Unfortunately, this do-it-yourself strategy has its limits and burnout, anxiety and depression are sure signs that you have reached them. While delegation is not a cure all, it will free you up to catch your breath. If you lean into it, you may even find yourself with space to take on the big assignment, delve deeper into a complex legal issue or forge a stronger connection with a client.

#### Let Go of the Process

There is no way around it. In order to delegate effectively, you will have to silence your inner micromanager. This is no small task for lawyers who are trained to be on top of the details. To tamp down your need to micromanage, first focus on *what* you will delegate. Is it the type of high quality assignment that will expand your team's skills or showcase their talents? Or, is it merely work that you do not care to do? To get the best results, make it clear how delegating the work benefits all involved. Second, zoom in on *who* should receive the assignment. Are you the only one who can complete the work well? Who else has skills that would uniquely fit the task? If no one comes to mind, it is not time to delegate; it is time to provide extra training. Third, decide *when* you should delegate. While it can be tempting to delegate when you are feeling overwhelmed, this often leads to disastrous results. A better course of action is to pause and get a handle on who is in the best position to get the work done effectively and efficiently given his or her current workload. This may seem like a luxury you cannot afford, but it is a vital step. Otherwise, you may just find that same half-completed assignment back in your inbox.

Lastly, remember that excelling in the art of delegation will take time. The learning curve is particularly steep in the beginning when you are trying on new habits and letting go of others. But, the sweat you invest to improve will result in what we all want in our workday: more time, more balance and, ultimately, more joy.

"Success Secrets" is curated by Emilie R. Ninan, Esquire. If you have a success secret to share, please contact her at [ninane@ballardspahr.com](mailto:ninane@ballardspahr.com). 



## DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

# Anticipation Planning

## The Process of Preparing for a Predictable Financial and Life-Changing Event

By Joan L. Sharp

**T**hough it is hardly uncommon these days for adults, yes and even lawyers, to make significant career changes or plan for transition, reinvention and/or retirement, often planning for the process is not considered. We know that realistically, life has experiences and events that can be and are life-altering — some positive and some not so positive. Therefore, no matter what age, planning for financial change is imperative. The article below by Joan L. Sharp outlines how to manage anticipated changes in financial circumstances.

Carol Waldhauser, DE-LAP Executive Director

• • •

As professionals trained in managing transitions, what we know for sure is as we experience change, life can, and often does, get more complicated and challenging. Moreover, some of us may think: “Why get all involved in planning for something that has not yet happened or may never happen?”

We have all heard stories about how a significant change in personal finances seems to change just about everything else in our lives. Expected or not, these shifts in our financial foundation are never just about the money that we are about to receive. When it comes to financial transitions, there are no guarantees that more money will make our lives better. On the other hand, without advanced and proper planning, we may find ourselves anxious and uncertain about how to handle the new opportunities at hand. Why? It is because the transition has already begun.

The transition started as soon as the potential life-changing event was identified. Waiting creates more complications because you have lost the opportunity to plan ahead. Anticipating big changes in

our circumstances can be overwhelming. For that reason, it is not unusual for people to put off the hard work of adjusting to changes ahead. Frequently, they are concerned with the new emotional and financial realities they face.

For example, Anita knows that her parents’ estate is being settled. She does not know how long the process will take and is not really sure about what her inheritance will be. In the meantime, the upcoming inheritance has become a topic of conversation for her family. She, her partner, and her children are all future spending, picturing things they hope to buy, and where they will travel or live. Instead of bringing in an advisor trained in managing transitions, Anita is solely focused on future possibilities. She has stopped saving for retirement and is no longer concerned about living within a budget. The Anticipation Stage creates expectations. Without the advantage of a proven process that gives Anita a roadmap to manage these expectations, the end result can be messy and frustrating.

The Financial Transitionist® Institute has spent over a decade and a half studying why and how major life events that could increase personal and financial well-being end up more complicated and demanding than imagined. We, as Certified Financial Transitionists™, have been specifically trained to work with clients to help guide them smoothly through all phases of transitions.

Our research and experience has led us to identify the Anticipation Stage as the first of four stages of Transition Planning. At the Financial Transitionist® Institute, we call the pre-event planning process Priage. It is designed to give

“Anticipating big changes in our circumstances can be overwhelming. For that reason, it is not unusual for people to put off the hard work of adjusting to changes ahead.”

people a better foundation for managing their decisions, commitments and relationships once the expected life event happens.

As a result of the Priage process utilized by Certified Financial Transitionists™, individuals find that managing changes in their financial circumstances are less stressful and more engaging. Some of the skills you may gain through this process are:

- Communication between you, your family, partner, advisors, and friends is more clear and productive. You learn how to sort your way through complicated decisions.
- You understand how to break things down into small steps and prioritize them. You know what to do when, and how to stop and change direction when needed.
- You have practiced how to uncover the real drivers behind your choices and actions. You save time, confusion, and resources instead of taking a circuitous route with many stops and starts.
- You have thought through the expectations of others as well as your own. This makes it

possible to set and reset expectations in advance rather than when all the action is taking place.

- You have thought through who is entitled to participate, and how, why and when.
- You have identified your inner circle. Financial transitions can be lonely and isolating. It is good to know who you can talk to.
- You know how to run “What If” scenarios to test your ideas and hopes against financial limits. Doing this in advance gives you time to get creative and perhaps to find compromises with competing goals.

And, what if the event does not happen and you have done all this Priage work?

You now have your own personal transition skill set. If the event you anticipated did not happen, something else will. Life is about change and you now have the personal skills you need to thrive while life happens. ⚖️

**Joan L Sharp** is a registered Life Planner® Certified Financial Transitionist™ and can be reached at [Joan@GlenayrWealth.com](mailto:Joan@GlenayrWealth.com).

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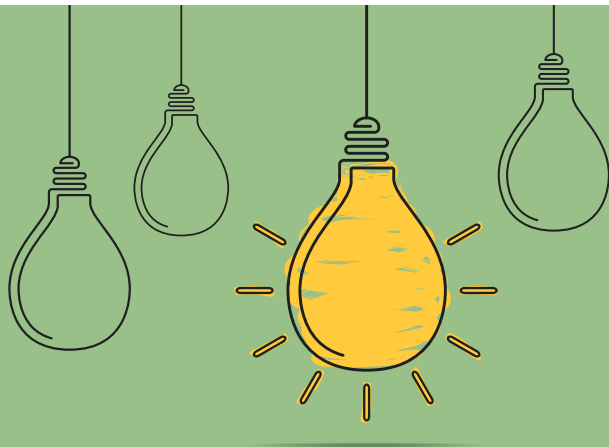
#### 3. Learn New Things

#### 4. Be Social

#### 5. Treat Depression

#### 6. Get Good Sleep

Visit [DE-LAP'S Wellness Page!](#)



## It is said that your second adulthood starts between the ages of 45-85.

Whether your thoughts of transition are to reset, reinvent, recharge, move on or retire, it takes knowledge, planning and implementation to change successfully.

Please join us on Wednesday, October 19 (and every month) for a free lunch and learn, hosted by The Delaware Lawyers Assistance Program (DE-LAP) at the Delaware State Bar Association (DSBA).

For more information about this topic, or other issues that may be affecting your quality of life or quality of professionalism, call our confidential line: The Delaware Lawyers Assistance Program (DE-LAP) at (302) 777-0124 or e-mail [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org).

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## Your Name in Print



For information on submitting articles for publication, please contact Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org).



By Alison W. Macindoe

## And so, the Adventure Begins! Starting a Law Practice

**S**ince I am at the beginning of my new position as the DSBA's law office management coordinator, I thought my second article would be about another beginning: starting a law practice. When I talked about the exciting and challenging world of the small firm and solo practitioner in my first article last month, I was thinking not only of the small firm and solo practitioner who practices law, runs a business, works with staff, and handles clients — but, I was also thinking about the lawyer contemplating starting his or her own firm. Exciting and challenging are perfect descriptive words for that new venture — and maybe a few other words as well, including, perhaps, frustration. But, let's see what we can do about decreasing that frustration.

The Delaware State Bar Association is developing a series of informational resources for those of you thinking about such a venture. Knowing what to expect is key. Not only do you have to be a lawyer to start a law firm (Duh!), but you have to be a lawyer with business knowledge. You need to be a people person who can work with staff, other lawyers, the court, and, of course, with your clients who are your source of income, job satisfaction, and to whom you are in service.

Considerations for opening a law practice start with you. Are you a self-starter? Do you tolerate risk well? What are your managerial skills? Marketing skills? And, of course, what are your legal skills and interests?

Do you have the money to start a firm? Financial planning is key to a thriving law practice. You will need to rent/buy an office. You will need furniture, computers, copiers, telephone system, postage equipment, office supplies, etc. What about online legal research?

The author of an article about starting a law practice suggested that you should know the focus of your practice. Who is your ideal client and why? Try to find and stay with clients who fit your need. Refer those who do not fit your focus to other attorneys better able to handle such clients. You might find that you will be happier this way. Definitely something to ponder.

Decide on a legal structure. Are you going to be an LLC? Sole Proprietor? Not all organizational structures will protect your personal assets from malpractice claims. Hire a professional to help. And on a similar note, start learning about taxes and government regulations from the get-go. What is involved when you have employees? Do you have to file an annual report with the Division of Corporations? It would also be good to hire an expert for help on that topic.

Malpractice insurance? The Delaware State Bar Insurance Services, of course, will provide plenty of help with information about insurance including malpractice, health, property and casualty, and others. Contact me for referral info. Accounting system? Many lawyers use QuickBooks, but is this best for your office? How are you going to market yourself? Website, social media, online ads, printed newspaper ads?

Good resources for information are, of course, other Delaware lawyers, especially those in the DSBA's Small Firms and Solo Practitioners Section. Members of the DSBA get information through their Sections, through CLE, through social events. Among the many wonderful benefits of living in Delaware, is that so many of us know each other, especially in the insular world of the law. Law practice questions arise all the time and who better to ask than your peers in your Section, many of whom probably have had experience with the same topic in question. If you are not a member of the Small Firm and Solo Practitioners Section, join!



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*“Considerations for opening a law practice start with you. Are you a self-starter? Do you tolerate risk well? What are your managerial skills? Marketing skills? And, of course, what are your legal skills and interests?”*

This winter the Delaware State Bar Association with its Law Office Management Assistance Program is presenting a trio of seminars on starting, running, and closing a law practice, plus other law practice management seminars. Attend these seminars to learn from expert speakers and from the attendees who are learning along with you. Many lawyers will attend as a refresher. You might have started a law practice long ago, but perhaps you should learn about what's

happening now. With so many changes in technology, banking, QuickBooks, business entity rules, and on and on, you need to keep up.

And, when you are settled in your new practice and satisfied with life, please remember *pro bono* work. You are in one of the finest professions in the world and have started a career that will provide you with income and satisfaction. Donate whatever time you can afford to those who cannot afford to pay for legal services. You needed some help along the way to reach your goal. Follow the lead of those who assisted you by helping others.

If you have questions about law office management, ask me. My email address is [amacindoe@dsba.org](mailto:amacindoe@dsba.org). I cannot give advice, but I can help you get the information you need or tell you who has the information. ⚖️

**Alison W. Macindoe** is the Director of the Law Office Management Assistance Program for the DSBA. She can be reached at [amacindoe@dsba.org](mailto:amacindoe@dsba.org).

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## BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

# A Fair Accounting: *Ballot Battles, The History of Disputed Elections in the United States*

By Edward B. Foley (Oxford Univ. Press, 2016)

**N**ot all elections go off without a hitch. The 2000 presidential election. The 1876 presidential election. The 1948 Texas Democratic Party runoff for United States Senator. The 2004 Washington gubernatorial election. The 2008 Minnesota United States senatorial election. This history of the United States includes dozens of elections which resulted in deadlock, litigation, and a confusing process before a winning candidate was declared.

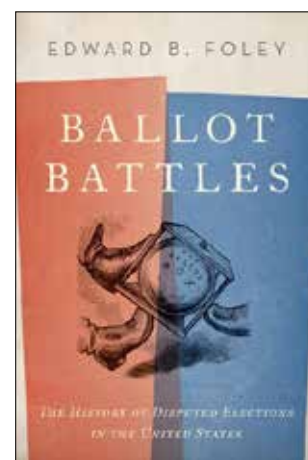
In *Ballot Battles, The History of Disputed Elections in the United States*, Professor Edward B. Foley recounts the history of disputed and troubled elections in our country, beginning with the very first congressional elections in New Jersey in 1789. Most of the election disputes he describes are little remembered today, but are nevertheless important for the principles they teach and for demonstrating how the election law evolved over time. While whole books have been written about the 2000 presidential election and the Supreme Court's decision in *Bush v. Gore*, Foley arguably does the best job of explaining and justifying the decision (in a single chapter no less) — by providing so much legal background and historical context, it is possible to see that the decision was not the wholly anomalous and partisan decision claimed by critics (remember, the equal protection portion of the opinion was decided by a 7-2 vote), but that, in many respects, the decision was consistent with how election law had been developing in the years beforehand.

Two major lessons emerge from Foley's book. First, for the vast majority of elections, the problems of hanging chads, absentee ballots, voter fraud, human error, and the like do not matter — with most elections there is a sufficient margin of victory that problems with some ballots or votes can be ignored because they do not affect the outcome. Nevertheless, as Foley demonstrates, in extremely close elections, many election law regimes simply are not robust and clear enough to ensure con-

fidence in the outcome. In those instances, where there is a very, very close election, the legal standards and the election process simply are not set out clearly and cleanly enough in advance so that the legal process itself, and the choices made by candidates and election officials during that process, may affect the outcome and leave the public and the parties with the feeling that the result of the legal process may not be the result the voters intended. This is the counting problem, or, as Foley puts it — the post-election process does not always lead to a fair count (although the process is arguably much better than it was).

There is much that can be done in terms of structure to make sure that a count is as fair as possible. The process needs to exist in advance. It needs to be transparent. It needs clear legal standards and guidelines. The decision makers should be neutral arbitrators (or as neutral as possible), meaning, of course, that a legislative body should not be deciding election disputes involving its members or potential members. In the wake of the 1876 presidential election, Congress created a process for handling electoral vote disputes, but Foley believes that that process needs to be improved. Many states also need to improve their processes.

The second lesson that emerges from Foley's book is not about counting the ballots cast — rather, it is the problem caused by illegal ballots being cast. This is the casting problem. Foley spends very little time discussing this issue (and he proposes





no fixes or improvements), but, to a large degree, in a close election, the problem of illegal ballots casts a cloud over the result no matter who is declared the winner. Put another way, in a very, very close election, the problem of illegal votes may be such that no matter how fair the counting process, a cloud will also hang over the result because of illegal voting.

Consider the 2004 Washington gubernatorial election, in which, after lengthy recounts and litigation, the Democrat Christine Gregoire was declared the winner over Republican Dino Rossi by 133 votes out of over 2.7 million votes counted. Yet, of the total votes cast, 1,678 votes were determined to have been illegally cast, including 1,401 votes by felons ineligible to vote, 252 “provisional” ballots *for which no voter could be found*, 19 in the name of voters *who were dead at the time of election* and 6 by voters who voted twice. But, because these votes/ballots had already been commingled with the legally cast votes, it was impossible to pull them out of the vote totals. Now, it might be tempting to think that since the total vote was essentially 50/50, then the total illegal votes would also be 50/50, so that, ultimately, there would no effect on the outcome. However, much would depend on where the illegal votes were cast. If 100 illegal votes came from a precinct or election district that voted 60/40 for one candidate over the other, then it might be more logical to conclude that those illegal votes broke down 60/40 as well. Rossi made this argument to the trial court, but it was rejected, as the court concluded that it had no way of knowing whether the illegal votes were cast in the same proportion as the precincts from which they came or whether other factors might have played a role. In sum, while there might have ultimately been a fair count of the votes cast, the intent of the voters will remain forever in doubt because 1,678 votes were cast illegally and should not have been counted and the margin of victory was only 133.

The 2008 Minnesota senatorial election is an even stronger argument for focusing on ballot integrity. In that race, after months of litigation and recounts,

with over 2.9 million votes counted, Democratic challenger Al Franken was declared the winner over incumbent Republican Norm Coleman by 312 votes. During the course of the proceedings, some (but not all) rejected absentee ballots were opened and counted. After the election, a watchdog group alleged that over 1,000 felons voted illegally (Minnesota officials dispute that number, although at least 177 people were later convicted of voting illegally). Foley finds, generally speaking, that Minnesota’s post-election process was fair and non-partisan; but, he never addresses the problem of illegal votes.

In those cases, such as Washington and, possibly, Minnesota, where the number of illegal ballots was greater than the margin of victory, a pall will always hang over the actual results. In the case of Minnesota, that pall is all the greater because Franken’s election gave the Democrats their sixtieth seat in the Senate, paving the way for the passage of the Affordable Care Act with a filibuster-proof majority. Without a sixtieth seat, and the ability to force Obamacare through on a strict party-line vote, Obamacare would have needed to have been a more bipartisan piece of legislation; and, as a more bipartisan piece of legislation, that only passed with some Republican support, Obamacare might not have become the rallying cry that gave rise to the Tea Party in the 2010 elections. (Historical what-ifs are always speculative, and naysayers may believe that Republicans would have opposed Obamacare no matter what its form, but in the absence of a filibuster-proof majority, Democrats would have

been forced to work with Republicans and Republicans would have been under a lot of pressure to work out something so as not to be seen as obstructionists, and thus it is not impossible to imagine an alternate history where a different, more bipartisan version of Obamacare was passed.)

America has come a long way since 1789 and its first major ballot battle involving the State of New Jersey’s congressional delegation (followed by a dispute involving Georgia’s congressional election in 1791 and Virginia’s in 1793). But, many of the issues still remain: unclear standards, an election process that has trouble with razor-thin election margins, and partisanship. As America has become increasingly polarized in its politics in recent years, now more than ever we need to take a comprehensive look at the election process to combat the problem of illegal voting and to ensure fair counting of the votes cast. The ultimate goal is a fair election that reflects the will of the people. Regardless of one’s political preferences, all should support a fair and honest process. Professor Foley’s book is a timely reminder that the casting and counting problems are not going away, and that improvements can and should be made. Hopefully the 2016 election will not prove the Professor prescient and we will not face more post-election problems. ☺

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



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## A PROFILE IN BALANCE

By James G. McGiffin, Jr., Esquire

# Mike Abram

## Attitude is Everything

*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

• • •

The first thing most folks notice about Georgetown criminal defense attorney Mike Abram is the distinctive beard. It is a beard in the Van Dyke style, combining the goatee and mustache, with clean shaven cheeks and no sideburns. But, it is not just the style that grabs one's attention, it is the size. The thing is huge. Set off by the contrast of a completely bald pate, the Abram beard makes a bold statement. Just what is the substance of that statement is a subject Mike is content to leave to the observer. He is not worried about it.

Mike was born in Rockville, Maryland and he graduated from Rockville High School. Between those events, he lived with his family in some pretty exotic places. He was in Hawaii for two years (before the first grade), and another two years in Australia. He spent one of his teenage years in Switzerland. After he had seen a lot of the world, he joined a local carnival (getting that sequence a bit backwards from the more romantic fantasy, he might admit). As a carny, he worked the Moon Bounce and the Pony Rides, among other attractions. He recalls a particularly dull gig, handling pony rides for some company picnic. A picnic-er struck up a conversation with him, and Mike used the opportunity to complain about his job. The listener was pleasant and polite and could not have been nicer. At the end of the conversation, Mike learned that this fellow was actually the owner of the company and the sponsor of the event. Mike liked his attitude.

After high school, Mike tried community college. His parents were not academics, and a bachelor's degree was not really on his radar screen. Still, he came to realize that he could do it if some of

the others he knew could do it, so he transferred to Hofstra for a degree in sociology. The idea of law school came to him in much the same way. He had a friend who got into a law school, so he guessed he could do the same, and he did. He attended Tulane Law School.

It would be a mistake to generalize about the physical appearance of lawyers. The profession is diverse. So, your writer will offer no comment about whether Mike looks like or unlike a lawyer. But, he certainly looks like a bar bouncer. And, he was so employed while in college and law school. He made many friends while he worked that job, and he heard many good bands. Mike lives in the moment, and he had many good moments at The Bayou in Washington, D.C. and The Balcony Bar in New Orleans.

It was the Tulane connection that brought Mike to Delaware. Georgetown attorney Ed Gill is also a Tulane graduate, and he recruits at Tulane. He hired Mike for a clerkship after his second year, and then offered Mike a job upon graduation. Mike started in family law, but soon gravitated toward criminal law, which he prefers. He likes the fast pace of trial work and the challenge of thinking on his feet. He eventually hung out his own shingle just off The Circle.

Mike lives in Milton with his wife, Amanda, to whom he was introduced by fellow Georgetown attorney Bill Wilgus. He has three step-children, all teenagers. He and Amanda have welcomed



into the house Mike's uncle and Amanda's mother. Probably an unrelated condition, Mike is not a guy who hangs around the house. He has many friends, including police officers and prosecutors. These are people who "leave work at work." He socializes in Rehoboth Beach and Dewey Beach. He takes a hockey trip every year to watch the Washington Capitals play. Mike and friends also take a "hair band" trip every year to a concert at the Merriweather Post Pavilion. He also does more exotic travel. He and Amanda visited Panama and the whole family has been to El Salvador.

Mike often advises new lawyers against taking themselves too seriously. "No one cares that you are a lawyer. It is just your job, not your identity." Attitude is important. Spend any time at all with Mike Abram and one will see that he takes his own advice. 🕒

**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).

DSBACLE

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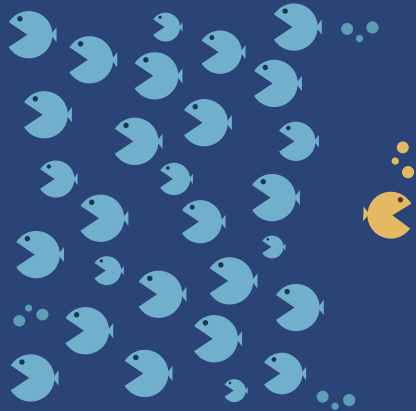
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Cooch and Taylor, P.A. is also pleased to announce that Director **Matthew P. D'Emilio** has been selected for inclusion in the 23rd Edition of *The Best Lawyers in America*® in the field of Trusts and Estates, Director **Andrew P. Taylor** has been selected for inclusion in the 23rd Edition of *The Best Lawyers in America*® in the field of Real Estate, and Director **James W. Semple** has been selected for inclusion in the 23rd Edition of *The Best Lawyers in America*® in the field of Commercial Litigation and Insurance Law.

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**Waiver of Release of Liability:** In consideration of this entry being accepted, I, intending to be legally bound hereby for myself, my heirs, executors, administrators, waive and release any and all rights I may have against DVLS, organizers and sponsors, or any personnel for any injury that I might suffer in this event. I attest that I am physically fit and prepared for this event. I grant full permission for organizers to use photographs of me and quotations from me in legitimate accounts and promotions of this event.

Signature: \_\_\_\_\_ (Parent/Guardian must sign if under 18)



# The Importance of the Combined Campaign for Justice

By David B. Stratton, Esquire

**W**ould you be willing to help a woman who is a victim of physical and emotional abuse get protection from her attacker? Would you be willing to help a senior citizen who was defrauded by a dishonest contractor get her money back? How about helping a young child suffering from physical and emotional disabilities qualify for disability benefits in the face of a daunting bureaucratic process? How about veterans?

We, as Delaware lawyers, have the distinct privilege to practice law here, with its obvious economic advantages. Yet, there are thousands of our less fortunate citizens who are unable to address their pressing legal needs — needs that most of us never face and could barely imagine — because they cannot afford to hire a lawyer, regardless of the hourly rate or fee arrangement.

There are two ways that we can help our neighbors: offer our services on a *pro bono* basis and support the three organizations in Delaware that provide legal representation to Delaware's poor: Community Legal Aid Society ("CLASI"), Delaware Volunteer Legal Services ("DVLS") and Legal Services Corporation of Delaware ("LSCD"). I encourage you to do both.

Thanks to the financial support of fellow attorneys, firms, and many other organizations, last year, these agencies provided legal services in 4,744 cases, affecting 12,101 low-income individuals and families. The cases involved a wide range of important matters to these families, children, veterans, seniors, people with disabilities, victims of domestic violence, and the homeless. Yet, this is only a small portion of the approximately 110,000 Delawareans that qualify for legal aid and need legal help from these

*“According to national studies, only about twenty percent of the civil legal needs of low-income and poor Delawareans are being met.”*

agencies. According to national studies, only about twenty percent of the civil legal needs of low-income and poor Delawareans are being met. American Bar Association research has found nationally that for every one person who seeks legal assistance, another is turned away because of lack of resources. Delaware is, unfortunately, no exception.

We should be honest enough with ourselves to acknowledge that we, as a Bar, are never going to have enough volunteers, volunteering enough time, to meet the needs of our state's poorest residents. That leaves supporting CLASI, DVLS, and LSCD financially through the Combined Campaign for Justice ("CCJ") as the best way to help our fellow citizens. Many of us donate an amount equal to one billable hour or give \$100 for each year they have been a member of our profession. Your donation to CCJ is extremely important because it will directly and immediately affect the number of children and families these three agencies can help.

As the lead chair of the CCJ this year, I urge each of you to be among those who donate and I hope you will do so generously, mindful of the plight of Delaware's poor and our enviable privilege as members of the Delaware Bar. The need is greater than ever and your support matters more than ever.

To donate, go online to [www.delawareccj.org](http://www.delawareccj.org). Or, send your check payable to the Combined Campaign for Justice, P.O. Box 2113, Wilmington, Delaware 19899. Our lawyers, staff, and everyone involved with CLASI, DVLS, LSCD, and CCJ join me in thanking you for your generous support. More importantly, the families and individuals CLASI, DVLS, and LSCD serve every day thank you so much for your help. 📧

**David B. Stratton** is a partner in Pepper Hamilton's Corporate Restructuring and Bankruptcy Practice Group and the managing partner of the firm's Wilmington office. He can be reached at [strattod@pepperlaw.com](mailto:strattod@pepperlaw.com).



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# The Honorable William T. Quillen

1935 - 2016

By The Honorable Collins J. Seitz, Jr.

**A**ffectionately known as Judge to his colleagues and friends, William “Bill” Quillen passed away on August 19, 2016, at the age of 81. The Judge believed a successful life was a “useful” life. By his own measure, Bill passed the test with flying colors as a military officer, law clerk, lawyer, judge, general counsel, director, teacher, political advisor, statesman, historian, and scholar.

Bill grew up in historic New Castle, where his family had deep roots in the town. He attended Wilmington Friends School, which started a life-long love affair for all things blue and white. A fixture at Friends School sporting events, Bill was happiest cheering on his talented grandsons. He could also be found in the stands at University of Delaware football games. Like many of his generation, he had a painful love-hate relationship with Philadelphia sports teams.

Bill graduated from Williams College in 1956, and received his LL.B. from Harvard Law School. Not satisfied with one advanced degree, and while a sitting Supreme Court Justice, Bill earned his LL.M. from The University of Virginia School of Law where he studied judicial process. Along the way, Bill found life-long friends in Judge Walter Stapleton, Charlie Crompton, and Rod Ward, all luminaries of the Delaware Bench and Bar. After earning his law degree, lawyer Quillen was a JAG Corps officer in the United States Air Force from 1959 to 1962, and then returned home to clerk for Judge Charles Terry. Following a short stint at Richards, Layton & Finger, political advisor Quillen became an assistant to Governor Terry, who in 1966 appointed Bill to the Delaware Superior Court at the age of 31. Bill had the distinction to serve on each of Delaware’s major constitutional courts, as Chancellor (1973-76), Justice (1978-83), and Judge (1966-73; 1994-2000).



Always restless and looking for new challenges, Bill took several detours to pursue other interesting jobs. He became a senior vice president at Wilmington Trust Company; a partner at Potter, Anderson & Corroon; a candidate for Governor; General Counsel of the Howard Hughes Medical Institute, then the world’s largest charity; and a Distinguished Visiting Professor at the Widener University School of Law where he taught many courses, including Ethics and Constitutional Law, as an adjunct professor.

Judge Quillen took the job of judging seriously. With a single-minded intensity when enmeshed in a case or project, Bill pored over briefs, cases, and law books. His labors as a Justice and Chancellor produced such enduring decisions as *Zapata Corporation v. Maldonado* and *Gimbel v. The Signal Companies, Inc.*, where he carefully balanced the board’s authority to run the company with the ownership interests of the stockholders.

He was free with his advice to candidates, judges, attorneys, and law clerks, whether asked for or not. After vacating one of his judicial offices, he is reputed to have left a slip of paper in his desk for the next judge, warning “I’ll be watching.” On Judge Quillen’s docket, there were no small cases. He fervently believed that judges should not take shortcuts. In his view, whether they won or lost, parties with disputes before the court deserved a piece of paper explaining the result.

While the Judge’s influence extended far beyond the Diamond State, he reserved a special place in his heart for Delaware history. As Secretary of State in 1993-94, Bill helped plan and make a reality the new Delaware Archives building. For decades, he was actively involved in the New Castle Historical Society. In 2013, Governor Jack Markell awarded Bill the Governor’s Heritage Award, reserved for Delawareans who have contributed significantly to the recognition, preservation, and celebration of Delaware’s heritage.



Bill's love of the law paled in comparison to his love of family. He boasted as a father should about his daughters Carol and Tracey. He loved his three grandchildren. And, without a doubt, he adored his late wife of 56 years, Marcia Everhart Stirling Quillen.


Bill was always a hopeful person, who spread his infectious optimism to all those fortunate enough to know him. In 1994, after surveying the lessons he learned from other great Delaware jurists, Judge Quillen wrote:

So, in my prayers for the bench, I pray: for judges who love life and their fellow human beings and who, in their work as well as their private life, foster a camaraderie of human-kind; for judges who have the courage to see the true principle when custom would deny it; for judges whose civility is individual as well as corporate; and for judges whose character transcends the expedient and reflects the universal, tolerance as well as truth. To such a bench, the bar can surely point with pride. With such a bench, surely there is yet hope for the rule of law.

Amen Judge Quillen. 

## OF NOTE

Condolences to the family of **John C. Landis, Esquire**, who died on September 10, 2016.

*If you have an item you would like to submit for the Of Note section, please contact Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org).* 

# CALL FOR APPLICATIONS!

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The Executive Committee would like to consider all interested candidates. If you would like to apply to serve as the DSBA Young Lawyer Delegate to the American Bar Association, please send your name along with a CV and at least one letter of nomination by email to Mark S. Vavala, Esquire, Executive Director, at [mvavala@dsba.org](mailto:mvavala@dsba.org) or by first class mail to: Mark S. Vavala, Esquire, Interim Executive Director, Delaware State Bar Association, 405 N. King Street, Suite 100, Wilmington, Delaware 19801. Application materials must be received on or before October 17, 2016.

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# R. Franklin Balotti, Esquire

1942 - 2016

By Allen M. Terrell, Jr., Esquire

**R.** Franklin Balotti (Frank) passed away on August 2, 2016 after a short illness; but his contribution to the Delaware Bar, Delaware corporate law, and his many friends has an enduring impact. Some great people are remembered for their remarkable accomplishments and others for the indelible memories that they have left with people they have known. Frank is remembered for both.

Frank never outgrew his Delaware roots. He graduated from Mount Pleasant High School, where he played football with his lifelong friend and Bar member, Mason Turner. While neither tall nor heavy, the undersized Frank was also a starter in football at Hamilton College, where he graduated in 1964. He went from there to Cornell Law School, where he was awarded the Order of the Coif in 1967.

Frank began his legal career at Richards Layton & Finger (RLF) in the summer after his first year at law school. Three years after his graduation from Cornell, he was made a partner — an achievement not yet duplicated at RLF. He never left RLF. Even after his retirement in 2012, he could be seen (when not on the golf course, or in Florida or New Jersey) in his office counseling young lawyers.

Before turning to Frank's unique personality, a few of his many accomplishments should be noted. Frank was what one might describe as a "Dean of Delaware Corporate Law." He practiced almost exclusively in the Court of Chancery and in the Delaware Supreme Court, although he advised and testified as an expert in courts and forums around the world. He and his partner Jesse Finkelstein co-authored the seminal treatise on Delaware corporate law, "The Delaware Law of Corporations and Business Organizations." Frank also co-authored "Meetings of Stockholders." He was elected to the



American College of Governance Counsel.

He was an accomplished litigator. He was elected a member of the exclusive American College of Trial Lawyers. Frank wrote briefs with precision, insight and clarity; as many of his colleagues remember after he crossed out redundancies and florid rhetoric in their drafts. In Court, Frank was persuasive and responsive; with the added advantage of an almost photographic memory of cases with instantaneous citations to the *Atlantic* digest page. During the hectic heydays of hostile takeovers and mergers, Frank was in many of the most important cases.

They are too many cases to list in this "In Memoriam"; and Frank would not have wanted it to appear that he was solely responsible for his many legal victories. He always credited his "team" and relished the post-victory celebrations; usually in his office with his stash of "airline" small bottles.

Speaking of airlines and Frank's work life, I will not forget seeing Frank early one morning in the Philadelphia airport. As I was ready to take off for my flight, I saw Frank's secretary hauling two large legal briefcases as Frank was coming down the concourse. He was just coming back on a red-eye after taking depositions on the West Coast. His secretary greeted Frank with the briefcases and a ticket for a morning flight back to Phoenix to meet with a new client who had just become the target of a hostile takeover. Frank had a demanding scheduling much of his career, which he managed with humor and stamina.

Despite Frank's extraordinarily busy legal practice, he was a dedicated teacher. He was an adjunct professor of law at Cornell Law School, University of Miami School of Law, Widener University School of Law, the University of Iowa College of Law, Ray Garrett Institute at Northwestern University School of Law, and Ohio State University Moritz College of Law.

Perhaps Frank's most enjoyable teaching stint was during summers in Padua, Italy, where he more frequently held class in Padua's cafes rather than the university's classrooms. Day in and day out, Frank was a teacher and mentor to lawyers at RLF. He always made time to answer questions and give advice. Frank's door was rarely closed, except when he escaped to the golf course. There too, he was always instructing, although perhaps with less success.

RLF and the corporate bar were not the only beneficiaries of Frank's attention. He served all members of the Delaware Bar. Frank was a member and often chairperson of Delaware Bar committees; including the General Corporation Law Section, liaison between Judicial Nominating Commission and the Bar's Committee on Judicial Appointments, Board on the Unauthorized Practice of Law, the Supreme Court's Advisory Committee on Rules, the Supreme Court's Courts Planning Committee, Board of Professional Responsibility, Advisory Committee on Administrative Efficiency in the Judicial Branch...actually, this list goes on and on. You get the picture: when asked by the Court or the Bar, Frank accepted the responsibility and served diligently. Naturally, Frank was a leading member of the Delaware State Bar Association, and served a term as its President.

Frank was fun. In the practice of law, his wit and humor lightened up any adversarial setting. For associates, working with Frank was more than just fun — it was career building. He made associates grow and gave them business opportunities. He shared his work and contacts; so as to encourage younger lawyers to develop their business. Frank would tell one of his trusted associates: "Call this guy and work it out with him. If you need to bounce something off me, do it; but try not to." His colleagues were part of his "greater family," whom he generously nourished and encouraged. When I first arrived from New York to RLF not knowing anyone

there, Frank came into my office on my first day and said: "I hear you have a little daughter about the same age as mine. I'll get a babysitter and we can go to dinner so that our wives can get to know each other."

Frank's own family was dear to him. Marcia, his wife for over 49 years, was the love of his life. They had three children, daughter Alissa (an attorney), sons Richard (a doctor), and Michael (an educator). He enjoyed wonderful vacations with them and delighted

in their successes. Frank's family, his gardens, and (most of the time) his golf game provided a needed respite from his hectic legal career.

Frank was a remarkable person, who accomplished so much and gave even more to all those whom he touched. ☺



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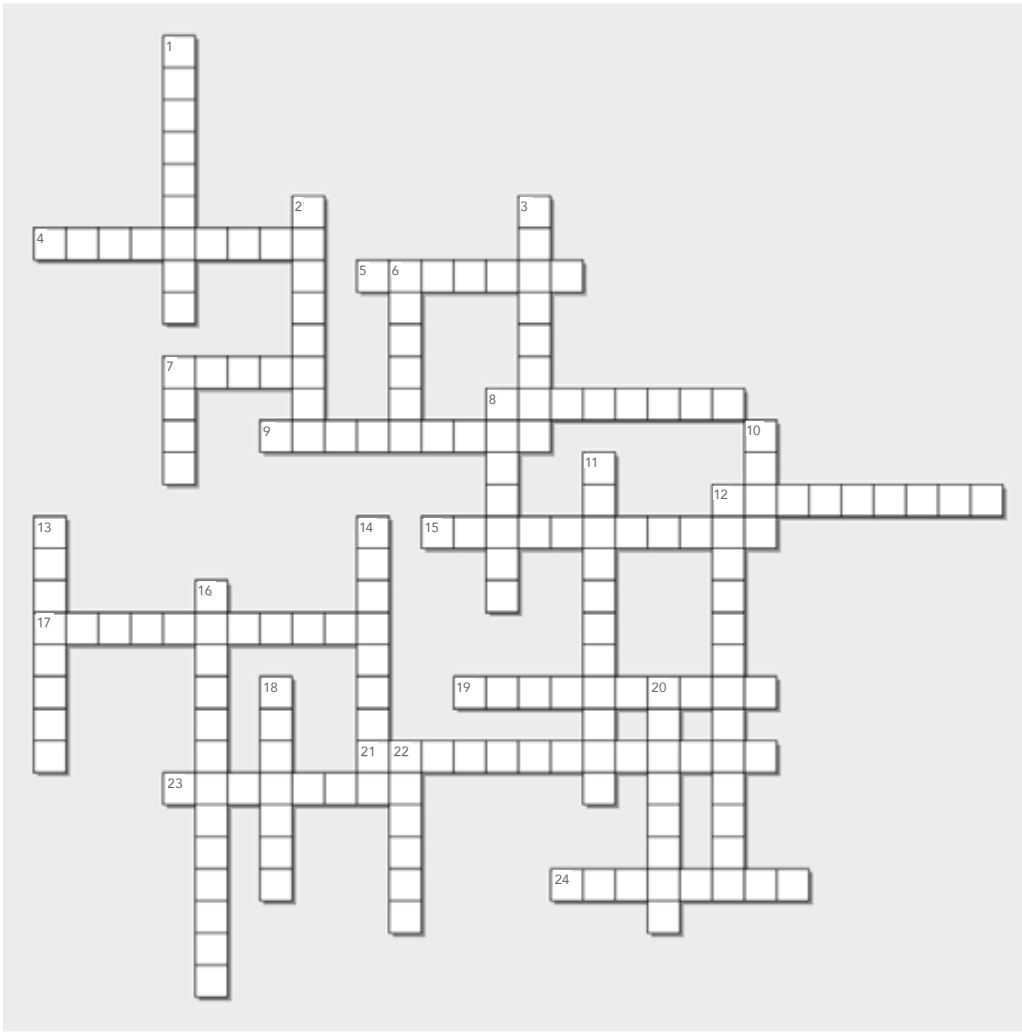
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# October Surprise

It has been too long since I've created a puzzle. So, surprise! Happy October! The first reader to email me at [spoppiti@hotmail.com](mailto:spoppiti@hotmail.com) with the correct answers to this challenging crossword puzzle will win a bottle of red Rhône wine, an ideal pairing for many fall meals. 🍷



## DOWN

1. Tripe dish created by Washington's army
2. Brazil's most famous dish
3. Twice baked bread
6. Also called Peking sauce
7. Drier than extra dry
8. Oyster plant
10. You will need it to wrap sushi
11. The richest of Viennese desserts
12. A must for a Kir
13. France's focaccia
14. Let's have a barbecue!
16. Premier pork
18. The salad created at one of New York's finest
20. Citrus fruit used in perfumes
22. Scotch Manhattan

## ACROSS

4. I love cheese!
5. Not a cornichon
7. Best rice for paella
8. I can't believe it's not butter!
9. Smoky, sulfurous salt
12. Italian pancake
15. A condiment in Argentina
17. The boss of salads
19. A superior cook
21. White powder that fosters creaminess
23. The hottest of curries
24. A small cake (don't be jealous)



**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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