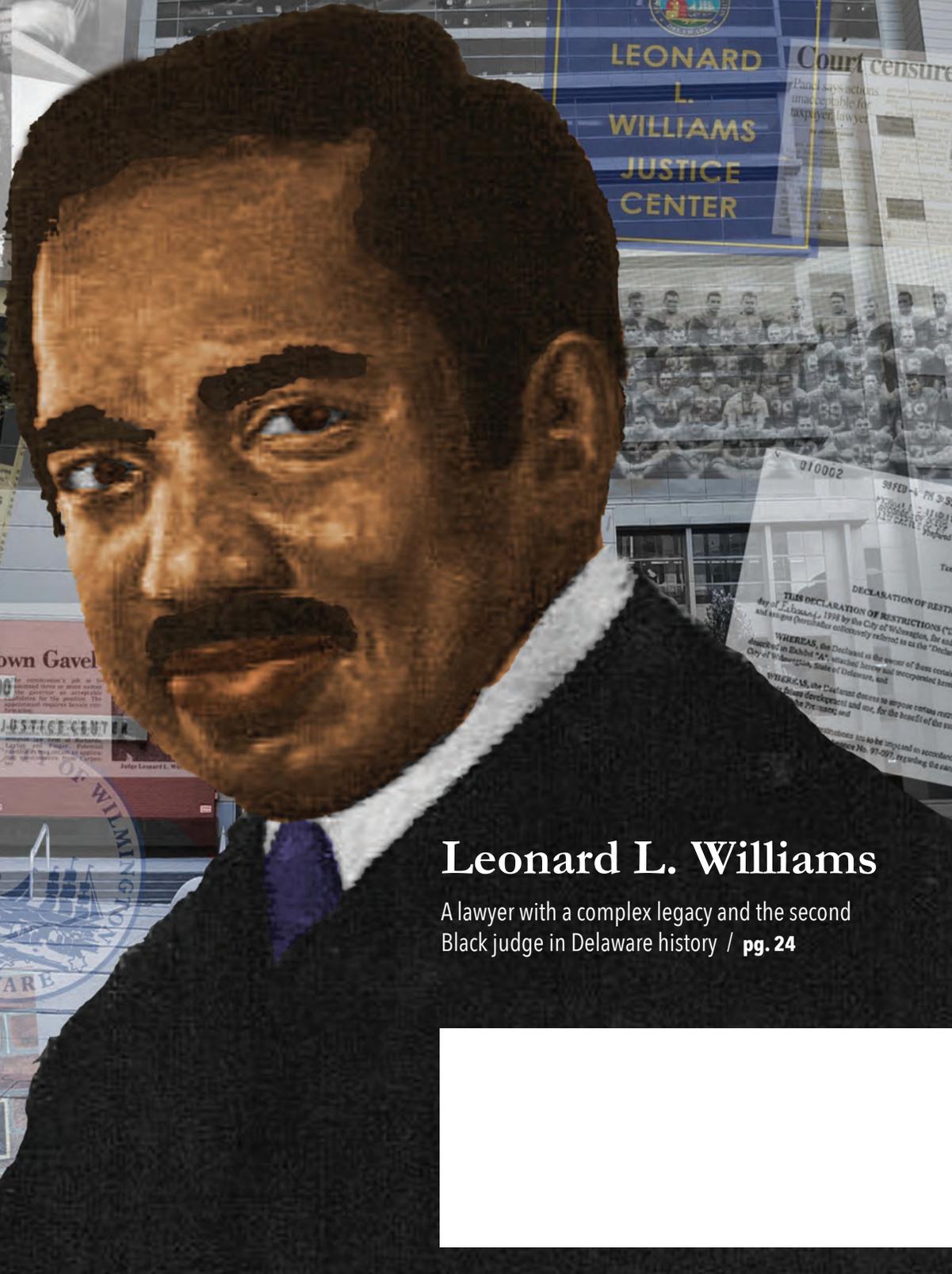




# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION



LEONARD L. WILLIAMS JUSTICE CENTER

Court censures part

30 Negroes call Terry a racist

Retired Judge Williams dies at 78

Williams Laying Down Gavel

LEONARD L. WILLIAMS JUSTICE CENTER

He has used his position to provide a level playing field for all who appear before him.

LAW OFFICES

LEONARD L. WILLIAMS, ESQ.

## Leonard L. Williams

A lawyer with a complex legacy and the second Black judge in Delaware history / **pg. 24**

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

# GET INVOLVED IN DSBA LEADERSHIP!



The Delaware State Bar Association is looking for a number of talented members to join the 2022-2023 Executive Committee and lead the DSBA to continued success.

The following positions on the Executive Committee of the Association must be filled for the year 2022-2023:

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

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

The following positions must be filled for the term as noted:

One (1) DSBA Representative to the Delaware Bar Foundation Board:  
Four-year term

One (1) DSBA Delegate to the ABA House of Delegates:  
Two-year term

The Nominating Committee wants to consider all interested candidates. If you are interested in serving on the Executive Committee or would like to recommend a candidate, please send your name or the candidate's name along with a CV and at least one letter of nomination to Mark S. Vavala, Executive Director, by email at: [mvavala@dsba.org](mailto:mvavala@dsba.org) or by mail at: Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE 19801 by February 11, 2022.

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

The Nominating Committee consists of:

William P. Brady, Chair  
Michael F. McTaggart, Vice-Chair

#### New Castle County

P. Clarkson Collins, Jr. (2022)  
Kyle Evans Gay (2022)  
Jeffrey S. Goddess (2022)  
Loren Holland (2022)  
Shannon D. Humiston (2022)  
Julia B. Klein (2022)  
Antoinette D. Hubbard (2022)  
Aaron R. Goldstein (2023)  
Achille C. Scache (2023)  
Kelley M. Huff (2023)  
Wilson A. Gualpa (2023)  
Christofer C. Johnson (2023)  
Brenda James-Roberts (2023)  
Emily A. Bryant-Álvarez (2024)  
Constance A. Dorsney (2024)  
LaKresha Roberts Moultrie (2024)  
Jacqueline A. Rogers (2024)  
Eric Scott Klinger-Wilensky (2024)  
Srinivas M. Raju (2024)  
Brandon R. Harper (2024)

#### Kent County

Laura A. Yiengst (2022)  
Melissa L. Dill (2023)  
Keith E. Donovan (2024)

#### Sussex County

Chase T. Brockstedt (2022)  
Stephanie A. Tsantes (2023)  
Etta R. Mayers (2024)



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

## DSBA BAR JOURNAL

FEBRUARY 2022 | VOLUME 45 • NUMBER 7

### PRESIDENT

Kathleen M. Miller

### EXECUTIVE DIRECTOR

Mark S. Vavala

### EDITORIAL BOARD

Laina M. Herbert

Jason C. Powell

Kristen S. Swift

Seth L. Thompson

### EXECUTIVE COMMITTEE LIAISON

Kate Harmon

### EDITORIAL ADVISORY COMMITTEE

Valerie A. Caras

Denise Del Giorno Nordheimer

Adria B. Martinelli

Victoria R. Sweeney

Holly O. Vaughn Wagner

### PUBLICATIONS EDITOR

Rebecca Baird

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

© Copyright 2022 by the Delaware State Bar Association. All Rights Reserved.

The *Bar Journal* is the independent journal of the Delaware State Bar Association. It is a forum for the free expression of ideas on the law, the legal profession and the administration of justice. It may publish articles representing unpopular and controversial points of view. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers, and all articles are subject to limitations of good taste. In every instance, the views expressed are those of the authors, and no endorsement of those views should be inferred, unless specifically identified as the policy of the Delaware State Bar Association.

The *Bar Journal* 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

Letters to the Editor should pertain to recent articles, columns, or other letters. Unsigned letters are not published. All letters are subject to editing. Send letters to the address above, Attention: Editor, Bar Journal.

### For Advertising Opportunities

Call (302) 658-5279, ext. 102

Email: rbaird@dsba.org

Read *The Bar Journal* online at  
www.dsba.org



# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

## FEATURES

- 2 Call for Executive Committee Nominations
- 6 Nominations Sought for First State Distinguished Service Award
- 24 Cover Story: Leonard L. Williams
- 29 Nominations Sought for Law Day Awards
- 33 A Tribute from CCJ to Mary Christine Byrd  
BY ELIZABETH M. MCGEEVER, ESQUIRE
- 34 Photographs and Sponsor Recognition from the Dr. Martin Luther King, Jr. Virtual Program and Statewide Day of Service

## COLUMNS

- 4 President's Corner
- 7 Editor's Perspective
- 12 Tips on Technology
- 14 Commission on Law & Technology: Leading Practices
- 16 Ethically Speaking
- 18 Office of Disciplinary Counsel Update
- 20 DE-LAP Zone
- 22 Bankruptcy Update
- 26 Creating Space in the LAW: Leadership, Advocacy & Women
- 38 Book Review
- 40 The Judicial Palate
- 46 The Last Word

## DEPARTMENTS

- 8 Side Bar
- 9 Of Note
- 10 Calendar of Events
- 11 Section & Committee Meetings
- 28 In Memoriam: Eugene H. Bayard, Esquire
- 30 In Memoriam: The Honorable Richard S. Gebelein
- 42 Bulletin Board

Cover Illustration: © Mark S. Vavala



As I reported in the July/August *Bar Journal*, in 2021 the DSBA launched its Diversity Judicial Clerkship Program. We placed four clerks in our inaugural year. The Superior Court clerks were Alan Cardenas-Moreno, Wayne Grant, and Marianne Tascon. Alan and Marianne were assigned to the Complex Commercial Litigation Division (CCLD). Jordan Greer clerked in the Bankruptcy Court. Throughout their stay in Delaware, the Clerkship Committee, the Bench, and the Bar embraced our clerks. They visited with in-house counsel, were hosted by a firm for lunch to talk about Delaware practice, attended section events, watched Supreme Court arguments and met with the Justices, and made some friends along the way. Each of the clerks expressed what the experience meant to them.

» **Jordan:** It was an honor to participate in the Delaware State Bar Association's Diversity, Equity & Inclusion Clerkship Program. The opportunity to meet the Delaware legal community has been both an impactful and humbling experience. The DSBA not only invested in my interest in Delaware culture but in my passion for bankruptcy as well. The judges I was fortunate enough to work under in the Delaware Bankruptcy Court are the best and brightest in the county. I genuinely appreciate the DSBA's selection of me for the program, and I hope to one day pay it forward.

» **Marianne:** Not only was the Judicial Diversity Clerkship Program a fantastic opportunity to participate in the practice of corporate law at the highest levels in the nation, but DSBA provided us a wonderful introduction into the Delaware legal community. Educational fellowship opportunities like this are a model for how outcomes in diversity,

equity, and inclusion can be improved through truly community-wide efforts.

» **Wayne:** My internship with the Delaware State Bar Association opened several doors for me and introduced me to the great legal jurisdiction that is Delaware. The Judicial Diversity Clerkship program emphasizes acceptance, inclusion, and equity while promoting unique learning opportunities within Delaware. As an intern, I was blessed enough to witness Delaware Supreme Court arguments; learn about the legal environment of general counsel; discuss diversity with partners and recruitment managers of big law firms; as well as observe the inner workings of the civil and criminal court system through the lenses of the excellent legal mind of President Judge Jurden of the Superior Court. The entire experience was fully comprehensive and provided me the opportunity to observe multiple legal avenues as well as get hands-on experi-

ence within the Superior Court. I was able to actively engage and participate in case work, hearings, and rulings. I was extremely pleased by the responsibility that was given to me in these internships as well as the freedom to explore avenues that I found intriguing. This opportunity has given me the insight necessary to understand that the Delaware Bar is a community that supports and appreciates each other, while promoting diversity and inclusion. Lastly, the program promoted active networking by allowing the clerks to mingle with attorneys and judges in a multitude of forums. I met Supreme Court Justices, DSBA committee members, and a plethora of legal counsel. With that said, my experience with the program was nothing short of excellent and every single member of the Delaware State Bar Association was helpful, enthusiastic, engaged and supportive of my legal journey, and interest in legal life in Delaware.

» **Alan:** Before going into Delaware, I only knew it for its vast corporate presence and its small Bar. Little did I know that that small Bar was composed of highly welcoming and approachable people. From the very beginning of the clerkship, everyone was eager to know us and share their experience with us, regardless of their title. This included justices, vice chancellors, judges, and other practicing attorneys. I felt like I was meant to be there. The legal community in Delaware definitely made our summer experience one to remember and one to make us want to come back as practicing attorneys.

---

We are so pleased that the Clerks had such a wonderful experience, which is not a surprise given the generosity

of our Bench and Bar. We are thrilled that Alan will be joining Young Conaway after graduation. No matter their path, as you've seen in their own words, Delaware has made a significant impact on them. Thank you!

The application period for the 2022 Program is now open. We expanded the Program to five clerks: for 2Ls clerkships are being offered in the Supreme Court, Bankruptcy Court, and Superior Court and for 1Ls clerkships are being offered in the Court of Chancery and Superior Court CCLD.

This Program would not have been possible without the financial support from the Delaware firms, organizations, and individuals who contributed. Thank you! We had a terrific start but our work is not done. Please consider supporting our Program in 2022.

CONTINUED ON PAGE 6 >



L to R: Wayne Grant, Jordan Greer, Alan Cardenas-Moreno, Marianne Tascon and DSBA President Kathleen M. Miller, Esquire, at the Diversity Scholars Reception in June 2021.

# BUILDING RELATIONSHIPS

1980

*for*

2022

# OVER 40 YEARS

PERMANENT ASSOCIATE | PARTNER | SUPPORT STAFF PLACEMENT SERVICES

KRUZA LEGAL SEARCH

215.981.5455 [kruza.com](http://kruza.com)

## PRESIDENT'S CORNER

CONTINUED >

I also want to thank the Clerkship Committee members for making this Program a success: Shaku Bhaya, Connor Bifferato, Dawn Crompton, Shanti Katona, Kerri Munford, Marcos Ramos, Stanley Tarr, Susan Waesco, Peter Walsh, Patricia Winston, Natalie Wolf, Joseph Barry (2021 Bankruptcy Section Member), Erin Fay (2022 Bankruptcy Section Member), and Jeremy Tigan (2022 Federal Bar Association Member).

The Committee developed the applications, reviews the submissions, interviews the candidates, and engages with the Clerks. I am proud to be a part of this wonderful team. Thank you for all your efforts. 

**Kathy Miller** is the current President of the Delaware State Bar Association. She is a partner at Smith, Katzenstein & Jenkins LLP where she focuses her practice on corporate and commercial litigation and corporate bankruptcy matters. She can be reached at [kmiller@skjlaw.com](mailto:kmiller@skjlaw.com).

## THANK YOU TO THE SPONSORS OF THE DIVERSITY JUDICIAL CLERKSHIP PROGRAM

Richard A. Forsten, Esquire

Michael F. McTaggart, Esquire

Kathleen M. Miller, Esquire

Francis J. Murphy, Esquire

Bankruptcy Section of the DSBA

Multicultural Judges & Lawyers Section of the DSBA

LGBTQ+ Section of the DSBA

Women & the Law Section of the DSBA

Delaware Chapter of the American Constitution Society

Delaware Chapter of the Federal Bar Association

Campbell & Levine LLC

Connolly Gallagher LLP

Doroshov Pasquale Krawitz & Bhaya

Heyman Enerio Gattuso & Hirzel LLP

Marshall Dennehey

McCollom D'Emilio Smith Uebler LLC

Morris Nichols Arsht & Tunnell LLP

Polsinelli PC

Potter, Anderson & Corroon LLP

Pratcher Krayner, LLC

Richards, Layton & Finger PA

Ross Aronstam & Moritz LLP

Smith Katzenstein & Jenkins LLP

Weiss, Saville & Houser, PA

Wilks Law

Wilson Sonsini Goodrich & Rosati

Young Conaway Stargatt & Taylor LLP

# First State Distinguished Service AWARD

## SEEKING NOMINATIONS

The Delaware State Bar Association and the Awards Committee are seeking nominations for the First State Distinguished Service Award to be presented at the 2022 Bench & Bar Conference. The award is described below:

*This award is given annually at the Bench & Bar Conference to a member of the Delaware Bar who, by exemplary leadership and service dedicated to the cause of good citizenship in civic and humanitarian service over a period of many years has maintained the integrity and honored recognition of the legal profession in community affairs and who, as an outstanding Delawarean, unceasingly advances the ideals of citizen participation and community accomplishment, thus reflecting high honor on both country and profession.*

## SUBMIT NOMINATIONS BY MARCH 4, 2022 TO:

Mark S. Vavala, Executive Director

Mail: DSBA, 405 N. King Street, Suite 100, Wilmington, DE 19801 or Email: [mvavala@dsba.org](mailto:mvavala@dsba.org)

Please include: The name, firm, and title/occupation of the Candidate; name and contact information (firm, address, email, phone, and fax) of the individual nominating the Candidate; and a brief statement of the reasons the Candidate is deserving of the Award.





**A**s if the Powell household wasn't complicated enough, we decided to host a foreign exchange student from Portugal for the current school year. So, among other changes, starting in August of last year, my office (code for sports watching room) was converted to another bedroom and a wonderful high school senior from Evora, Portugal came to join our family. She will reside with us until she graduates from high school this summer and then return to her home country.

Prior to coming to live with us, she had never traveled to the United States. If you happen to be of the opinion that the climate in this country, whatever that may be, is not opportune for welcoming visitors, you are wrong. She does not see it that way and nor do we. It is enthralling to watch her experience this country and our family life and household for the first time. Tasks and daily routines are not so routine when she questions who and why we do certain things a certain way. I find myself explaining things and discussing topics, certain traditions unique to our country, that I had seemingly taken for granted. While this experience may not be for everyone, it is wonderful to help her experience our culture and discuss how it is different than her own. Playing board games, or explaining my profession, or anything different from how things are done in Portugal is of interest to her. In return, the conversation is interesting to me, especially when seeing her enthusiasm. In response to her questions, I find myself evaluating and thinking about the development of our culture and the lineage of our family traditions.

My level of excitement and enthusiasm for our travel and family experiences

## **Children can be exposed to diversity in a number of ways, of course, and involving a foreign exchange student in our family made sense to us as a way to foster an emphasis on respect and acceptance of persons from any background.**

is greater now with the addition to our family. When we travel now, it is even more important to include the historical and culturally important sites and experiences. Watching any young person, from any country, experience New York City for the first time is exciting. Watching her see the Statute of Liberty from the ferry, and then accompanying her in the tour and accompanying museum on its grounds added an extra level of enjoyment to an already intriguing attraction and trip in general. Safety and health protocols have become the norm and have factored into what we do and don't do as a family, but I don't think she feels cheated. At least, I hope not. Philadelphia has been the subject of several day trips and a trip to Washington D.C. should have occurred before this article was published. I do wish I could write about her experiencing the Martin Luther King, Jr. Memorial in our nation's capital on Martin Luther King, Jr. Day but that will have to be addressed another day.

Finally, these benefits swing both ways. My two younger children, and my family as a whole benefit greatly from this experience. This experience is the type of education that extends well beyond academia. Just like their travel to foreign countries, by way of this new member to our family, my children are seeing diversity that is expanding their minds and giving them a greater curiosity and

tolerance for the unfamiliar. They are learning how traditions celebrated here may vary or may not even exist in other countries. My children's amazement, coupled with puzzlement, as they learn about how Christmas is celebrated in Portugal is invaluable.

Children can be exposed to diversity in a number of ways, of course, and involving a foreign exchange student in our family made sense to us as a way to foster an emphasis on respect and acceptance of persons from any background. It was a way to show the commonalities, and differences, among and between various cultures. I suppose we could have sat our kids down and watched a video about "Life in Portugal" but, in the end, what would they truly learn? They would not have learned that lasagna, Portuguese style, is much different than the lasagna we are accustomed to and tastes great. They would not have learned what types of American sneakers are popular with the kids in Portugal. And, they would not have learned the value and importance of bringing a stranger, from a foreign country, into their home. 🍷

---

*Bar Journal* Editor **Jason C. Powell** is the managing director of The Powell Firm, LLC, in Wilmington, Delaware. He may be reached at [jpowell@delawarefirm.com](mailto:jpowell@delawarefirm.com) and more information is available at [delawarefirm.com](http://delawarefirm.com).

## MEMBER BENEFIT OF THE MONTH

## The DSBA Lawyer Referral



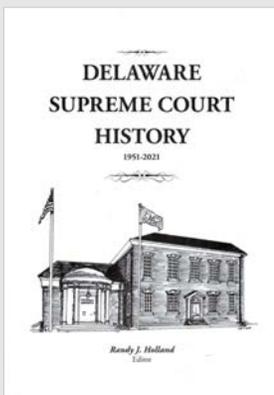
Each day, the DSBA Office receives phone calls from individuals asking for help in finding a lawyer. We refer those callers to our online Lawyer Referral system which receives about 300 hits per month from Delaware citizens seeking help with their cases.

The Lawyer Referral Process is easy to opt into or opt out of and some attorneys have found there are some paying clients at the end of the Lawyer Referral process.

Potential clients submit a questionnaire and provide their email address. The system will match the client with potential attorneys and will notify the attorneys of the potential client's email. At no time, does the client receive the attorney information. The system is built to allow the attorney to assess what has been submitted and to offer to meet with the client for a nominal half hour fee of \$35, which is then turned over to DSBA. Whatever transpires between the client and the attorney, as well as all future fees, is within the discretion of the attorney through agreement with the client.

It costs nothing to sign up and might lead to a potentially lucrative relationship. Visit the DSBA website at [www.dsba.org](http://www.dsba.org) and login to your account to opt in. 

## New Book *Delaware Supreme Court History, 1951-2021* Now Available Free to all Delaware Attorneys



Last year, the Delaware Supreme Court published an update to its 2001 history of the Delaware Supreme Court. The new book, *Delaware Supreme Court History: 1951-2021*, is now available for free to all members of the Delaware Bar. Consisting of 26 chapters, written by various members of the Bar, and edited by retired Justice Randy Holland, the book begins with a history of appellate review in Delaware (the Supreme Court was not established as an independent court with its own members until 1951) and discusses the creation of the Court. The heart of the book is

12 chapters discussing the Court's seminal decisions in 12 different areas of the law, from corporate law to criminal law to family law to wills and trusts.

Copies may be obtained by contacting Karlis Johnson at the Delaware Supreme Court's Wilmington offices, at [karlis.johnson@delaware.gov](mailto:karlis.johnson@delaware.gov). 

## TOP 5

## REASONS TO EMBRACE DIVERSITY AND INCLUSION IN YOUR WORKPLACE

### 1 Diversity Expands Innovation, Creativity, and Productivity

Studies conducted by the *Harvard Business Review* revealed that the more diverse the team is in terms of demographics and deep-level diversity, the more creative and productive they are likely to be.

### 2 Cognitive Diversity Improves Problem-Solving Skills

Cognitive diversity is defined as differences in perspective or information processing styles. *Harvard Business Review* studies show that individuals with diverse cognitive abilities — as opposed to gender, ethnicity, and age — show faster and more advanced problem-solving skills when working together in teams.

### 3 Organizational Diversity Leads to Increased Profits

The Peterson Institute for International Economics conducted research that shows that companies with more diverse leadership teams are also top financial performers. The latest data shows that companies in the top 25th percentile for gender diversity on their executive teams were 21 percent more likely to experience above-average profits.

### 4 Diversity Results in Better Decisions

According to the research by Cloverpop, a decision-making database, teams outperform individual decision makers 66 percent of the time, and decision making improves as team diversity increases. Compared to individual decision makers, all-male teams make better business decisions 58 percent of the time, while gender diverse teams do so 73 percent of the time.

### 5 Diversity Reduces Employee Turnover

When employees feel accepted and valued, they are happier in the workplace and tend to stay longer. As a result, companies with greater diversity in the workplace have lower turnover rates. Employees feel a sense of belonging to the organization and are less likely to leave.

## CLE NEWS

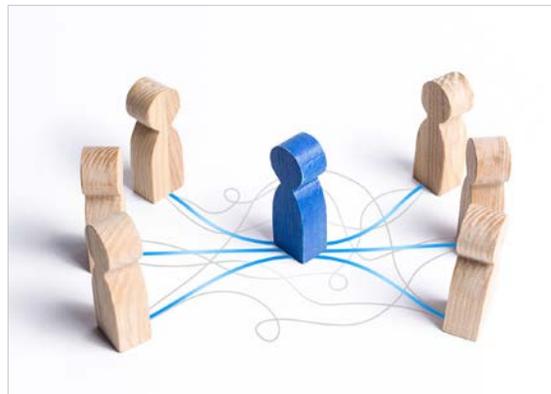
Attendees of the seminar “Daubert and Expert Testimony 2022” on January 4, 2022 were treated to a valuable CLE discussing the intricacies of expert testimony which involved the three authors of the *Tumlinson v. Advanced Micro Devices, Inc.* decision, Chief Justice Myron T. Steele, Justice Jack B. Jacobs, and Justice Henry duPont Ridgely. *Tumlinson*, which is still good law, provides clarity on how courts should decide Daubert issues. Joining the justices were moderator, Ian Connor Bifferato, Esquire, and the Honorable Jan R. Jurden, President Judge of Superior Court. 



L to R: The Honorable Jan R. Jurden, President Judge, Superior Court of the State of Delaware; Ian Connor Bifferato, Esquire, of The Bifferato Firm P.A.; Myron T. Steele, Esquire, of Potter Anderson & Corroon LLP and retired Chief Justice of the Supreme Court of Delaware; The Honorable Henry duPont Ridgely, retired Justice of the Supreme Court of the State of Delaware; and Jack B. Jacobs, Esquire, of Young Conaway Stargatt & Taylor, LLP and retired Justice of the Supreme Court of the State of Delaware.

## Now Offering Training to Become A Certified DSBA Arbitrator

Attorneys may now become Certified DSBA Arbitrators. Members wishing to be certified must take the first day of training which is offered on February 10 and involves basic training in preparing for and conducting an arbitration hearing and filing an arbitrator’s report, as well as arbitration ethics. Once that is completed, an attorney



would need to take one other arbitration training course in a particular practice of law. Seminars on Family Law Arbitration, Labor & Employment Arbitration, Personal Injury Arbitration, and Commercial Law Arbitration are being planned for later in 2022. Once certified, the attorney is permitted to add the certification logo to their own website. Visit [www.dsba.org](http://www.dsba.org) to register! 

## OF NOTE

Condolences to the family of **The Honorable Pamela Deeds Holloway** who died on December 28, 2021.

Condolences to the family of **Rachel A. Dwares, Esquire**, who died on January 2, 2022.

*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).* 

## CONFERENCE ROOMS AND SPECIAL EVENT SPACE

THE DSBA HAS MEETING & EVENT SPACE IN THE HEART OF DOWNTOWN WILMINGTON

- ▶ Perfect for depositions, arbitrations, and committee formation meetings
- ▶ Across from the Leonard L. Williams Justice Center
- ▶ Over 2000 sq. ft. of meeting space
- ▶ Meeting room divisible into three private sections
- ▶ Free Wi-Fi
- ▶ Access to a catering kitchen
- ▶ Competitive rental fees
- ▶ Handicap accessible
- ▶ Access to state-of-the-art technology
- ▶ On-site parking

For more information call  
(302) 658-5279



DELAWARE STATE BAR ASSOCIATION  
405 N. KING STREET, SUITE 100  
WILMINGTON, DE

## Professional Guidance Committee

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

### New Castle County

Karen Ann Jacobs, Esquire, Chair\*  
 Dawn L. Becker, Esquire  
 John P. Deckers, Esquire  
 David J.J. Facciolo, Jr., Esquire  
 David J. Ferry, Jr., Esquire  
 Robert D. Goldberg, Esquire  
 Laura Nastase Najemy, Esquire  
 Denise D. Nordheimer, Esquire  
 Kuhu Parasrampur, Esquire  
 Kenneth M. Roseman, Esquire\*  
 Yvonne Takvorian Saville, Esquire  
 R. Judson Scaggs, Jr., Esquire\*  
 Victoria R. Sweeney, Esquire  
 Gregory Brian Williams, Esquire  
 Lydia E. York, Esquire

### Kent and Sussex County

Candace E. Holmes, Esquire, Chair  
 Crystal L. Carey, Esquire  
 Edward Curley, Esquire  
 Clay T. Jester, Esquire  
 Christopher D. Tease, Esquire  
 The Honorable William L. Witham, Jr.

### Honorary Volunteer Members:

Victor F. Battaglia, Sr., Esquire  
 Mary C. Boudart, Esquire  
 Wayne A. Marvel, Esquire  
 Bayard Marin, Esquire  
 Michael F. McTaggart, Esquire  
 Mary E. Sherlock, Esquire\*\*  
 I. Barry Guerke, Esquire\*\*  
 Dennis L. Schrader, Esquire\*\*  
 E. Alan Uebler, Esquire  
 David A. White, Esquire

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

\*Certified Practice Monitor  
 \*\* Past Co-Chair

## CALENDAR OF EVENTS

### February 2022

**Thursday, February 10, 2022 • 9:00 a.m. – 12:15 p.m.**  
**Arbitration Training and Certification**

3.0 hours CLE credit including 1.0 hour in Enhanced Ethics credit  
 Live Webinar via Zoom

**Friday, February 11, 2022 • 8:30 a.m. – 12:45 p.m.**  
**27th Annual Rubenstein-Walsh Seminar on Ethics and Professionalism 2022**

4.0 Hours of CLE credit in Enhanced Ethics  
 Live Webinar via Zoom

**Tuesday, February 15, 2022 • 9:15 a.m. – 3:15 p.m.**  
**Precise, Powerful, and Persuasive: Legal Writing for Litigators 2022**

4.5 Hours of CLE credit  
 Live Webinar via Zoom

### March 2022

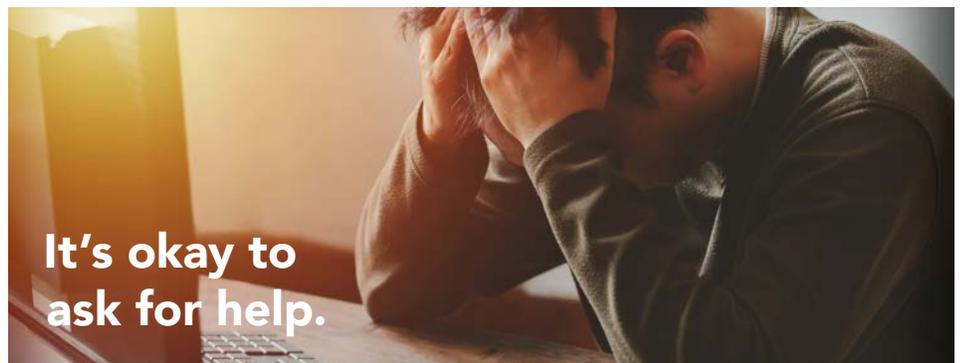
**Wednesday, March 23, 2022 • 12:30 p.m. – 2:30 p.m.**  
**Maximizing Legal Analytics as a Competitive Advantage in Delaware State Trial Courts**

2.0 Hours of CLE credit  
 Live Webinar via Zoom

**Thursday, March 31, 2022 • 9:00 a.m. – 12:15 p.m.**  
**Day 1: Superior Court Mediation Training**

*Mediation Training dates: March 31, 2022; April 6, 2022; April 25, 2022; and April 26, 2022*  
 20.0 hours CLE credit including 2.0 hours in Enhanced Ethics credit  
 Live Seminar at Delaware State Bar Association, Wilmington, DE

**Dates, times, and locations of Events and CLEs may occasionally change after time of press. Please consult the DSBA website for the most up-to-date information at [www.dsba.org](http://www.dsba.org).**



**It's okay to ask for help.**

Asking for help can be difficult.  
 Knowing help is available makes it a little easier.

#### DE-LAP'S NEW MENTAL HEALTH CALL-IN SERVICE

A free, confidential call-in service with DE-LAP's core team of licensed health-care professionals during the COVID-19 crisis

#### DELAWARE'S LAWYERS ASSISTANCE COMMITTEE

A peer-to-peer network of attorneys focusing on lawyer wellbeing

#### PROFESSIONAL GUIDANCE COMMITTEE

Peer counseling for lawyers needing assistance in meeting law practice demands

**For more information call DE-LAP's confidential line at (302) 777-0124 or email [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org).**

# SECTION & COMMITTEE MEETINGS

## February 2022

**Wednesday, February 2, 2022 • 12:30 p.m.**

**Women & the Law Section Meeting**

Zoom Meeting, see Section listserv message for link and password

**Tuesday, February 8, 2022 • 12:00 p.m.**

**Litigation Section Meeting**

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

**Wednesday, February 16, 2022 • 9:00 a.m.**

**ADR Section Meeting**

Zoom Meeting, see Section listserv message for link and password

**Thursday, February 17, 2022 • 12:00 p.m.**

**Executive Committee Meeting**

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

**Friday, February 18, 2022 • 12:00 p.m.**

**Workers' Compensation Section Meeting**

Zoom Meeting, see Section listserv message for link and password

## March 2022

**Wednesday, March 2, 2022 • 12:30 p.m.**

**Women & the Law Section Meeting**

Zoom Meeting, see Section listserv message for link and password

**Tuesday, March 8, 2022 • 12:00 p.m.**

**Litigation Section Meeting**

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

**Friday, March 18, 2022 • 12:00 p.m.**

**Workers' Compensation Section Meeting**

Zoom Meeting, see Section listserv message for link and password

**Wednesday, March 16, 2022 • 9:00 a.m.**

**ADR Section Meeting**

Zoom Meeting, see Section listserv message for link and password

**Thursday, March 17, 2022 • 12:00 p.m.**

**Executive Committee Meeting**

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

**Tuesday, March 22, 2022 • 12:00 p.m.**

**Multicultural Judges and Lawyers Section Meeting**

Zoom Meeting, see Section listserv message for link and password

Refer to the DSBA Section Listserv messages for the most up-to-date information on Section Meetings. Please contact LaTonya Tucker at [ltucker@dsba.org](mailto:ltucker@dsba.org) or (302) 658-5279 to have your Section or Committee meetings listed in the *Bar Journal*.

## EXECUTIVE COMMITTEE

Kathleen M. Miller

**President**

Charles J. Durante

**President-Elect**

Kate Harmon

**Vice President-at-Large**

Mary Frances Dugan

**Vice President, New Castle County**

Anthony V. Panicola

**Vice President, Kent County**

Ashley M. Bickel

**Vice President, Sussex County**

Samuel D. Pratcher III

**Vice President, Solo & Small Firms, New Castle County**

Jessie R. Benavides

**Vice President, Solo & Small Firms, Kent County**

Stephen A. Spence

**Vice President, Solo & Small Firms, Sussex County**

Ian Connor Bifferato

**Secretary**

David A. White

**Assistant Secretary**

Francis J. Murphy, Jr.

**Treasurer**

Jennifer Ying

**Assistant Treasurer**

Michael F. McTaggart

**Past President**

The Honorable Arlene Minus Coppadge  
**Judicial Member**

Katelin A. Morales

**Assistant to President**

James D. Nutter

**Special Assistant for Legislative Matters**

Loren R. Barron

Lori A. Brewington

Jamie L. Brown

Crystal L. Carey

Alberto E. Chávez

Kaan Ekiner

Thomas P. McGonigle

Nicholas D. Mozal

Denise Del Giorgio Nordheimer

Mae Oberste

Victoria R. Sweeney

**Members-at-Large**

Mark S. Vavala

**Executive Director**



# Navigating Spoliation and Data Retention Issues in the Remote Workplace

BY WILLIAM R. DENNY, ESQUIRE AND CARSON R. BARTLETT, ESQUIRE



**William R. Denny** has a business and litigation

practice, focusing on commercial and corporate transactions, vendor management, mergers and acquisitions, data privacy and security, and information technology. Mr. Denny is a Certified Information Privacy Professional (CIPP/US) and a Certified Information Privacy Manager (CIPM). He can be reached at wdenny@potteranderson.com.



**Carson R. Bartlett** practices general litigation

at Potter Anderson & Corroon LLP in Wilmington. She can be reached at cbartlett@potteranderson.com.

Since the advent of the COVID-19 pandemic, companies are increasingly opting for the use of digital messaging platforms in the workplace, including instant messaging applications such as Slack and WebEx, and even ephemeral messaging applications such as Signal and Telegram. The accelerated transition to these new and varied forms of communication presents a significant challenge in the context of eDiscovery and data retention.

Further, as more and more employees are packing up their offices in the “Great Resignation,” employers must be prepared quickly and effectively to preserve terminated employees’ data when it may be relevant to litigation. This article addresses some of these remote workplace challenges and recommends best practices for approaching these issues.

## Retention in the Remote Workplace

The use of messaging applications in the workplace has surged since the beginning of the COVID-19 pandemic, and, when litigation ensues, litigants and their counsel have an obligation to ensure that relevant data is properly retained, even data from more informal collaborative messaging systems like Slack or WebEx. Litigants must be aware of how the programs in use are storing data, how long that data is stored, and how that data can be accessed.

As organizations begin using new platforms, they must familiarize themselves with how these platforms store relevant data. With new messaging platforms come new data organization, file types, and data storage procedures. Litigants

must be prepared to access and organize these data with very little notice.

Additionally, litigants must be cognizant of the different data retention timeframes used by various platforms. For example, programs are increasingly instituting auto-deletion settings to minimize storage requirements, so it is possible that data will be deleted without any affirmative action from the user.

Litigants and counsel have a duty to be aware of default auto-deletion settings and understand how they can be disabled or changed as soon as litigation is anticipated. A recent federal court decision, *WeRide Corp. v. Kun Huang*, Case No. 5:18-CV-07233, 2020 WL 1967209 (N.D. Cal. Apr. 24, 2020), underscores the importance of identifying and disabling these auto-deletion settings. In that case, the court found, among other violations, that plaintiff “violat[ed] its



duty to preserve” by setting its email settings to automatically delete emails after 90 days and “*maintaining that setting* despite knowledge that litigation was imminent.” *Id.* at \*3 (emphasis added).

The duty to preserve requires that litigants and counsel remain abreast of what messaging platforms are in use within their organizations as well as how those platforms store information, for how long, and how promptly to disable any auto-deletion policies. *See, e.g., Doe v. Purdue Univ.*, Case No. 2:17-CV-33-JPK, 2021 WL 2767405 (N.D. Ind. July 2, 2021) (awarding sanctions against plaintiff who failed properly to produce and understand the retention procedure for Snapchat data); *DR Distribs., LLC v. 21 Century Smoking, Inc.*, 513 F. Supp. 3d 839, 867-68 (N.D. Ill. 2021) (discussing an attorneys’ duty to be reasonably knowledgeable regarding a client’s electronically-stored information).

In the remote workplace, auto-deletion is not the only danger to data retention. Litigants also must be proactive about retaining data while it is available and preventing users from destroying or deleting relevant data. Organizations should implement clear data retention policies, outlining when data can and cannot be deleted, as well as proper safeguarding procedures.

### Data Retention During the “Great Resignation”

Another eDiscovery challenge in the digital workplace is the increase in employees leaving the workforce altogether, often termed the “Great Resignation.” As more employees are turning in their resignations, there is an increased risk that exiting employees’ data will be destroyed or lost in the process. For example, employees may delete data on their own, or their workplace accounts may automatically delete data following their termination. To prevent these losses, employers must update their termination procedures to safeguard relevant data that may be on the exiting employees’ devices or workplace accounts.

The recent decision *In re Skanska USA Civ. Se. Inc.*, Case No. 3:20-CV-05980,

\_\_ F.R.D. \_\_, 2021 WL 5226547 (N.D. Fla. Aug. 23, 2021), is instructive. There, plaintiff agreed to produce text messages from several of its employees’ company cell phones. *Id.* at \*1. Before those messages could be produced, multiple employees exited the company and deleted data from their mobile phones in the process, either on their own or at the direction of other employees. *Id.* at \*1-2. The court ordered an adverse inference and monetary sanctions against plaintiff, specifically faulting its “wholesale failure to take any steps to collect the cell phone data ... or, at minimum, to ensure the custodians were aware of and understood the litigation hold.” *Id.* at \*3. The court also highlighted plaintiff’s failure to back up the phone data or “suspend its routine document destruction policies.” *Id.* at \*5.

Consequently, employers not only must implement clear data retention policies regarding termination of employment, they must ensure that those policies are understood and enforced by the managing employees who are involved in the termination process, not just corporate executives or attorneys.

### Implications for Ephemeral Messaging Platforms

As digital communication has increased, so too have the variety of platforms available for use, including platforms that enable ephemeral, or transient, communication, such as Telegram and Signal. These platforms permit users to send and receive messages without leaving any trace of the messages’ content. When it comes to eDiscovery, organizations should be cautious about the use of such platforms, which one court has described as “designed to disguise and destroy communications.” *Herzig v. Ark. Found. For Med. Care, Inc.*, Case No. 2:18-cv-02101, 2019 WL 2870106, \*5 (W.D. Ark. July 3, 2019). The use of such services after a litigation hold is in place has also led courts to sanction litigants in the form of an adverse inference. *FTC v. Noland*, Case No. CV-20-00047-PHC-DWL, 2021 WL 3857413, \*14 (D. Ariz. Aug. 30, 2021).



In *FTC v. Noland*, defendants began using the application Signal, with its auto-deletion function enabled, shortly after learning that they were under investigation by the FTC. *Id.* at \*1. In subsequent litigation, the FTC sought an adverse inference sanction against the defendants for spoliation of evidence. *Id.* at \*5. The court found that defendants’ “systematic efforts to conceal and destroy evidence” warranted such a sanction. *Id.* at \*1.

While ephemeral messaging may have advantages, the *FTC v. Noland* decision cautions against the use of such messaging platforms when litigation is anticipated or a litigation hold is in place. To avoid exposure to sanctions, organizations should enforce policies that prohibit the use of such messaging platforms for communications relevant to anticipated litigation. Additionally, to the extent the application’s settings or other technical processes enable storage of ephemeral data, organizations should become familiar with them. Organizations should also update their data retention policies to reflect the use of ephemeral messaging platforms and require retention of any data generated by these platforms. *See The Sedona Conference, Commentary on Ephemeral Messaging*, 22 SEDONA CONF. J. 435, 474-75 (2021).

### Conclusion

The remote workplace and the technology it utilizes are constantly evolving, and litigants’ eDiscovery practices must keep up. By regularly reevaluating and refining data retention policies and approaching new technologies with caution, litigants can effectively mitigate spoliation and data retention risks. 



# Constitutional Limits on Government Moderation of Social Media Comments

BY PROF. ERIC GOLDMAN

**G**overnment actors are bound by the constitution. Those restrictions apply to the world of social media just as they would apply if the government were regulating speech in the public square. The result, some argue, will complicate the ability of governments to engage with citizens via social media.

In *Kimsey v. Sammamish*,<sup>1</sup> the city of Sammamish, Washington, had a Facebook page that it used to communicate with residents about city events, public safety, and more. The city also livestreamed its city council meetings on its Facebook page and encouraged comments. The city had a comment policy that prohibited any comment that:

- Supported or opposed political candidates or ballot propositions;
- Was obscene;
- Discussed or encouraged illegal activity;
- Promoted, fostered, or perpetuated discrimination;
- Provided information that could compromise the safety or security of the public or public systems;
- Violated a legal ownership;
- Was sexual in nature or linked to sexual content;
- Was posted by a minor under 13; and
- Was posted anonymously.

Plaintiffs brought suit over the first rule, which restricts off-topic comments, and sought a preliminary injunction seeking to enjoin the city’s enforcement of the rule.

A federal court in Washington first held that the city’s Facebook page was a designated public forum. The court specifically pointed to the fact that the city had chosen to enable the commenting field, strongly suggesting that the page was a space “designed for a dedicated to expressive activities.” The court pointed out that Facebook as a platform “is designed for individuals to share information and express ideas. It is not part of a government-run enterprise that only allows incidental expressive activities, such as the advertising space on the side of a city bus.”

The off-topic rule is, by definition, a content-based restriction on speech. Thus, it triggers strict scrutiny. The city argued that off-topic messages distracted from the public-safety messages. The court did not agree, finding that the comments did not dilute the initial message. “Public comments are not akin to, say, graffiti scrawled over a billboard that contains a city’s effort to disseminate public safety information.”

- Was not related to the article being commented on;
- Promoted or advertised commercial services, entities, or products;

The court granted the preliminary injunction but only as to the “off-topic” rule. In theory, the city remains free to enforce its other existing rules. In practice, the city should consider the constitutionality of the other rules of its comment policy.

The obligation to comply with the First Amendment puts government actors in a box when it comes to social-media engagement. They can’t effectively moderate user content, but they can’t allow unrestricted user activity, either. If the government is prohibited from removing off-topic comments, chances are good, to put it mildly, that the comments won’t stay on point. Plus, government actors will (rationally) fear that every decision/non-decision they make will get them sued, and they don’t have the capacity or money for that. Knowing the dilemmas that they face, governments will logically conclude that allowing social media comments is not cost-benefit justified.

The court implies that if the city reviews all comments pre-publication, it might turn the designated public forum into a limited public forum and avoid strict scrutiny. That seems unlikely. The court emphasized the lack of consistency in applying the rules, which is an unavoidable feature of all content moderation. Prescreening won’t fix that; and the ability to pick-and-choose comments to publish might exacerbate censorial tendencies. Thus, I think most government-operated online commenting venues, especially on social media, will be characterized as designated public forums, with all of the legal baggage that attaches to that status. 🗣️

**Notes:**

1. *Kimsey v. City of Sammamish*, C21-1264 MJ (W.D. Wash. Nov. 22, 2021).

**Eric Goldman** is a Professor at Santa Clara University School of Law. He can be reached at [egoldman@gmail.com](mailto:egoldman@gmail.com).



## USI Affinity & The Delaware State Bar Insurance Services – Where Lawyers Go For Protection.

DSBIS brings decades of risk management experience, a proprietary risk analysis process and a local team supported by the expertise of USI Affinity.

Since 1940, our Wilmington office has provided the insurance solutions and services that lawyers count on to protect their firms, their employees and their families.

**Call today for more information on the insurance products available to The Delaware State Bar members.**

**302.658.8000 | [www.dsbis.com](http://www.dsbis.com)**

Powered by



AFFINITY

[www.dsbis.com](http://www.dsbis.com)

## CLE at HOME

### DSBA CLE ONLINE

View an online CLE seminar ANYTIME, ANYWHERE.



View the full online CLE catalog at [www.dsba.org/cle](http://www.dsba.org/cle).



# Professional Responsibility and Limits on Judicial Power

**T**he Delaware Supreme Court issued a ruling on January 19, 2022, which further limits the trial court's role in and authority for regulating the practice of law in Delaware. In doing so, the Court again made it clear that it has sole and exclusive authority in matters of attorney discipline.

Carter Page, an American petroleum industry consultant and former foreign-policy consultant to Donald Trump during his presidential election campaign, filed a defamation action in Superior Court against Oath, Inc. for published articles which allegedly falsely accused him of colluding with Russian agents to interfere with the 2016 presidential election. Mr. Page was represented in that suit by L. Lin Wood, Jr., who also had his own notoriety. Mr. Wood is a "celebrity lawyer" specializing in defamation cases. He formerly represented Richard Jewel, falsely accused of the 1996 Atlanta Olympics bombing, the family of JonBenet Ramsey, maligned in the press as possible suspects in her murder, and presidential candidate Herman Cain in the allegations that he sexually harassed female employees. Wood later became better known for his support of QAnon conspiracy theories. Mr. Wood was admitted *pro hac vice* by the Superior Court.

Mr. Wood was reported to be actively involved in a number of lawsuits in other states to challenge and overturn the results of the 2020 presidential election. In an apparent response to those press reports, the trial judge *sua sponte* issued a rule to show cause ("RTSC") directing Wood to show why his *pro hac vice* admission should not be revoked, citing conduct in other jurisdictions which, had it occurred in Delaware, would violate the Delaware Lawyers' Rules of Professional Conduct. The RTSC cited Wood's conduct in litigation in Georgia and Wisconsin as well as pleading irregularities in an action filed in the United States District Court for the Eastern District of Wisconsin as well as a complaint of "questionable merit" filed in the United States District Court for the Northern District of Georgia.

In his response to the RTSC, Wood denied that he violated any of the DLRPC or rules in any other jurisdiction, noting that he had not appeared as counsel in the Georgia litigation but was the plaintiff represented by counsel in that matter. His response also noted that there had been no claim of sanctionable or disciplin-

ary conduct against him in the Georgia litigation. As to the Wisconsin litigation, Wood pointed out that he was not the attorney of record in the matter and had never appeared in the case. In the interest of full disclosure, I provided an expert opinion on the Delaware professional conduct rules, which Mr. Wood included in his response to the RTSC. That opinion concluded that no DLRPC had been violated and that trial courts lack authority to impose a disciplinary sanction or a reciprocal disciplinary sanction, especially where another jurisdiction has not yet found such a violation to have occurred. In addition to filing a response to the RTSC, Mr. Wood asked to withdraw his application for *pro hac vice* admission.

The trial court issued a Memorandum Opinion and Order revoking Wood's *pro hac vice* admission and canceling the hearing on the RTSC two days before it was scheduled to occur. The Opinion stated that, "The conduct of Mr. Wood, albeit not in my jurisdiction, exhibited a toxic stew of mendacity, prevarication and surprising incompetence." The Order went on to cite a long list of deficiencies, errors, and falsities in the Georgia and Wisconsin litigation. The trial judge stated that he wasn't making any determination about any specific violation of professional conduct but was ensuring that those practicing before him are of "sufficient character" and "conduct themselves with sufficient civility and truthfulness." The

**The Court again made it clear that it has sole and exclusive authority in matters of attorney discipline.**

Court also cited tweets by Wood calling for the arrest and execution of former Vice President Mike Pence, finding that the tweets likely contributed to the incitement of the January 6 insurrection by Trump supporters who took over the U.S. Capitol.

On the same day that the Court dismissed Page's defamation suit, it issued an order vacating the trial court's revocation of Wood's *pro hac vice* admission. In a *per curiam* Order, the Supreme Court rejected the trial judge's assertion that he was making a determination under Superior Court Civil Rule 90.1(e) of the appropriateness and advisability of Wood's continued *pro hac vice* admission and was not engaging in lawyer discipline. The Court noted that the trial judge did not explain why Wood's request to withdraw his *pro hac vice* application and appearance did not adequately address the Court's putatively limited concerns. The Opinion was also critical of the revocation of the admission without affording Wood the opportunity to appear at the hearing while making factual findings adverse to Wood.

The Supreme Court noted that neither the Georgia trial court nor the Eleventh Circuit Court of Appeals on appeal had made any findings that Wood's complaint was frivolous or filed in bad faith and that Georgia's determination that Wood's request for injunctive relief was without factual or legal merit was not equivalent to a finding that his complaint was frivolous. The Court noted that, under the DLRPC, prohibiting a lawyer from asserting claims unless there is a basis in law for doing so implicitly recognizes that a claim ultimately found to lack a basis in law and fact can nonetheless be non-frivolous. The Court was also troubled by the trial court's insinuation that Wood was at least partially responsible for the events that occurred at the U.S. Capitol

on January 6, 2021, as that topic was not addressed in the RTSC.

Finally, the Supreme Court noted that both the tone and explicit language of the Superior Court's Memorandum Opinion and Order suggested that the Court's interest extended beyond the mere propriety and advisability of Wood's continued involvement in the case. While offering no opinion on the accuracy of those characterizations, the Court found no evidence in the record below to support them.

The Supreme Court opined that when a lawyer admitted *pro hac vice* in this state is accused of serious misconduct in another state, the admitting trial court is not powerless to act. But when those allegations of misconduct in another jurisdiction have not yet been adjudicated and there is no assertion that the alleged misconduct has disrupted or adversely affected the proceedings in this state, and the lawyer agrees to withdraw his appearance, it is an abuse of discretion to preclude the lawyer's motion to withdraw in favor of an involuntary revocation of the lawyer's admission.

Surprisingly, the Supreme Court did not cite previous opinions both defining and limiting the trial court's authority to regulate attorney conduct and misconduct. Notably absent was a reference to *Crumplar v. Superior Court*,

56 A.3d 1000 (Del. 2012), which was a successful appeal of a Superior Court judge's sanctions under Superior Court Civil Rule 11. In *Crumplar*, the Court extended *In re Infotechnology, Inc.*, 582 A.2d 215 (Del. 1990), which barred judges from sanctioning attorneys except where the attorney's conduct prejudicially disrupts the administration of justice in a particular case. In addition, the *Crumplar* decision made it clear that trial judges are required to conduct a hearing before imposing sanctions on their own motion.

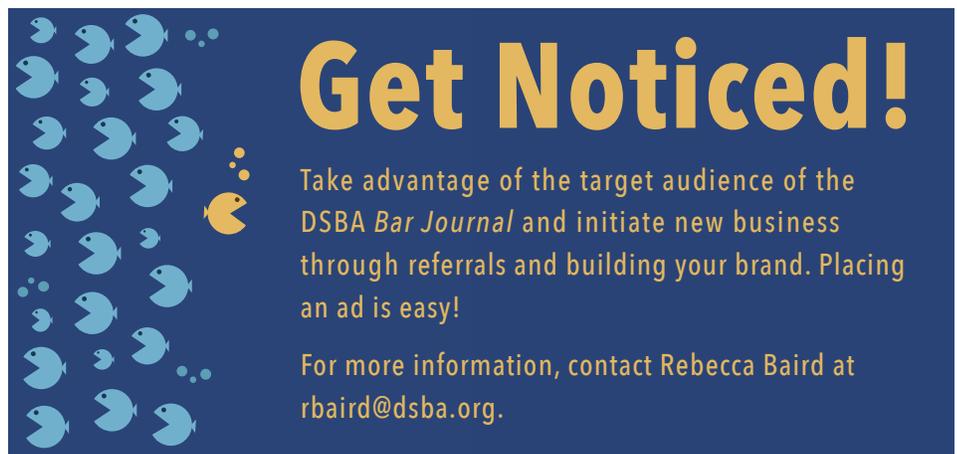
There will be a panel discussion of the Wood decision at the February 11, 2022, Rubenstein-Walsh seminar featuring myself and Matt Boyer who provided an amicus brief in support of the lower court.

*"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. Columns from the past five 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.delawgtop.com](http://www.delawgtop.com).



# Get Noticed!

Take advantage of the target audience of the *DSBA Bar Journal* and initiate new business through referrals and building your brand. Placing an ad is easy!

For more information, contact Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org).

# Mind the Gap

BY PATRICIA BARTLEY SCHWARTZ, ESQUIRE

**A** cardinal rule of professional ethics is a lawyer's professional obligation to communicate with his or her clients. However, since Rule 1.4 does not contain a specific requirement regarding the method of communication a lawyer must use, lawyers exercise appropriate judgment in determining the mode, frequency, content, and preservation of lawyer-client communications.

While the pandemic has only recently forced many of us to embrace technological changes in the way we practice law, communications-based technology has been advancing at a staggering pace. How many of the readers of this article do not remember a time before smart phones? It is likely a minority.

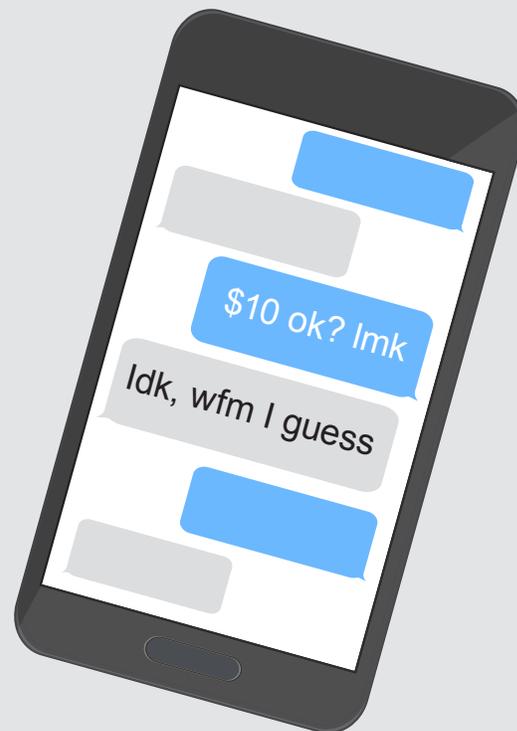


It follows that while hard copy letters sent by U.S. mail may still be the preferred method of correspondence in many instances, other methods of communication may be equally effective, ethical, more timely, and easier to use than paper. Times have changed and, as a profession, we would be remiss to overlook technology that now allows us to communicate anytime — from virtually anywhere.

Clients may range from baby boomers to Generation Z and every generation in between. Each generation relies on different methods of communication. Understanding these generational gaps can make all the difference in your relationship with your client. For example, a meeting with a baby boomer may call for an in-person meeting in a more formal tone, whereas a conversation with a Gen Z or Millennial might be by smartphone and considerably more relaxed. Think Prince Charles versus Prince Harry.

For this reason (and to ensure your professional obligations are met), it is crucial for you to discuss with and understand what method of communication each client prefers — U.S. mail, telephone, email, text, virtual, or some combination thereof. On the flip side, your clients should also know how you prefer to communicate! If you do not routinely ask your clients how they would like to receive basic information, perhaps you should.

As a member of a generation that remembers typewriters and pay phones, for years I resisted the idea that it was okay and appropriate to communicate in legal mat-



ters any way other than letters or phone. I viewed email as too informal and texting downright uncivilized. However, like all Earth's creatures I've reluctantly evolved.

Email is now my personal, preferred method of communication. I often find it more effective to send an email than to call someone on the phone and have a conversation. Conversations can veer in several directions, whereas a well-drafted email focuses on the specific issues and provides a written record of the interaction. When I do call someone and miss them, my personal preference is to send them an email rather than leave a message. Depending upon the competency of your call's recipient and their staff (or even your own), voicemails, scribbled messages, and pink missed call notes can be lost whereas an email is immediate and permanent.

Confidentiality is also always a concern. It is important to talk to your clients at intake as to what form of communication best suits their needs. Some clients may not want phone calls at their place of business, or they don't want email because they share the account or someone else might have access.

Having a timely conversation with your client about how to converse with them will promote more effective communication, establish mutual expectations, and hopefully reduce the number of complaints you receive. Tailoring your communications is also more likely to satisfy a client and provide insight as to those that need a "personal touch."

With that said, regardless of your or your client's communication preferences, there are certain communications, from a best practices standpoint, that should always be done either by phone or detailed written communication. In a recent article for *Bloomberg News* titled "A New Year's Resolution for Attorneys — No Client Emails (or Texts)," Joel Cohen,

a senior white collar criminal defense attorney at Stroock, implores clients not to communicate with him in email. In fact, Cohen urges attorneys to insist that clients use the phone to avoid the many legal pitfalls of email and text messages especially if those messages include the client's thoughts or problematic issues regarding the client's matter.

So, what's wrong with communicating by text?

For those of us unfamiliar with the text lexicon, it may be hard to decipher what the above "coded" question and answer mean. Presumably the text exchange is between a lawyer and client who are perfectly in sync — the lawyer is communicating to the client a settlement offer of \$10,000 and the client communicates back acceptance of the \$10,000 offer. But what if they aren't in sync? What if a malpractice lawsuit or disciplinary complaint follow? What if this isn't a perfect world? Perhaps a best practice would have been for the lawyer to spell out exactly what the offer was and to ask the client to confirm their understanding of the offer and clearly communicate acceptance of the offer? And ideally, this message would be communicated, at a minimum, by email — and better yet by letter.

Although, I was ultimately able to translate the above messages, I had to use Google to ascertain their meaning. In the same vein, as the parent of three children who straddle the Millennial and Gen Z Generations, I do not understand some of the words they are using — even when I recognize the words themselves. I'm slowly getting more hip. I may not yet know the meaning of Glow Up, I'm Baby, Stan, Sip Tea, Snack, Salty, Whip, and Steez ... but I do know I suffer from FOMO, Serena Williams is the GOAT, I can be hangry, I do not troll, I do not want to be canceled or ghosted, and my children think I am sometimes bougie. How well versed in the technology and text lingo are you?

For the rest, mind the gap and put it in writing. 🗣️



**Patty Schwartz** has been Deputy Disciplinary Counsel for the Office of Disciplinary Counsel of the Supreme Court of Delaware since 2004. Patty currently serves as President Elect for the National Organization of Bar Counsel. She can be reached at [patricia.schwartz@delaware.gov](mailto:patricia.schwartz@delaware.gov).



# The Great Reset Continues with Self-Love

**N**o one asked for a pandemic; but here we are two years later still dealing with it. This involuntary pause in our daily life, at times both professionally and personally, is a great time to reflect, evolve, and reset our ways. If you have not yet explored the possibility of a great reset, have no worries — you can start any time. This month, DE-LAP’s great reset is all about self-love and how to find joy without having to change anything about yourself.

February is the month of love. It is a time for Valentine’s Day and emphasizing the importance of love in our life. The word February comes from the Latin word “februa,” which means “to cleanse.” The month was named after the Roman Februalia, which was a monthlong festival of purification and atonement. The dictionary defines purification as the removal of contaminants from something and atonement as the amends made for an injury or wrong. Therefore, with these definitions in mind, join me on a journey of exploration into self-love: what it means, how to cultivate it, and how to practice it to find self-confidence and happiness.

Self-love can mean something different for each of us. For some, it may be to

recall the pure energy of passion that dies in “burnout” and the need to rekindle it; the need to trust and to believe in oneself; or it may mean to forgive and make peace with your mistakes. Whatever the reason, figuring out what self-love looks like as an individual is an important part of one’s mental health fitness.

## What Is Self-Love?

Self-love is a state of appreciation for oneself that grows from actions that support our physical, psychological, and spiritual growth. Self-love means having a high regard for your own wellbeing and happiness. It means taking care of your own needs and not sacrificing your wellbeing to please others. Self-love means not settling for less than you deserve. Self-love can mean:

- Talking to and about yourself with love;
- Prioritizing yourself by being good-selfish and putting the oxygen mask on yourself first;
- Giving yourself a break from self-judgement, forgiving yourself, and making peace with your mistakes;
- Trusting yourself; believing in yourself; have faith in your abilities;

- Being true to yourself with sound self-confidence that you can succeed;
- Being nice to yourself and stop beating yourself up;
- Setting healthy boundaries; and
- Forgiving yourself when you aren’t being true or nice to yourself.

Many of us know that forgiveness is a good thing. It frees us from bitterness and anger, two difficult emotions that can disrupt our physical health and hold us back. Often, we are consistent about forgiving others, but forgiving ourselves is more difficult. Understanding why self-forgiveness is hard can make it easier to practice.

## How to Cultivate Self-Love

In *Psychology Today*, Dr. Deborah Khoshaba offers a way to cultivate self-love by implanting “A Seven-Step Prescription for Self-Love.”

**1. Become mindful.** People who have more self-love tend to know what they think, feel, and want. They are mindful of who they are and act on this knowledge, rather than on what others want for them.

**2. Act on what you need rather than what you want.** You love yourself when you can turn away from something that feels good and exciting to what you need to stay strong, centered, and moving forward in your life, instead. By staying focused on what you need, you turn away from automatic behavior patterns that get you

**Self-love means accepting yourself as you are in this very moment for everything that you are.**

into trouble, keep you stuck in the past, and lessen self-love.

**3. Practice good self-care.** You will love yourself more when you take better care of your basic needs. People high in self-love nourish themselves daily through healthy activities, like sound nutrition, exercise, proper sleep, intimacy, and healthy social interactions.

**4. Set boundaries.** You'll love yourself more when you set limits or say no to work, love, or activities that deplete or harm you physically, emotionally, and spiritually, or express poorly who you are.

**5. Protect yourself.** Bring the right people into your life. I love the term "frenemies" that I learned from my younger clients. It describes so well the type of "friends" who take pleasure in your pain and loss rather than in your happiness and success. My suggestion to you here: Get rid of them! There isn't enough time in your life to waste on people who want to take away the shine on your face that says, "I genuinely love myself and life." You will love and respect yourself more.

**6. Forgive yourself.** We humans can be so hard on ourselves. The downside of taking responsibility for our actions is punishing ourselves too much for mistakes in learning and growing. You must accept your humanness (the fact that you are not perfect) before you can truly love yourself. Practice being less hard on yourself when you make a mistake. Remember, there are no failures if you have learned and grown from your mistakes; there are only lessons learned.

**7. Live intentionally.** You will accept and love yourself more, no matter what is happening in your life, when you live with purpose and design. Your purpose doesn't have to be crystal clear to you. If your intention is to live a meaningful and healthy life, you will make decisions that support this intention, and feel good about yourself when you succeed in this purpose. You will love yourself more if you see yourself accomplishing what you set out to do. You need to establish your living intentions, to do this.

## SIDEBAR

### WAYS TO PRACTICE SELF-LOVE

- **Becoming mindful.** People who have more self-love tend to know what they think, feel, and want.
- **Taking actions based on need rather than want.** By staying focused on what you need, you turn away from automatic behavior patterns that get you into trouble, keep you stuck in the past, and lessen self-love.
- **Practicing good self-care.** You will love yourself more when you take better care of your basic needs. People high in self-love nourish themselves daily through healthy activities, like sound nutrition, exercise, proper sleep, intimacy, and healthy social interactions.
- **Making room for healthy habits.** Start truly caring for yourself by mirroring that in what you eat, how you exercise, and what you spend time doing. Do stuff, not to "get it done" or because you "have to," but because you care about you.

Self-love means accepting yourself as you are in this very moment for everything that you are.

As noted by Jeffrey Borenstein, M.D., President & CEO of the Brain & Behavior Research Foundation, for many people, self-love is another way to say self-care. To practice self-care, we often need to go back to the basics and:

- Listen to our bodies;
- Take breaks from work and move/stretch;
- Put the phone down and connect to yourself or others or do something creative; and
- Eat healthily, but sometimes indulge in your favorite foods.

• • •

Finally, to practice self-love, start by being kind, patient, gentle, and compassionate to yourself, the way you would with someone else that you care about. "When you start taking care of yourself you start feeling better, you start looking better and you start to attract better. It all starts with you. Thus, love yourself, forgive yourself, be true to yourself because how you treat yourself sets the standard for how others will treat you. Remember too, that self-love is not selfish; you cannot

truly love another until you know how to love yourself.

For more information on the topics discussed above call The Delaware Lawyers Assistance Program (DE-LAP) at (302) 777-0124 or email Carol Waldhauser, Executive Director, at [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org). Remember too, if you, or someone you know, is having problems that are affecting your/their ability to practice law or quality of life -REACH OUT and call DE-LAP. Also, join us for wellness seminars, 12 step support groups, Wellness Wednesday Resilience Group at noon, and Tuesday Mindfulness. We do together, what need not be done alone. 🌍

#### Notes:

1. Khoshaba, Deborah. "A Seven-Step Prescription for Self-Love | Psychology Today." Psychology Today, March 27, 2012. <https://www.psychologytoday.com/intl/blog/get-hardy/201203/seven-step-prescription-self-love>.
2. James, Matt. "The Person You Can't Part With." Psychology Today, January 2022. <https://www.psychologytoday.com/us/blog/articles-heterodoxy/202201/how-your-attachment-style-could-lead-you-back-ex>.
3. Borenstein, Jeffrey. "Self-Love and What It Means." Gravity Blankets. Gravity Blankets, October 23, 2020. <https://gravityblankets.com/blogs/blog/self-love-and-what-it-means>.

**Carol P. Waldhauser** is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org).

## Bankruptcy Judge

## Christopher S. Sontchi

## To Retire

BY ERIN K. BRIGNOLA, ESQUIRE



The United States Bankruptcy Court for the District of Delaware announced that Judge Christopher S. Sontchi has declared his intention to retire, effective June 30, 2022. Judge Sontchi took the bench 2006, and served as Chief Judge from 2018 to 2021.

Immediately following his retirement, Judge Sontchi will commence service as an International Judge of the Singapore International Commercial Court where he will focus on insolvency matters. In addition, he will be privately engaged in, among other things, conducting mediations and arbitrations in Delaware and elsewhere.

The Court's announcement refers to some of the significant chapter 11 bankruptcy cases over which Judge Sontchi presided, but as the DSBA Consumer Bankruptcy Vice-chair, I would be remiss, if I did not take this opportunity to share with our readers Judge Sontchi's significant decisions in the consumer bankruptcy world as well.

Two Bankruptcy Judges have been assigned the Delaware district's chapter 7 consumer bankruptcy cases from 2006 to present. Judge Brendan L. Shannon hears chapter 7 cases, and is the only chapter 13 Judge. Judge Sontchi entered the chapter 7 consumer arena in 2008, and in 2014 transferred the case load to our current Chief Judge Laurie Selber Silverstein. Presently, all consumer chapter 7 cases are assigned to either Judge Shannon or Judge Silverstein.

The history aside, Judge Sontchi wrote 12 substantial consumer bankruptcy opinions, which can be found along with his other opinions at <https://www.deb.uscourts.gov/judges-info/opinions>. These thoughtful opinions provide substantive and procedural insights into bankruptcy's fundamental promise of a fresh start which is found at the intersection of federal and state law.

His first, *Baker*<sup>1</sup> one of three reaffirmation opinions, is a tutorial on the law before and after the 2005 BAPCPA<sup>2</sup> amendments. Reaffirmation, in a consumer case, often is proposed by a debtor who wants to continue to pay on a car loan on the contract terms until the debtor obtains clear title on payment in full. The Bankruptcy Code requires a debtor to reaffirm the contract terms in a statement of intention. After 2005, a debtor's intention to reaffirm required in addition that the reaffirmation agreement be submitted to the Court for approval. If the Court approves, though, and the debtor later defaults, he remains personally liable for any deficiency balance resulting from the lender's subsequent repossession and sale of the car. In Delaware, it is rare that

reaffirmation orders are entered, because they can be contrary to the “fresh start” principles basic to chapter 7.

The Court in *Baker* declined to approve the reaffirmation agreement, because it would impose an undue hardship on the debtor. Immediately after the bankruptcy case concluded, the lender repossessed the car — notwithstanding that the debtors were current in their payments — arguing that the reaffirmation agreement had not been approved. The debtors moved to reopen the case and for an order to show cause why the repossession was not wrongful.

The Court held that under the Third Circuit’s *Price*<sup>3</sup> opinion, the loan “passed through unaffected” due to the “timely entered into reaffirmation agreement” and the current payment status. There was no basis for repossession under Delaware law because the only default was based on an unenforceable *ipso facto* clause. The repossession violated the discharge injunction, and the Court ordered the car returned and damages.

In *Hart*<sup>4</sup> in 2009, Judge Sontchi clarified that there is no requirement before or after *Price*, or BAPCPA, for real property reaffirmation. However, if a debtor enters into such an agreement, and the presumption of undue hardship has arisen without *satisfactory* rebuttal, then under Code section 524(m), the Court must disapprove the agreement as contrary to the debtor’s best interest.

In *Miller*<sup>5</sup> in 2011 he parsed BAPCPA to conclude that a new section 362(h) requires a debtor to indicate whether she will surrender, reaffirm, redeem, or assume an unexpired lease, and *then perform accordingly*. Consequently, the pre-BAPCPA “ride through,” “keep and pay” option of *Price* and *Baker* remains available on this condition to debtors in the Third Circuit.

Judge Sontchi in *Smale*<sup>6</sup> squared a key provision of BAPCPA — the “means test” — with the effect of a debtor’s surrendering a car and thus not having to make payments on it. Under the means test, if an individual’s income in the six calendar months preceding the bankruptcy filing, net of statutorily-determined expenses,

exceeds a statutorily-defined “median” income, the individual is not eligible to remain in chapter 7. That individual instead must convert her case to a chapter for which she is eligible, typically chapter 13, or have her case dismissed. The result is that the debtor who “failed” the means test cannot immediately obtain a discharge under chapter 7, but must successfully devote her disposable income to paying her creditors over the term of a 5-year plan.

The debtor in *Smale* filed an intention to surrender his vehicles. The U.S. Trustee argued that payments on the vehicles that the debtor proposed to surrender could *not* be included in the expenses to be netted against income for purposes of the means test. Judge Sontchi disagreed, reasoning that the statutory language did not require adjustments based on future events. Applying the principle of *noscitur a sociis* (“a word is known by the company it keeps”) to the interpretation of the amended statute, he held that the statement of intention had no relation to the contractual obligation, and required the allowance of the expense, upon which the debtor was eligible under chapter 7.

Property that a debtor can exempt is also key to the fresh start. Cases in which the U.S. Trustee objected to exemptions resulted in the following opinions: *In re Akulova*,<sup>7</sup> denying the debtor an exemption for a personal injury claim scheduled by amendment (and substituted for a claim abandoned by the chapter 7 trustee), because the amendment was in bad faith; *In re Willis*,<sup>8</sup> granting a late-filed exemption for a previously undisclosed prepetition employment discrimination claim, but only in the amount of the value of the claim at the time of the bankruptcy filing, and with sole settlement authority granted to the chapter 7 trustee (because the estate’s interest in non-exempt balance of the claim was greater than the amount exempted); and a day later *In re Swarbrick*,<sup>9</sup> defining the Delaware exemption for a debtor’s “vehicle.” These opinions succinctly but definitively address issues implicating a debtor’s “bad faith” in connection with a debtor’s exemptions.

Other opinions offer detailed tutorials of the Code’s expectations and require-

ments: determining the avoidance of a lien securing a “domestic support obligation” — another new BAPCPA definition (*In re Coleman*<sup>10</sup>); procedure for claims objections (*In re Willis*<sup>11</sup>); standard for dismissing discharge complaint (*Crowe v. Moran*<sup>12</sup>); defining standing for a debtor, rather than a trustee, to pursue avoidance actions (*In re Schifano*<sup>13</sup>); and determining an exemption regarding tenancy by the entirety property pursuant to bankruptcy law based in Delaware state law (*In re Scioli*<sup>14</sup>).

Not only should consumer bankruptcy practitioners be reminded to re-read these significant decisions, the reasoning in each is a refresher that everyone either in Bankruptcy Court or not, can use to strengthen their skills.

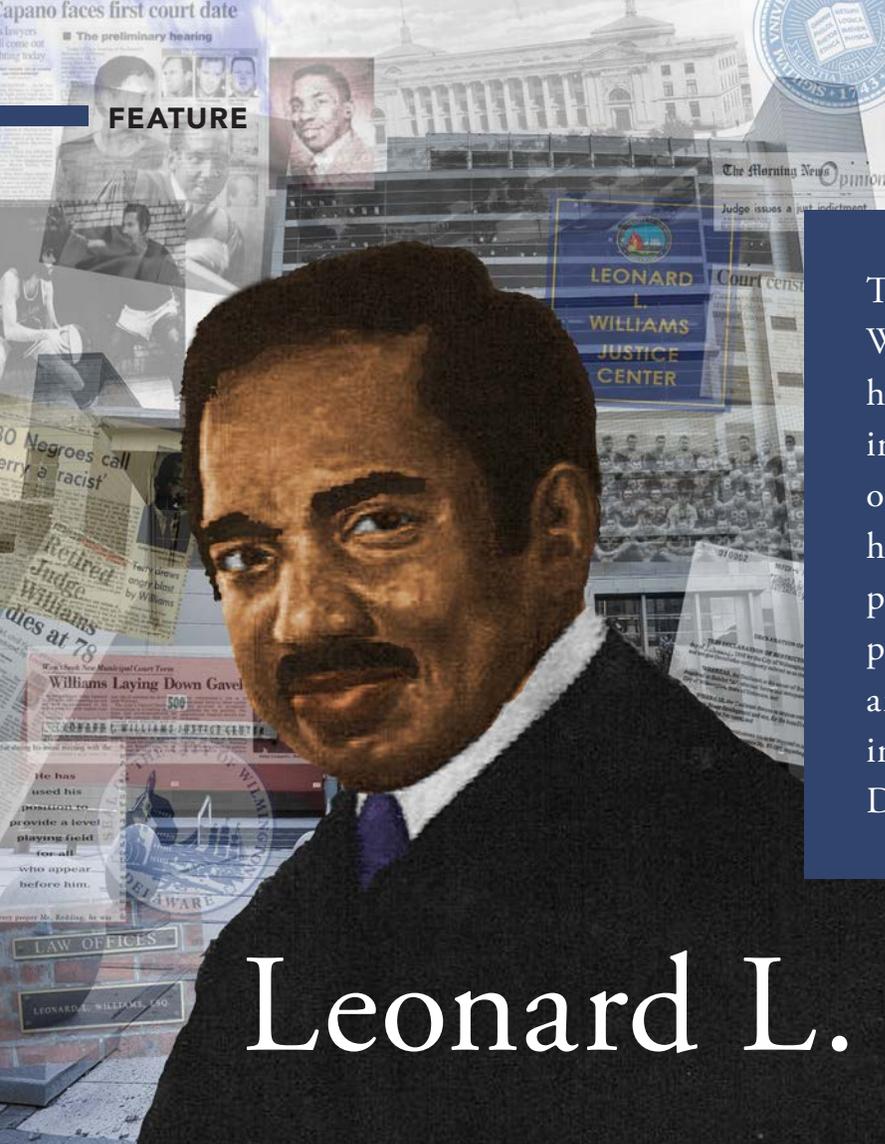
Thank you, Judge Sontchi, for your distinguished and eloquent contributions to the Delaware Bankruptcy Court. The consumer bar will not forget them. ☺

#### Notes:

1. *In re Baker*, 08-10077 CSS (Bankr. D. Del. Jun. 10, 2008), 390 B.R. 524 *aff’d*, 400 B.R. 136 (D. Del. 2009).
2. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
3. *Price v. Delaware State Police Fed. Credit Union (In re Price)*, 370 F.3d 362, 369 (3rd Cir. 2004).
4. *In re Hart*, 08-12107 CSS (Bankr. D. Del. Mar. 10, 2009); See *In re Baker*, 390 B.R. 524, 527 (Bankr. D. Del. 2008) (describing the “fourth option” for retention of secured property), *aff’d*, 400 B.R. 136 (D. Del. 2009).
5. *In re Miller*, 10-12134 CSS (Bankr. D. Del. Jan. 5, 2011).
6. *In re Smale*, 07-11396 CSS (Bankr. D. Del. Jun. 9, 2008).
7. *In re Akulova*, 07-11654 CSS (Bankr. D. Del. Jul. 21, 2009).
8. *In re Willis*, 07-10046 CSS (Bankr. D. Del. Dec. 18, 2012).
9. *In re Swarbrick*, 12-12338 CSS (Bankr. D. Del. Dec. 19, 2012).
10. *In re Coleman*, Memorandum Order 11-12145 CSS (Bankr. D. Del. Mar. 16, 2012).
11. *In re Willis*, Memorandum Order 07-10046 CSS (Bankr. D. Del. Nov. 7, 2013).
12. *Crowe v. Moran (In re Moran)*, 09-50040 CSS (Bankr. D. Del. Sep. 11, 2009).
13. *Shifano v. Lendmark Fin.Svcs., Inc. (In re Shifano)*, 12-50744 -12-50749 CSS (Bankr. D. Del. Jan. 8, 2013).
14. *In re Scioli*, 12-10572 CSS (Bankr. D. Del. Jan. 28, 2013) *aff’d*, *In re Scioli* (3rd Cir. 2014).



**Erin Brignola** practices consumer bankruptcy law at Cooper Levenson, P.A. and is Consumer Vice-Chair of the Bankruptcy Section of the DSBA. She can be reached at [ebrignola@cooperlevenson.com](mailto:ebrignola@cooperlevenson.com).



FEATURE

To many younger attorneys, Leonard L. Williams is just a name on the Courthouse at 5th and King Streets in Wilmington. The *Bar Journal* Editors reached out to a few of the attorneys who knew him and thought it might be nice to provide some historical information and personal insights into the complex lawyer and judge who has the distinction of being the second Black judicial officer in Delaware history.

# Leonard L. Williams

BY CHARLES H. TOLIVER IV, ESQUIRE  
AND KESTER I. CROSSE, ESQUIRE

## Charles H. Toliver IV, Esquire

My first recollection of Leonard L. Williams, Esquire, who subsequently became known to me as “Judge Williams,” was because of a telephone call I made to his home during my first year in law school, 1972-1973. I called because of what I perceived as a possible conflict of interest in a matter involving my parents who were clients of his. I do not recall the specifics, but I recall that he listened to me patiently, chuckled slightly and, in an indulgent tone, said that he understood my concern. He went on to indicate that he would eliminate the conflict if it became an issue, again chuckling ever so slightly. Well, the problem never materialized, and I was left with the feeling that he was amused by the fact that a first-year legal puppy had the temerity to bark at the biggest dog, at least to me, in a profes-

sional that I would one day join. I think that is why he took a liking to me and became my friend as well as my mentor.

Judge Williams greatest influence was to instill in me a sense of personal and professional pride in what I did and the way I performed in the practice of law. He constantly impressed upon me that I was as good, if not better, than those who opposed us. However, that meant that we had to be more prepared than what others might deem appropriate under the same circumstances. We required to present a first-class work product no matter who was on the other side. Interestingly enough, he was just as concerned that we were sympathetic and understanding of the socio-economic status of a substantial number of our clients who were not sophisticated or well-educated and demanded that we advocate even more

strenuously on their behalf, particularly if the matter went to trial.

Judge Williams was the second or third child from a family of sixteen children born and raised on the lower westside of Wilmington. How his mother and father managed that feat as poor and underserved by society as they were, was a testament to work ethic and perseverance during times when opportunities were limited by race, economics and/or ethnicity.

Notwithstanding the challenges they faced as a family, Judge Williams was an outstanding student and athlete at the then segregated Howard High School. He went on to become one of the first Black graduates of the University of Delaware and was the first Black member of the football team. He graduated Georgetown University School of Law in

Illustration: Mark S. Vavala

1959 and passed the Delaware Bar that same year. He was only the fifth African-American to do so and began a storied career as an attorney specializing primarily in personal injury litigation, estate matters and real estate, working out of the same office as civil rights icon Louis Redding and later as a city solicitor. In 1966, Governor Charles Terry appointed him a judge of the Municipal Court of the City of Wilmington, only the second African-American to serve as a member of the judiciary in the State of Delaware up to that point in time.

Judge Williams fought for and earned all the accolades, titles, awards, and economic success he managed to acquire. Nothing was given to him. At the same time, he took great pride in helping to raise his children, making significant contributions to the City of Wilmington and the State of Delaware in the areas of civil rights and education. He also helped to professionally guide a number of individuals attempting to make the transition from law school graduate to attorneys at law hopefully to be judged by their professional knowledge and work product rather than by their race or ethnicity. As others have pointed out, he was not perfect or without flaws.<sup>1</sup> Nevertheless, I can state without fear of contradiction, that on balance, he was a good person, thoughtful and considerate of others. I will always be proud to call him my mentor and my friend.

### Kester I. Crosse, Esquire

The Honorable Leonard L. Williams was a notable member of the Delaware Bar who made significant contributions to the people of the City of Wilmington, New Castle County, and the State of Delaware. He assisted two pillars of our Bar, Louis Redding and Irving Morris, in all of the important civil rights litigation for Delaware involving education, housing, and employment. For a time, judges were permitted to continue practicing law and Judge Williams developed a

successful civil practice, although due to his position with Wilmington Municipal Court, he could not practice civil law while on the bench. He was a physically imposing and confident litigator. (See *Shineka Harmon v. Daniel Eudaity M.D.* and *Alice Toppin v. City of Dover.*)

At one time, four African-American members of the Bar were associated with Judge Williams' firm: George E. Evans, (former Superior Court Judge) Charles H. Toliver IV, (current Family Court Judge) Arlene Coppadge, and myself.

Many are aware that the Justice Center has been named in his honor, but Judge Williams was also largely responsible for the movement and preservation of his colleague Louis Redding's home at 310 E. 11th Street in Wilmington, a piece of history worth preserving.

### In His Own Words

Some direct quotes from the Judge Leonard L. Williams:<sup>2</sup>

"I wasn't the straightest of arrows, but I never got arrested, either. Never got in trouble. Never had time. I helped my father sell wood, coal, ice... I saw my dad work his butt off, and I knew there wasn't a lot to be accomplished without that education."

"Part of the whole fabric of the Black person, deeply embedded in his religion, is the feeling that if you know something is wrong, it's going to be changed."

"Many times, a Black appointed to a key position is appointed as a 'token.' If he looks at himself as a token, he ends up being nothing but a token. I believe... there is no reason why there should be only one judge from the minority community."

### In the Words of Others<sup>3</sup>

"He went through the hoops of life a lot differently than most of us."

– The late Thomas C. Maloney,  
Mayor of Wilmington

"Lenny has a heart of gold. Over a long number of years, he has given back to the community, in terms of free professional service and civic leadership, more than any Black professional I know."

– Former Mayor James H. Sills, Jr.

"During the civil unrest in Wilmington Judge Williams as well as the other two Municipal Court Judges were under siege with hundreds of arrests, bail decisions, and eventually trials. I was at the time with the City Solicitor's office and prosecuted some of those cases. I do recall Judge Williams being remarkably calm, thoughtful and fair in his handling of those very difficult issues."

– Former Superior Court  
Judge Carl Goldstein 

### Notes:

1. Judge Williams' fight for civil rights was briefly overshadowed by controversies involving his unpaid taxes and parking tickets towards the end of his career, but his career in the law and in politics fighting for the rights of those who needed his voice will remain his true legacy.
2. Taken from various *News Journal* sources, particularly, Canavan, Kathy "A Black Judge Looks Back Over 12 Years on the Bench." *News-Journal* [Wilmington, DE], May 19, 1978, A1, A5.
3. Taken primarily from Barrish, Chris "Judge Williams boasts an illustrious past." *Sunday News Journal* [Wilmington, DE], March 17, 1996, A6.



**Charles H. Toliver IV** has served the community in many capacities including Wilmington Assistant City Solicitor, Chairman of the Wilmington Housing Authority, and a two-term Judge with the Superior Court of Delaware. He is currently working for the firm, Leroy A. Tice, P.A. and can be reached at [ctoliver@teamtice.com](mailto:ctoliver@teamtice.com).



**Kester I. Crosse** is a former Public Defender and attorney with Williams & Crosse. He now lives in Kissimmee Florida, enjoying nicer weather. He can be reached at [williamsandcrosse@verizon.net](mailto:williamsandcrosse@verizon.net).

# Musings of a Former Plaintiff's Employment Lawyer

BY BARBARA H. STRATTON, ESQUIRE

*I have not retired from the practice of law. However, in the summer of 2020 I settled my last employment law matter, a sexual harassment case. Afterwards I felt the need to put down in writing what was swirling through my head at the time. I share it with you now.*

I handled sexual harassment cases for 30 years. My first case involved a woman who was sexually assaulted by her boss at work. My last case involved a woman who was sexually assaulted by her boss at work. How can it be, after all these years, that the fact patterns remain the same?

Between the bookends of the sexual harassment cases, I have represented employees in disability discrimination cases, age discrimination cases, sex discrimination cases, whistle blower cases, sexual orientation discrimination cases, workers' compensation retaliation cases, breach of the implied covenant of good faith and fair dealing cases, breach of contract cases, Title VII employment retaliation cases, First Amendment retaliation cases, and unemployment cases. I have filed cases in both State and Federal Courts. I represented people at both State and Federal agencies. I have faced opponents from big law firms in big cities. I have done it on my own, with only occasionally working with another lawyer, or even a law clerk.

I have been motivated by a sense of justice, of wanting to help people. For the most part, I have been very successful at it. I am grateful for good judges, excellent mediators, and clients who just wanted to be heard, to be seen, to not be

invisible. I am also appreciative of those opposing counsel who litigated against me with integrity. I came to realize that there really is something to what is known as "the Delaware Way." I found Delaware opposing attorneys to litigate cases with less of a "scorched earth" mentality than those I encountered from Philadelphia, New York, or Washington. Also, while there were some out-of-state counsel who leveled personal attacks against me, I never experienced that from an opposing Delaware employment lawyer.

I am also thankful for those very few employers who not only wanted to settle a case, but genuinely wanted to "reconcile" with their former employee. Those employers admitted they were wrong, agreed they made a mistake, and were committed to correcting it in the future. Those instances were few and far between — but when I came across them — I was impressed.

It was usually "David vs. Goliath." Indeed, one of my clients referred to myself and co-counsel as "Team David." When the case was over, she presented me with a framed sling shot which still sits on a shelf in my office. The quotes on my office door sum it up: "David Beat Goliath" and "never let the fear of striking out keep you from playing the game" from the movie *A Cinderella Story* starring Hilary Duff.

I am not retiring from the practice of law — I am only retiring from handling employment matters. I have learned that when I take on an employment case, my whole being gets sucked in — I cannot do anything halfway, I go all in. After years of waking up at night with arguments for countering a summary judgment motion rattling in my brain, I am turning my attention to my other area of practice—plaintiff's personal injury law. That area also involves real people with real problems and a need for strong advocacy.

I still have pet peeves that 30 years of practicing employment law have not changed.

Why does the Delaware Department of Labor ("DDOL") Anti-Discrimination Unit still use a Conciliation Questionnaire which does not list emotional distress/pain and suffering as an element of recoverable damages even though Delaware's employment discrimination laws provide that remedy? That does a disservice to victims of discrimination who are not represented. Why is a DDOL investigation often a review of the papers only and not a true "let's talk to the witnesses" investigation? Why are summary judgment motions granted to defendants in employment cases more often than in other cases? Why are there still caps on

damages, based on the size of the employer, which were set in 1991?<sup>2</sup>

The interesting thing about practicing employment law is that I cannot talk about most of it! Every case is settled with a confidentiality clause. I cannot brag that, “I just settled a case for x dollars.” I have consulted with hundreds of potential clients. Many times I told them that they did not have a case — that while what they experienced was morally wrong, it was not illegal. (Note: I always suggested they get a second opinion.) But even when I told someone they did not have a case, I listened, and tried to help them strategize about what to do, how to move forward. I often felt like more of a therapist than a lawyer. I often told people, quoting a role-model, now deceased New York employment lawyer, Judith Vladick, “Litigation isn’t always the answer. Success somewhere else is the best revenge.” People have shared fact patterns with me that made me cringe — every once in a while I suggested they contact their legislator to fashion a remedy.

One time I contacted the legislature myself. I was frustrated when a potential client could not file a sex discrimination

charge at the DDOL because the 120 day statute of limitations had passed. Her employer did not have enough employees to be subject to federal law which, as applied to Delaware, has a 300 day limitations period. I approached the Delaware Trial Lawyers Association to see if they would push for an amendment. They had other priorities. So, I went to Senator Karen Peterson myself, and with her help, got the law changed. The Delaware statute of limitations for discrimination cases is now 300 days, mirroring the Federal law. I love Delaware! In how many other States can one person effectuate change that easily?

So, to my fellow employment lawyers, keep up the good fight. I have been referring potential employment clients out for a while now. Do justice. Listen to people. And try like hell to end sexual harassment in the workplace! 🗣️

#### Notes:

1. The Honorable Denny Chin, a U.S. District Court Judge for the Southern District of New York, cited statistics in a 2013 Law Review Article that summary judgment motions in federal courts are granted 77 percent in employment discrimination cases as compared to 61 percent in tort cases, and 59 percent in contract cases. *Summary Judgment in Employment Discrimination cases: A Judge's Perspective*, Vol 57, NYLS Law Review, 2013. A December 20,

2021 Forbes on-line article by Eric Bachman entitled “Summary Judgment Explained: The Critical Juncture in Employment Law Cases,” referred to those statistics and concluded that: “Given how important credibility determinations are in employment discrimination ... cases, it is surprising that judges grant summary judgment so often given that judges are not supposed to assess credibility in making their decision. Further exploration of why judges dismiss these types of cases prior to a jury trial at such an alarming rate is needed.” [www.forbes.com/sites/ericbachman/2021/12/20/summary-judgment-explained-the-critical-juncture-in-employment-law-cases/?sh=7a8be97d6a8b](http://www.forbes.com/sites/ericbachman/2021/12/20/summary-judgment-explained-the-critical-juncture-in-employment-law-cases/?sh=7a8be97d6a8b)

2. Title VII of the Civil Rights Act of 1991 limits the amount of money a victim of discrimination based on race, color, religion, sex, and national origin can recover for combined pain and suffering/emotional distress damages and punitive damages depending on the size of the employer. 42 U.S.C. § 1981(a), (b) (3). The same caps apply in a disability discrimination case pursuant to the Americans with Disabilities Act. For example, a sexual harassment victim working for an employer with only 50 employees can not recover more than \$50,000.00 combined for pain and suffering/emotional distress and punitive damages. Delaware’s employment law adopts those caps. 19 Del. C. § 715. While race cases may also have constitutional claims which are not subject to the caps, a sexual harassment victim, for example, is not so fortunate.

**Barbara H. Stratton** is a Partner with the law firm of Knepper & Stratton. Ms. Stratton currently practices plaintiff’s personal injury law. For the past 30 years she also specialized in plaintiff’s employment law. She can be reached at [bhs@knepperstrattonlaw.us](mailto:bhs@knepperstrattonlaw.us).



**I have been motivated by a sense of justice, of wanting to help people. For the most part, I have been very successful at it. I am grateful for good judges, excellent mediators, and clients who just wanted to be heard, to be seen, to not be invisible.**

# Eugene H. Bayard, Esquire

1946 - 2021

BY THE HONORABLE CRAIG A. KARSNITZ

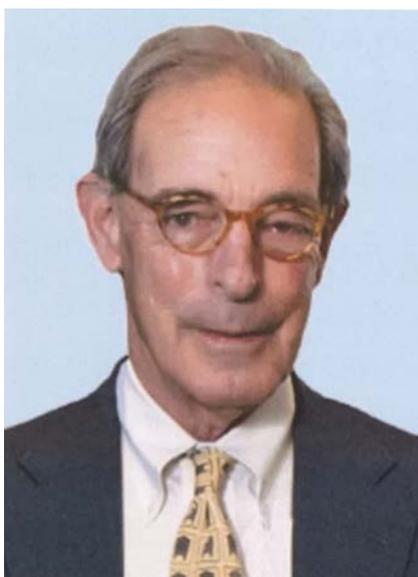
## The Squire of Sussex County *A Personal Appreciation of Gene Bayard*

**G**ene Bayard was born June 19, 1946 and died October 30, 2021. He attended Tower Hill School, St. Paul's School, Princeton, and the University of Virginia Law School. Gene also served our country in the Army. He told me much of his time there was spent at Fort Gordon, Georgia, close to an Augusta golf course of some renown which he was pleased to play. He practiced law for 47 years, and was married to his wife, Diane for 37 years. They have two lovely daughters, Molly and Avery.

Gene's practice was primarily civil and business related. He served on many Boards, including the Boards of the Delaware State Fair, Delaware Wild Lands, Inc., and Harrington Raceway. Gene served on those Boards with passion, and for long hours, which turned in to many years. His service was not the casual attendance at a few yearly meetings.

The recitation above is impressive but doesn't capture Gene's indomitable spirit. Gene loved the outdoors, and particularly loved to hunt and fish. His decade long service to Delaware Wild Lands was part of his effort to share and preserve the environment. He loved horses, and his work with Harrington Raceway and the State Fair was also part of his effort to share and preserve much of what is good in Delaware.

Gene was privileged by birth and the gifts with which he was born. One of his signature traits was his generosity which he exercised with notable anonymity. Gene only sought one thing in return, and that was that the recipient



of his generosity make the most of the gift. Whether it was tickets to an event at the State Fair, or a letter of reference to law school, Gene expected the recipient to make full use of the offering. He gave without fanfare and with purposeful anonymity.

Any discussion of Gene must include mention of his coruscating wit. Gene was the most understated, funny person I have known. His wit carried into his professional life in his superb and understated writing. He was articulate and the consummate professional in Court.

I have a treasure chest of stories about Gene. I will tell just two, as the more off color ones can be left for the oral history.

First, a fishing story.<sup>1</sup>

On his birthday twelve years ago, Gene and I went on an early morning trip in the Delaware Bay. Not much was happening as we fished near the Lewes Harbor Ice Breakers hoping to catch a few flounder. Gene's light rod went taught and I was sure he had a shark or skate. Gene worked on the fish for ten or fifteen minutes and finally brought a very large black drum to the surface. I netted it and watched with horror as the frame of the net, brittle with age and unable to handle the heft of the fish, broke into a half dozen pieces. I grabbed the net with the fish still in it and lifted it into the boat. At that point the fish made the drumming noise for which they are famous, which caused my dog Maggie, who was a puppy at the time, to madly bark in response.

Gene and I looked at this fifty plus pound drum, croaking away, accompanied by Maggie's frantic barking, as well as pieces of net floating in the water and began to laugh. I picked

up the fish, which was an old veteran with a scar on his tail from a battle with a predator, and gently as I could, slid him back in the water. It was all too much: we laughed until tears flowed.

My second story is a golf one. Gene was a strong player who had been on the Princeton team. We often took day trips together, and one of those trips was to Wilmington Country Club at the invitation of Charlie McDowell. Charlie was and is a magnificent golfer who, if memory serves, won the Delaware Senior Open twice. I hope he doesn't mind my reciting this story.

Gene and I met Charlie and his partner, and Charlie told us we would be playing the North course, a very fine course in its own right. Despite Charlie's clear superiority, we smoked him and his partner. The last hole on the North course is a par five with a pond short of the green. Charlie and his partner, having already lost the match, "pressed" the last hole. A press is an additional double or nothing bet. We never played for much money, but pride was definitely at stake.

Gene hit a long drive, but pulled it left into the rough. He drew a perfect lie, pulled out his driver and smashed it on the green, sixty feet from the hole. Gene then pulled from the bag his old mallet head wood shafted putter which he used since he was 17 years old. He rolled the sixty foot putt into the hole for an eagle three to end the match and the day. Charlie had many great victories on the golf course, but this was not one.

I mentioned briefly that Gene was a fine practitioner of the legal arts. Gene got more done in the early morning hours in his office than most of us did in a week. Gene was a gentleman, a wit, and a generous person. I will miss him, as will his family and all his friends. 🕒

#### Notes:

1. I will not tell the story of how Superior Court President Judge Jan Jurden in her youth came to Sussex County and caught many more flounder than two Sussex County veteran fishermen.

# NOMINATIONS SOUGHT FOR LAW DAY AWARDS

The Delaware State Bar Association and the Awards Committee are seeking nominations for the Liberty Bell Award, the Community Service Award, and the Myrna L. Rubenstein Professional Support Recognition Award to be presented at the 2022 Law Day Luncheon. Below are the criteria for these awards.

## LIBERTY BELL AWARD

The Liberty Bell Award is given annually to an individual, who is not a judge or lawyer, who has rendered outstanding service to his or her community. The award is designed to promote a better understanding of government, a greater respect for the rule of law or a deeper sense of individual responsibility which contribute to the effective functioning of our governmental institutions.

## COMMUNITY SERVICE AWARD

The Community Service Award recognizes annually a member of the judiciary or the Delaware Bar who has rendered meaningful service to the community and who has contributed significant time and effort to the greater Delaware community. Nominees should have demonstrated a commitment to leadership and service in activities that enrich and strengthen our community over a substantial period of time.

## MYRNA L. RUBENSTEIN PROFESSIONAL SUPPORT RECOGNITION AWARD

This Award recognizes long and dedicated service to the Bench and Bar of the State of Delaware, to the Bar Association, and to the Members thereof, which has contributed in a significant way to them and to the high ideals of the legal profession.

Nominations should be submitted to Mark S. Vavala, Executive Director, DSBA at [mvavala@dsba.org](mailto:mvavala@dsba.org). The deadline for nominations is February 18, 2022. Please include: The name, firm, and title/occupation of the Candidate; name and contact information (firm, address, email, phone, and fax) of the individual nominating the Candidate; and a brief statement of the reasons the Candidate is deserving of the Award.

# The Honorable Richard S. Gebelein

## 1946 - 2021

BY THOMAS D. WHITTINGTON JR., ESQUIRE

**W**hat can you say about a shy man who was a giant intellectually and physically? As Rich always counseled me, start at the beginning and proceed logically, but with Rich that is difficult. An oft repeated description was established when he won the race for Delaware Attorney General in 1978 and columnist Ralph Moyed described him as “a rumpled walrus of a lawyer” expected to lose because he was too “dull to win.” I better like the description of a colleague of ours, and former college suitemate of mine, who in a Senate hearing pronounced Rich to be “...one hell of a guy.”

My beginning with Rich commenced in 1971 when we were at a meeting of candidates to take the Delaware Bar. I was dismayed to learn that the Attorney General expected me to work with the overweight, poorly dressed, frowsy looking guy across the room — which goes to show you how wrong first impressions can be. I learned that he was Chancellor Duffy’s law clerk and, when you could get him to talk, a walking version of CJS.

Rich’s parents were frugal and it became a part of him. His father, a DuPonter, reviewed the cost of college with Rich and his brother Walter, then handed them checks and said good luck. Rich obtained his degree in three years, not just because he was bright, but also because he was frugal — in fact family lore has it that he loaned college funds to his brother. His mother bought his suits at Wilmington Dry Goods until the managers of his AG campaign insisted that he somewhat upgrade.

Richard Stephen Gebelein was born in Upper Darby, Pennsylvania, on June 8, 1946. Raised in the Roman Catholic faith, he attended St. Joseph’s on the Brandywine for his early education and continued with Salesianum School graduating in 1964 (inducted into its Hall of Fame in 2017).

In 1967, Rich received his BS in Mathematics from the University of Pittsburgh and, switching gears for what would be his life’s work in law, was elected the youngest Magistrate in the Commonwealth of Pennsylvania. He received his JD from Villanova Law School in 1970 and began as a Law Clerk for the Honorable William Duffy in the Court of Chancery. Due to Attorney General W. Laird Stabler, Jr.’s need for lawyers, Richard was admitted early (with your un-esteemed author) to the Bar of the Delaware Supreme Court in November of 1971 and appointed as a Deputy Attorney General serving in that role for three years. His Delaware service continued when he was appointed State Solicitor, Chief Deputy Public Defender, and eventually elected Attorney General in 1978. Richard began his military career by joining the Delaware Army National Guard in 1979 as an Assistant Staff Judge Advocate of the Judge Advocate General’s Corps.



Judge Gebelein with members of the Afghan Supreme Court and Court Administrators.

After serving as Attorney General, Richard was asked to serve as the State’s first Disciplinary Counsel tasked with working with the Delaware Supreme Court to enforce attorney’s rules of conduct, investigate, and prosecute matters related to ethical violations.

In 1984, Richard was appointed as a Superior Court Judge by Governor Pierre

S. DuPont IV. During his tenure with the Delaware Superior Court, Richard pursued various initiatives including serving as a member and later chair of Delaware’s Sentencing Commission where he supervised criminal justice research and championed criminal justice and sentencing reform leading to evidenced-based sentencing alternatives. This experience led him to advocate for and oversee the establishment of the Superior Court Drug Court in 1993 with the goal of rehabilitation through addressing an individual’s substance abuse issues. This court model has been replicated or influenced similar specialized courts throughout the United States.

Richard became an expert in the impact and implementation of drug Courts with his expertise causing him to be complimented in the United States Senate by then-Delaware Senator Joseph R. Biden in an exchange recorded in the hearing minutes:

Senator Biden: But I know you know Judge Gebelein, Mr. Chairman. He has been here before. He has been a member and associate judge in the Superior Court of Delaware since 1984. Prior to that, he had a job similar to the one you had as a Federal prosecutor. He was our attorney with the State of Delaware.

He is a good card-carrying Republican, which I hope makes you like him a little more, but he also is--

Senator Sessions: He did look like a nice fellow, I must admit.

Senator Biden: He is one hell of a guy. He has served as chairman of the Delaware Sentencing Accountability Commission since 1989. He is the founder of the Delaware Statewide drug court system — ours is Statewide — where he serves as drug court judge responsible for post-adjudicated offenders, and he is the founding member of the National Association of Drug Court Professionals. There is much more to say about him, except to suggest to you that this is a serious man who has taken his job incredibly seriously.

In 2004, as a Colonel and Staff Judge Advocate in the Delaware National Guard, Richard was deployed to Kabul, Afghanistan as the Rule of Law Officer supporting Operation Enduring Freedom. His role was to help put together the nation’s legal system. He helped draft laws and participated in judicial and legal training with the goal of changing the patchwork of existing laws. For his work in Afghanistan, Colonel Gebelein received the Legion of Merit Award, the Bronze Star Medal, Army Commendation Medal, and the Army Achievement Medal for his career service.

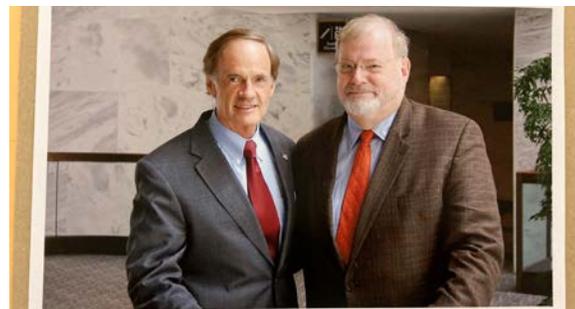
Upon return from military deployment, Richard took an appointment as an International Judge on the State Court of Bosnia and Herzegovina, War Crimes and Economic Crime and Corruption Chambers presiding over several high-profile cases. Richard said the most appealing part of the job was resolving disputes in ways that might not please everyone involved but was fair.

During Rich’s Bosnia service, family continued to be important. My wife, Marna, and I were living part-time in Munich, Germany and, due to the potential issues when traveling in Bosnia, we would on occasion host Richard or members of his family to local sites or events such as Oktoberfest, Christmas, or an “American Thanksgiving.”

In 2006, Attorney General-Elect Joseph R. “Beau” Biden III, himself a colleague of Richard’s in the Judge Advocate General’s Corps in the Delaware National Guard, crossed party lines and announced that he had enlisted former Attorney General, judge, and decorated National Guard veteran Richard S. Gebelein as his Chief Deputy Attorney General. He noted:



Judge Gebelein meeting with Russian judicial counterparts shortly after the fall of the Soviet Union.



Judge Gebelein with U.S. Senator Tom Carper along with a note from Senator Carper.  
*Rich, we're still got it! That raw animal negotiation that swept up from one electoral victory to another. Just ask our kids! Well, maybe not! Seriously, thank you upon arrival for being my friend. Out, Tom 7-16-13*

I am extraordinarily pleased that Judge Gebelein has agreed to serve with me,” said Biden, “He brings with him decades of experience marked by success, innovation and leadership. He is truly the best person for the job and I look forward to shaping the Department of Justice into the best law firm in the state with Judge Gebelein by my side.

During Biden’s military deployment in 2008, Richard managed the Office of the Attorney General overseeing all final case decisions, policy matters, and guiding legislation.

In 2009, Richard retired from the State of Delaware and went on to serve as a legal expert on numerous long-term and short-term law reform and training projects related to judicial, ethics and discipline matters in the United States, American Samoa, Armenia, Bahrain, Bosnia and Herzegovina, Indonesia, Kosovo, Moldova, Montenegro, Mongolia,

CONTINUED >

# You May Call Your **Best** Witness



William A. Santora, CPA



Robert S. Smith, CPA



Stephen M. Conyers, CPA



Keith A. Delaney, CPA, MBA, CMA, CVA

## Delaware's Premier Litigation Support Team



Visit [www.santoracpagroup.com/consulting](http://www.santoracpagroup.com/consulting) for more information or call our office at 302.737.6200

## Need help achieving your personal and professional goals?

*Let me provide you with a plan for a successful outcome!*

**ERIC DOROSHOW, Esq.**  
Master Certified Professional Coach  
302-998-0100 [Ericd@dplaw.com](mailto:Ericd@dplaw.com)



## IN MEMORIAM

CONTINUED >

Lebanon, Lithuania, Russia, Sri Lanka, and other nations funded by USAID, Department of State, the United Nations Development Project, American Bar Association, and other organizations. Richard felt strongly that his call to service extended to people around the world striving to build a civil society through the rule of law.

Richard felt passionately about inspiring the next generation of legal minds and, thus, at various periods throughout his career, taught law classes as an Adjunct Faculty at the University of Delaware, Wilmington College, Widener University School of Law, and Rowan University.

Richard had the reputation of a brilliant legal mind; a tough, never ungracious adversary in the legal arena; a politician who worked with both political parties and sought the best for people he represented; and a judge, fair in his approach while applying the law. He was often seen as soft spoken — but determined, especially in pursuing areas of legal reform to make the world a better place for his children and the citizens he served.

For Richard, his greatest achievement, though, was his family: his wife of 41 years, Anna T. Gebelein “Jerri”; his adult children, R. Zachary “Zach” Gebelein, Lauren Gebelein, and Alexandra “Sacha” Sharkey; and his grandchildren: Zoe A. Gebelein, R. Wilder Gebelein, and Lyla V. Sharkey.

A funeral mass will be held privately with a memorial set for some time in the spring/summer of 2022.

In memory of Richard, the family requests donations in Richard’s honor to the Nativity Preparatory School of Wilmington, DE. Donations may be sent to Nativity Preparatory School, 1515 Linden Street, Wilmington, DE 19805 or online at: <https://nativitywilmington.org/giving/hon-richard-stephen-gebelein-memorial-endowment-fund/>. 

# A Tribute from CCJ to Mary Christine Byrd

BY ELIZABETH M. MCGEEVER, ESQUIRE

Delaware's legal community lost a trusted and true friend, Mary Christine Byrd, in late 2021. Mary Christine, "MC" as she was known to us, guided fundraising for the Combined Campaign for Justice from its inception in 1998 until her retirement in 2017.

MC's work to sustain legal services for disadvantaged people in Delaware preceded CCJ's creation. Earlier in the 1990s, when each of Delaware's three legal service agencies ran separate fundraising campaigns, MC worked on behalf of CLASI's Campaign for Justice. She tutored Dave Baldwin and me in the "art of the ask" at many early morning meetings at CLASI's old office housed in a row house at 9th and Washington Streets. In those days, we were thrilled to reach our \$100,000 goal for CLASI's campaign. Thanks to the creation of CCJ and MC's dedication, the combined fundraising effort on behalf of the three agencies now raises more than ten times as much.

MC kept CCJ's fundraising efforts organized and focused. It helped that MC genuinely enjoyed working with lawyers (and that she knew most of the them!). MC kept CCJ's lawyer co-chairs on task, readily picking up assignments, including making critical phone calls, whenever necessary. As former co-chair Allen Terrell recalled, "She pushed us with aggressive goals and somehow helped us get there."

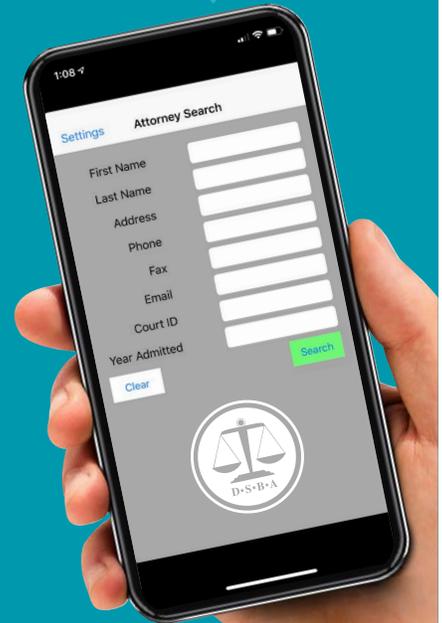
MC believed in CCJ's mission. Its success is a legacy of which she was proud. MC kept in touch with CCJ's leadership after her retirement and she celebrated the progress of a fundraising effort that she helped to get off the ground.

MC's CCJ "family" mourns her loss and fondly remembers her for her patient guidance, tenacious service and professional dedication to equal justice for all. ⚖️



The 2017 CCJ Breakfast Celebration where MC Byrd was honored.

## THE DSBA LEGAL DIRECTORY APP



Free for all DSBA members



Call or email right from the app



ALWAYS up-to-date!



SEARCH: DELAWARE LEGAL DIRECTORY

# 2022 Dr. Martin Luther King, Jr. Virtual Program and Statewide Day of Service

Monday, January 17, 2022

**T**he annual Dr. Martin Luther King, Jr. Breakfast and Statewide Day of Service had to pivot suddenly this year from a live event to a virtual one due to the continuing pandemic and the increased risks due to the Omicron variant. But, the resulting Zoom event was no less inspiring than other years.

This year's keynote speaker, Professor Deborah Archer, the president of the American Civil Liberties Union (ACLU) spoke to almost 100 virtual attendees on the topic of "Dr. King and His Vision for a Beloved Community," Dr. King's vision for a truly integrated America, one that springs forth from the racial battles that precede it. Professor Archer discussed this dream of every citizen having access to true justice and social and economic opportunity. She focused on how American history has promoted segregation, not just during the Civil Rights era, but even in its aftermath in the results that have developed in our communities, keeping persons of color at a disadvantage in establishing a place to live where the same opportunities could be found as were found in other communities. Her focus was on how the systems in place in our society which protect power and privilege continue to perpetuate a segregation in where people live.

"This is not because black people would get some magical benefit from living closer to white people or sitting in a classroom with white people, it



Committee Co-Chair Samuel D. Pratcher III, Esquire, gave the Welcome address and hosted the event.



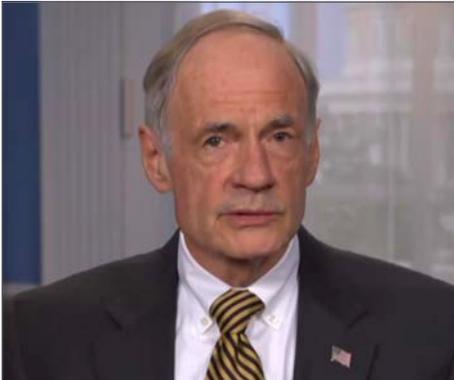
DSBA President Kathleen M. Miller, Esquire, gave Introductory Remarks.



Committee Co-Chair Nicole M. Mozee, Esquire, introduced the Keynote Speaker and gave the Closing Remarks.



Delaware Supreme Court Chief Justice Collins J. Seitz, Jr. addressed the attendees at the event.



U.S. Senator Tom Carper gave Brief Remarks by video.



U.S. Senator Christopher Coons gave Brief Remarks by video.



Deborah Archer, President of the American Civil Liberties Union (ACLU), gave the Keynote Address on Dr. King and his Vision for a Beloved Community.

is because you really cannot separate the places people have access to from the opportunities people have access to. Our home, not only the physical residence, but also the community in which it is located, in numerous and interdependent ways [affects] our access to education and jobs, our physical safety and our health, our access to healthy food, our social networks, even the quality air we breathe are all deeply impacted by where we live.”

Professor Archer identified mortgage programs, the interstate highway system, the historic violence and hatred toward persons of color, and numerous other legal and social programs which have had lasting negative impact on the black communities by amplifying the effects of racism and segregation. Access to opportunities, according to our Professor Archer, is the key to creating the beloved community and said she found it disheartening to see America’s historic opposition to closing the gap of opportunity between white and black America. “Oppression is creative... America ratified the 15th Amendment giving black men the right to vote and then America responds with poll taxes, grandfather clauses, and voter ID laws. America makes Jim Crow and housing discrimination illegal, and then America responds with redlining and racially exclusionary housing policies...America makes slavery illegal, and then America responds with mass incarceration, police brutality, and racial terror.” To get to the beloved community, Professor Archer said we need to fight racism (quoting Dr. King) “which inflicts spiritual and physical homicide on its victims.”

## STATEWIDE DAY OF SERVICE PROJECTS



Volunteers at the Food Bank of Delaware (Newark).



Volunteers at the Sunday Breakfast Mission.



Volunteers at the Friendship House.

THE DELAWARE STATE BAR ASSOCIATION

DR. MARTIN LUTHER KING, JR.  
VIRTUAL PROGRAM & STATEWIDE DAY OF SERVICE

Monday, January 17, 2022

THANK YOU TO OUR SPONSORS

PLATINUM SPONSORS

**Morris Nichols**  
ARSHT & TUNNELL

**RICHARDS  
LAYTON &  
FINGER**

**Skadden**

GOLD SPONSORS

 **Fox Rothschild** LLP  
ATTORNEYS AT LAW

 **MARON MARVEL  
BRADLEY ANDERSON  
& TARDY LLC**

**Morris James** LLP

 **Potter  
Anderson  
Corroon** LLP

**WSFS** bank  
*We Stand For Service®*

BRONZE AND FRIEND SPONSORS

 **AmeriHealth Caritas**  
Delaware

**Duane Morris**®

 **intertrust**  
GROUP

 **PK** **PratcherKraye**  
INJURY LAWYERS

**SAUL EWING  
ARNSTEIN  
& LEHR** LLP



## Looking for legal help?

A legal aid agency may be able to help!

- BANKRUPTCY
- DISABILITY LAW
- DOMESTIC VIOLENCE
- FAMILY LAW ISSUES
- HOUSING
- IMMIGRATION
- ISSUES WITH AGING
- PUBLIC BENEFITS

[DELegalHelpLink.org](http://DELegalHelpLink.org)



## The Law Offices of Scott and Shuman

are pleased to announce that

### **Daniel T. Conway**

has joined the firm as a partner.

33292 Coastal Highway

Bethany Beach, DE 19930

(302) 537-1147



## Step up to the mic!



Organizing a program or a CLE Seminar is a great way to get exposure and engage with the DSBA! Email your ideas to Lauren Delle Donne at [ldelledonne@dsba.org](mailto:ldelledonne@dsba.org).

## PRICKETT, JONES & ELLIOTT

A Professional Association

IS PLEASED TO ANNOUNCE THAT

### STACEY A. GREENSPAN

HAS BECOME COUNSEL WITH THE FIRM

JANUARY 2022

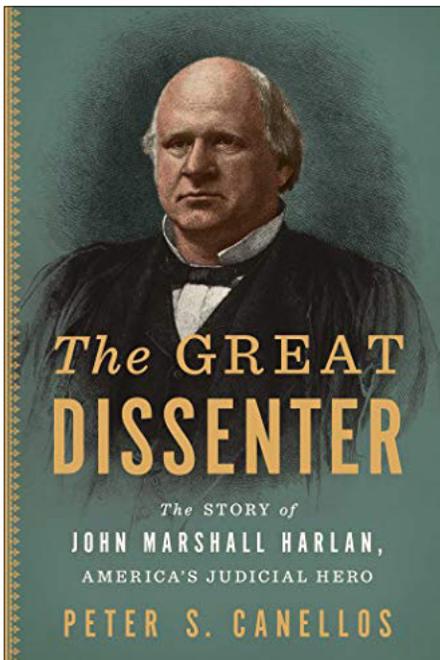
1310 KING STREET  
WILMINGTON, DELAWARE 19801

(302) 888-6500  
Fax (302) 658-8111

[www.prickett.com](http://www.prickett.com)



# The Test of Time



## *The Great Dissenter: The Story of John Marshall Harlan, America's Judicial Hero*

By Peter S. Canellos  
Simon & Schuster, 2021

Supreme Court Justice John Marshall Harlan, “the great dissenter,” was a man, and a judge, ahead of his time. Every lawyer and law student knows of his powerful dissent in *Plessy v. Ferguson* that “[o]ur Constitution is color blind and neither knows nor tolerates classes among its citizens.” But Harlan’s dissent in *Plessy* was just one of many. Justice Harlan is called “the great dissenter” not because of his ringing dissent in *Plessy*, but because of his many dissents, in many of the great cases of his day, many of which were so prescient. While he did not live to see his dissents become the law of the land, become the law so many of them did.

In *The Great Dissenter: The Story of John Marshall Harlan*, America’s Judicial Hero, writer and journalist Peter S. Canellos recounts the life story of Justice Harlan. Part biography, part legal history, Canellos reminds us that any short list of great Supreme Court justices must include John Marshall Harlan.

Harlan dissented in many of the important cases of the day, so much so that his colleagues on the Court sometimes joked that he suffered from “dissent-try.” Yet a large number of those dissents either later became law, or, the decisions from which he dissented, while not directly overturned, are poorly regarded today.

His first great dissent came in the *Civil Rights Cases of 1883*, where the Court, in an 8-1 decision, declared unconstitutional portions of the Civil Rights Act of 1875 that forbid racial discrimination in inns and other public places. The majority engaged in a narrow reading of the Thirteenth and Fourteenth Amendments and claimed that any other reading would render the African-Americans “the special favorite of the laws.” Harlan, the lone dissenter, responded forcefully that “[i]t is, I submit, scarcely just to say that the colored race has been a special favorite of the laws. The statute of 1875 now adjudged to be unconstitutional, is for the benefit of citizens of every race and color. What the nation, through Congress, has sought to accomplish in reference to that race is — what has already been done in every State of the Union for the white race — to secure and protect rights belonging to them as freemen and citizens. Nothing more.” In writing his dissent, and in one of the great ironies of Supreme Court history, Harlan used the very same pen and inkwell that Chief Justice Roger Taney had used to write the Court’s earlier and infamous *Dred Scott* decision.

The dissent in the *Civil Rights Cases* was not Harlan’s first, nor would it be his last. Ten months prior, he was the lone dissenter in *United States v. Harris*, where the Court struck down the Ku Klux Klan Act of 1871 and held that the Fourteenth Amendment did not authorize Congress to prosecute private citizens for the denial of other citizens’ rights.

Other dissents included *Pollock v. Farmers’ Loan & Trust Co.*, where the Court struck down the federal income tax as unconstitutional (a result later reversed by the Sixteenth Amendment), and *Lochner v. New York*, where his dissent is overshadowed

**Harlan dissented in many of the important cases of the day, so much so that his colleagues on the Court sometimes joked that he suffered from "dissent-try."**

by the dissent of Oliver Wendall Holmes. In *Berea College v. Kentucky*, Harlan was the lone dissenter to the Court's upholding of a Kentucky law forbidding blacks and whites from attending the same classes together — something which Berea College had done since its founding before the Civil War.

Harlan was also the sole dissenter in the first great antitrust case, *E.C. Knight Company v. United States*, where the majority held that Congress could not regulate the manufacturing of goods, even if a monopoly, as manufacturing was not commerce. Harlan argued, alone, that such manufacturing could be regulated as the monopoly power would extend to the sale of goods in interstate commerce.

The *E.C. Knight* case was a rare exception for one of Harlan's dissents, as the Court, ten years later, and with Harlan still on the bench, completely reversed course and unanimously held, in *Swift & Co. v. United States*, that the Sherman Antitrust Act could reach local monopolies that affected interstate commerce.

Harlan served 34 years on the Supreme Court, nearly as long as his namesake, the great Chief Justice. Yet at the time of his passing, and for many years thereafter, he was not particularly well-regarded (except in the minority community), and few would have thought he was bound for greatness when compared to his now little-mentioned colleagues, such as Justices Joseph P.

Bradley, Stephen J. Field or Samuel F. Miller. Indeed, in a 1947 Supreme Court concurring opinion, Justice Felix Frankfurter referred to Harlan as "an eccentric exception," such was the modest esteem in which Harlan was then held.

But the weight of history has proven to be on the Great Dissenter's side. Not all of his dissents have become law, but the great majority of them have. It would, of course, have been far easier for Harlan to simply join his brethren in their majority opinions, to go along to get along, and to acquiesce where his dissents led to no palpable results, but we are better for his perseverance, his courage, and his foresight. John Marshall Harlan still has much to teach us. ⚖️

**Richard "Shark" Forsten** is a Partner with Saul Ewing Arnstein & Lehr LLP, where he practices in the areas of commercial real estate, land use, business transactions, and related litigation. He can be reached at Richard.Forsten@saul.com.

CONNECT WITH YOUR COLLEAGUES

# DSBA SECTION FORUMS

- SHARE NEWS AND BEST PRACTICES
- ASK QUESTIONS AND GAIN INSIGHT
- EXPAND YOUR PROFESSIONAL NETWORK

To access the forums, log into [www.dsba.org](http://www.dsba.org) and click on Forums listed at the top of the Members Area page. From there, you will find the list of potential forums. Posting and responding is easy to do. Enjoy connecting!





# Childhood Chocolate Treat

**A**s a child, snow days were synonymous with sledding in my saucer disc and savoring a mug of what I thought was hot chocolate. It was not until adulthood that I learned the envelope of Swiss Miss with mini marshmallows that I carefully and thoroughly stirred into hot milk was, in fact, hot cocoa.

Looking back, I suppose the realization resulted from noticing the two different offerings on coffee shop and restaurant menus.

Is this a case of “tomato, tomâto, potato, potâto?” Both are liquid forms of chocolate, yet the differences are worth exploring.

Research revealed that my mug of Swiss Miss was made from cocoa powder and sugar. As a result, hot cocoa is lighter and sweeter than its counterpart. Hot chocolate, produced from chocolate shavings, is the creamier and richer of the two. Both hot beverages are a source of comfort during these winter months, so your choice may come down to mood, your pantry contents, and/or the coffeehouse offerings.

Below are a few favorites that have been on my pantry shelves over the years:

**Ghirardelli Premium Hot Cocoa (Double Chocolate):** The ingredient list consists of ground cocoa beans, sugar, vanilla, and ground chocolate. It’s this last ingredient, the ground chocolate, that seems to distinguish it from other hot cocoas. I think this elevates the creaminess of this brand.

**Williams Sonoma Classic Hot Chocolate:** The over 150-year-old American chocolate company, Guittard, is the star of Williams Sonoma’s version. The ingredients are bittersweet chocolate shavings combined with pure vanilla. “Inspired by the velvety hot chocolate served at the renowned Angelina café in Paris,” this option provides a transporting experience.

**Kilwins Shredded Peruvian Chocolate for Drinking or Shredded Drinking Chocolate:** Founded in 1947 in Petoskey, Michigan, Kilwins now has over 140 franchise locations around the country. The closest two are in Rehoboth Beach, DE, and West Chester, PA, and offer ice cream, chocolates, and confections. Several years ago, I was gifted a package of the Peruvian version – shavings of single origin Peruvian chocolate. The latter, still available in the online store, is made from Kilwin’s Semi-Sweet Dark Chocolate. You can’t go wrong with either.

Wishing you a Happy Valentine’s Day filled with sweet childhood memories. 



While a steaming mug of hot cocoa or hot chocolate is a real treat, there is a limit to how much I can drink. So, I offer some other suggestions:

**Pancakes:** Fold some chocolate shavings into your pancake batter for a decadent breakfast.

**Ricotta:** Top a dollop of ricotta with chocolate shavings. It’s like cannoli filling without the shell.

**Ice Cream:** Blend some chocolate shavings into Madagascar vanilla ice cream. You now have your own version of chocolate chip.

**Cocktail:** For the grown-ups, top your Chocolate Martini<sup>1</sup> with the shavings and rim the glass with cocoa powder.

#### Notes:

1. Liquor.com. “This Decadent Cocktail Is Dessert in a Glass.” Liquor.com. Liquor.com, April 5, 2021. <https://www.liquor.com/chocolate-martini-cocktail-recipe-5120730>.



**Susan E. Poppiti** is Associate Faculty in Mathematics at Immaculata University and an AP Calculus instructor at Johns Hopkins Center for Talented Youth. To further her commitment to mathematics education, she also serves as a math content expert for UPchieve, an ed-tech nonprofit providing free, online STEM tutoring to high school students. Susan can be reached at [spoppiti@hotmail.com](mailto:spoppiti@hotmail.com).

# LAWPAY<sup>®</sup>

AN AFFINIPAY SOLUTION



Delaware State Bar Association

Member  
Benefit  
Provider

“LawPay makes processing credit card payments a snap!”

– Delaware Attorney

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.



22% increase in cash flow with online payments



Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA



62% of bills sent online are paid in 24 hours



PAYMENT  
RECEIVED



YOUR FIRM LOGO HERE

---

**Trust Payment  
IOLTA Deposit**

New Case Reference

\*\*\*\* \* 9995      \*\*\*

**TOTAL: \$1,500.00**

**VISA**

eCheck   **DISCOVER**   **PAY ATTORNEY**

Get started at  
[lawpay.com/dsba](http://lawpay.com/dsba)  
**877-861-7363**

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA, Synovus Bank, Columbus, GA., and Fifth Third Bank, N.A., Cincinnati, OH.

**POSITIONS AVAILABLE**

**SMITH, KATZENSTEIN & JENKINS LLP** seeks an associate with 1-4 years' experience to work in our complex commercial and corporate litigation practice. Delaware bar admission (or pending) required. We are looking to add a team member with strong writing and advocacy skills. We offer a competitive salary and benefits and a collegial work environment. Interested applicants should send résumé, along with a writing sample, to [info@skjlaw.com](mailto:info@skjlaw.com).

**DELAWARE DIVISION OF PROFESSIONAL REGULATION:** Delaware Division of Professional Regulation anticipates opening as hearing officer. Position involves convening administrative hearings which may lead to professional discipline of licensees of all Delaware professional licensing boards under Titles 23, 24 and 28. Will work closely with Chief Hearing Officer. Some involvement in scheduling proceedings and deciding pre-hearing applications. After conclusion of proceedings, hearing officers prepare written recommendations for boards which may then lead to professional license discipline. Candidates should have at least 3-5 years civil litigation experience, with experience in hearings involving administrative law, hearing officer practice, or arbitrations a plus. Candidates should also demonstrate strong writing skills. Delaware Bar membership required. Most hearings are conducted in Dover. Send letter of interest, resume, references and writing sample by March 14, 2022 to: [roger.akin@delaware.gov](mailto:roger.akin@delaware.gov) or by mail to Roger A. Akin, Chief Hearing Officer, Division of Professional Regulation, 861 Silver Lake Blvd., Dover DE 19904. The State of Delaware is an Equal Opportunity and Affirmative Action employer.

**FAMILY COURT LITIGATION PRACTICE** seeks Delaware Attorney: To represent clients in Court, to assist with motion practice, discovery, research and case management. The ideal candidate possesses a demonstrated interest in Family Court work, litigation experience, good people skills and empathy for clients. We pride ourselves in work ethic, fairness, communication and respect. Training and guidance provided. Part-time or flexible schedule possible. A great opportunity for the right candidate. Please send resume and cover letter including relevant experience to [george@tsakataraslaw.com](mailto:george@tsakataraslaw.com).

**THE LAW OFFICES OF DOROSHOW, PASQUALE, KRAWITZ & BHAYA** have an opening for an Attorney in its Personal Injury and Worker's Compensation practices in the firm's downstate offices. An excellent opportunity to practice and work near the beach. Resumes can be emailed to Shaku Bhaya at: [ShakuBhaya@dplaw.com](mailto:ShakuBhaya@dplaw.com) or she can be called at the office at (302) 998-0100.

**DORSEY & WHITNEY LLP** is seeking a Corporate Finance Associate with three to five years of experience to join the Minneapolis, Dallas, Denver, New York, Salt Lake City, Seattle, or Wilmington, DE office. This associate will have the opportunity to work on a wide variety of corporate finance transactions, including senior debt, asset based lending, cash flow, sponsor finance, unitranche and mezzanine transactions. Qualified candidates will have: A JD degree from an ABA-accredited law school; Three to five years of corporate debt financing experience at a large law firm; The relevant state bar admission; Strong communication and writing skills; and Top academic credentials. Dorsey & Whitney LLP is an EEO/AAP/Disabled Vets Employer. For more information and to apply online, please visit [www.dorsey.com/attorneyjobs](http://www.dorsey.com/attorneyjobs).

**SMALL NEWARK LAW OFFICE** is looking for a Delaware licensed attorney to help grow the practice. Must have interest and/or experience in estate planning and/or residential real estate. Part-time position with the possibility to transition to full-time in the future. Great opportunity for the right candidate to have control over their own client base. Portable business a plus. Send resume to [vcarr@carrlawde.com](mailto:vcarr@carrlawde.com).

**MORRIS JAMES LLP** seeks an experienced litigation associate to join its Corporate and Commercial Litigation Group, based in Wilmington, Delaware. An ideal candidate would have two to six years of experience, with exposure to complex contract disputes, shareholder litigation, breach of fiduciary duty claims, and other corporate litigation issues, including summary proceedings under Delaware's business statutes (e.g., control disputes, advancement and indemnification proceedings, and books and records demands). Experience counseling fiduciaries on governance, transactional, and investigatory matters under Delaware law would be a plus. Our Corporate and Commercial Litigation Group regularly represents clients in high-value, high-stakes litigation in the Delaware state and federal courts. Our group offers the advantage of dedicated and experienced eDiscovery attorneys that effectively and efficiently manage all aspects of eDiscovery in collaboration with our partners and associates. Join our thriving, friendly, and collegial working environment with opportunities for significant substantive responsibility early in your career. The position offers attractive benefits, bonus opportunities, and competitive salary commensurate with experience. Please email cover letter, resume, and writing sample to Albert J. Carroll at [acarroll@morrisjames.com](mailto:acarroll@morrisjames.com).

**BAIRD MANDALAS BROCKST-EDT LLC** is recruiting an Associate with 3-5 years of Real Estate experience for its Wilmington, Delaware office. The associate will primarily work on Residential and Commercial settlements and transactions. Delaware bar license required. This is a wonderful opportunity to join a growing statewide practice at a reputable law firm offering great benefits. Please send resume to [heather@bmbde.com](mailto:heather@bmbde.com).

**ASSOCIATE ATTORNEY:** Ready to be a real lawyer? Find autonomy, handle your own files, try cases, negotiate claims, conduct discovery... Join our highly regarded, but small firm atmosphere and enjoy the competitive salary, retirement benefits, flexible hours, challenges, and rewards of a legal career at Young & McNelis. We are seeking motivated, smart, ambitious attorneys ready to make their marks. Send a cover letter and resume to [BTMcNelis@youngandmcnelis.com](mailto:BTMcNelis@youngandmcnelis.com).

**MORRIS JAMES LLP** seeks an experienced Personal Injury associate to join its Personal Injury Group, with offices in Wilmington, Newark, Dover, Rehoboth, and Georgetown, Delaware. The ideal candidate is Delaware barred and has two to six years of experience handling plaintiff personal injury and workers' compensation claims. While not required, other qualifications such as fluency in Spanish or having a Maryland law license would be a plus. Morris James LLP is consistently rated among the best places to work in Wilmington, providing a collegial atmosphere and excellent staff support. This position offers attractive benefits, bonus opportunities, and a competitive salary commensurate with experience. Qualified applicants must submit a cover letter, resume, and document drafting and writing samples to Albert J. Carroll at [acarroll@morrisjames.com](mailto:acarroll@morrisjames.com).

**GENERAL COUNSEL AND CCO:** Wilmington-based investment adviser firm seeks general counsel and chief compliance officer. Must have experience with the Investment Advisers Act and related securities and corporate law experience. Relevant industry experience preferred but not required. Will address legal, regulatory, and business issues relating to all aspects of the enterprise. Required: computer literacy, ability to work both independently and in a team structure, strong attention to detail, ability to anticipate issues and address them proactively. Must be a problem solver. Please submit cover letter and resume in confidence to Karen Buckley at [karenbuckley@mpainc.com](mailto:karenbuckley@mpainc.com).

**LITIGATION ATTORNEY – WILMINGTON:** Wilmington, Delaware office of White and Williams LLP, a large multi-practice law firm, is seeking an attorney with 1-3 years of litigation experience to join our rapidly growing healthcare practice, primarily defending medical malpractice matters. Delaware bar admission is required. We offer a competitive salary, excellent benefits and the opportunity for professional growth. Please send your resume to Marietta Miles at [milesm@whiteandwilliams.com](mailto:milesm@whiteandwilliams.com) for consideration.

**ELZUFON AUSTIN & MONDELL, P.A.** seeks a full-time attorney for its active and growing defense liability department including medical, legal and accounting professional liability cases. Candidate must be a member of the Delaware Bar. Membership in PA Bar also strongly preferred, but not required. Litigation experience preferred but not required. Please submit cover letter and resume in confidence to: John Elzufon, Esq., P.O. Box 1630, Wilmington, DE 19899 or [jelzufon@elzufon.com](mailto:jelzufon@elzufon.com).

**CLASI IS HIRING ATTORNEYS.** Please check our website for details about the positions. <http://www.declasi.org/employment/>.

**HIRING BONUS - \$5,000.00.** For Delaware Barred attorneys in our Newark, DE office, we are offering a \$5,000.00 hiring bonus. \$2,500.00 paid after 90 days of employment, \$2,500.00 paid after 180 days of employment. We have two attorney positions open in our Newark, DE office: Workers' Comp Defense and Liability Litigation Defense. Litigation Description: Hands-on, autonomous, position with heavy defense litigation in transportation, products, and premises liability. Delaware Bar required. WC Description: Hands-on, autonomous, position with heavy Workers' Comp cases. Delaware Bar required. Requirements: 3 – 5 years insurance defense experience, experience with billing hours, the ability to communicate effectively and frequently with clients, opposing counsel, and all levels of management. Delaware Bar required. Benefits: F&P provides competitive salaries and a comprehensive benefits package, including health, life/ADD, STD, LTD, 401K with profit sharing, flex spending, immediate leave accrual, paid holidays, and other company perks. Additional Information: F&P employs a diverse workforce of 150+ employees across seven office locations. Our hiring needs stem from the growth of our business and the subsequent addition of more attorneys! The firm offers generous compensation and benefits, including domestic partner eligibility, and prides itself on maintaining a casual professional environment with an emphasis on work-life balance. Please send resume and salary requirement to [employment@fandpnet.com](mailto:employment@fandpnet.com).

CONTINUED >

**MORRIS JAMES LLP** seeks an experienced attorney to join its Tax, Estates & Business Practice Group based in Wilmington, Delaware. An ideal candidate would have a minimum of 3 to 5 years' law firm experience, with a focus in one or more of the following practice areas of the Group's multidisciplinary representation: Taxation, Business Planning & Transactions, and Trust & Estate Planning/Administration. Candidates admitted to practice in Delaware are preferred, but other qualified candidates willing to sit for the Delaware bar will be considered. An LL.M. in Taxation is a plus. This position offers unlimited potential to the successful candidate and, commensurate with experience, the opportunity to undertake substantive responsibility in working directly with clients from the outset. Superior communication, drafting, and research skills are required in an environment that promotes working both independently and as a team member. With a broad-based business, tax, and trust & estates practice at its core, the focus of our Tax, Estates & Business Practice Group is to deliver a coordinated and comprehensive approach to the representation of regionally based closely-held businesses and individuals. Among the planning and transactional aspects of the practice are strategic business & succession planning, tax planning & controversies, stock & asset acquisitions including private equity transactions, wealth transfer & estate planning including dynasty and other "Delaware Advantage" trusts, estate & trust administration, and structuring of corporations & alternative entities. Our Tax, Estates & Business Practice Group provides a collegial atmosphere and excellent staff support. The position offers attractive benefits, bonus opportunities, and a competitive salary commensurate with experience. Please email a cover letter, resume, and document drafting and writing samples to Albert J. Carroll at acarroll@morrisjames.com.

**PETTINARO DEVELOPMENT** is seeking an attorney to join our growing company: Associate General Counsel. The Associate General Counsel will provide legal support to the general Counsel and direct legal services to various other staff within Pettinaro Management and its related group of Pettinaro owned entities in all facets of their real estate acquisition, development, financing, leasing, managing and operating businesses. Candidate should possess J.D. from an accredited U.S. Law School with strong academic credentials. Must have admission to the Bar of a U.S. State or the District of Columbia (with ability to become admitted in Delaware per Delaware Court Rule 55.1). Prefer five or more years of legal experience as a practicing lawyer working in the areas of commercial real estate leasing and transactions with additional experience in commercial, corporate, transactional bankruptcy, finance and/or transactional law. Candidate must be detail oriented with effective time management and communication skills and possess the exemplary professional judgement to effectively communicate with internal and external stakeholders. Salary is commensurate with experience. We offer a competitive array of benefits such as medical, dental, vision, 401K, vacation and PTO. Pettinaro is an equal opportunity employer with a strong commitment to diversity in the workplace and to veterans. Interested candidates should forward cover letter and resume to Mike Walsh at mw Walsh@pettinaro.com.

**DELAWARE DEPARTMENT OF JUSTICE** currently has employment opportunities available for Deputy Attorney General positions in multiple divisions. For all opportunities and full job descriptions, please visit: <https://attorneygeneral.delaware.gov/executive/hr/career-opportunities/>.

**FUQUA, WILLARD AND SCHAB, PA** seeks an associate with partnership potential to work in our Lewes or Georgetown offices. Areas of experience include Real Estate, Land Use, Wills, Estates, and some Litigation but all inquiries are welcome. Email resume or cover letter to Lisa@fwslawde.com.

**OFFICE SPACE**

**INSIDE OFFICE 10 X 12 SPACE AVAILABLE** in Newark/Christiana/Bear area in a small firm office. Comes with own entrance and signage space, phone, wifi, use of small and large conference rooms. \$450/mo. Call (302) 894-4357, Ext 2.

**LAWYERS' ROW SUITE: 16'X9'** Furnished Office with 11'X7' Window Plus 8'X7' Workstation Plus Shared Access to Conference Room (14'X12'), Kitchen, and Reception Area; \$900; (302) 888.1275.

**LOCATION! LOCATION! LOCATION! Central Location DE, MD, PA, and NJ office space near I-95, RT 141 in Newport DE. Two furnished office space with large parking lot, Wi-Fi, shared reception area, kitchen, conference room. Call Laurie (302) 998-1331 ext. 801.**

**2,000 SQ. FT GENERAL OR MEDICAL OFFICE FOR LEASE:** First floor in stand-alone building that consists of front reception/waiting area, private offices, 18 x 37 space that has a multitude of possible uses and may be configured for workstations or offices, large conference room, copy room and kitchen/lunch room. Conveniently located in Wilmington, but in a suburban setting, with close access to I-95 and Route 202. Large parking lot to accommodate employees and visitors. Handicapped accessible. Gate, fencing, and cameras for security. If interested, please call (302) 540-2831. 

# TRANSACTIONAL POSITIONS AVAILABLE

## BANKING AND BUSINESS DEPARTMENT ASSOCIATE

Richards, Layton & Finger seeks applications for an associate position in our Business Department's Banking practice group. Candidates must have a strong interest in banking and at least two years of experience in high-level practice. Background and experience in banking, either before or after law school, is a significant plus.

The successful candidate will have the opportunity to work in the Firm's Business Department, combining their time in Banking with a placement in another departmental practice group such as Corporate Trust and Agency Services or Trusts and Estates. The co-placement will be determined based on candidate experience and interest. Within the Banking practice, the candidate will represent financial institutions before the Office of the Delaware State Bank Commissioner and provide state and federal regulatory advice.

Please see below for additional information.

## ALTERNATIVE ENTITIES ASSOCIATE

Richards, Layton & Finger seeks applications for an associate position in our Business Department's Alternative Entities practice group. The ideal candidate will have at least two years of experience in a high-level practice and a strong interest in transactional work.

The successful candidate will have the opportunity to work in a leading limited liability company and partnership practice. The Firm has the largest and most active LLC and partnership practice in Delaware. Members of the Firm are pioneers in the development and drafting of Delaware's influential Delaware Limited Liability Company Act and partnership statutes. The Firm works on transactions involving public and private Delaware LLCs and partnerships, and regularly provides advice to businesses and law firms throughout the world, including advice concerning formation, governance, and M&A transactions.

Please see below for additional information.

Candidates should possess a strong academic record, excellent oral and written communication skills, attention to detail, and the initiative to learn and grow in this sophisticated practice. Candidates should be self-motivated and able to work in a deadline driven environment.

The firm offers a competitive pay structure, bonuses, fully-paid health benefits for employees and their dependents, an on-site state-of-the-art gym, and a hybrid remote work policy. All employees must be fully vaccinated against Covid-19. If a candidate is licensed outside of Delaware, they must agree to sit for the Delaware Bar Examination in July, 2022. All new attorney hires must be legally entitled to work in the U.S. and not now or in the future require sponsorship for employment visa status. The Firm does not accept unsolicited resumes from legal recruiters.

To apply, please visit [rlf.com/careers/law-students-associates](http://rlf.com/careers/law-students-associates). Please contact Samantha Stern, Hiring Manager, at [stern@rlf.com](mailto:stern@rlf.com) with questions.

**SAVE  
THE  
DATE**



**2022 DSBA  
SMALL FIRMS AND  
SOLO PRACTITIONERS  
CONFERENCE**

**FRIDAY, MAY 6, 2022**

**DSBA CONFERENCE CENTER  
WILMINGTON, DE 19801**



# 10 THINGS

## To Do in February to Commemorate Black History Month

BY ELIZABETH S. FENTON, ESQUIRE

In no particular order, here are ten ways you can celebrate Black History Month. Items four through seven on the list are a few of several events sponsored by the Delaware Division of Historical and Cultural Affairs.<sup>1</sup> In addition to these ten ideas, check out others related to the 2022 Theme of Black Health and Wellness at the website for the Association for the Study of African American Life and History.<sup>2</sup>

**1** Learn about the history of Black History Month, which originated in 1926 as Negro History Week, and about its creator, the historian Carter G. Woodson.<sup>3</sup>

**2** Visit Gateway Park in Seaford, where Harriet Tubman and Tilly stayed during Tilly's escape from slavery in Maryland.<sup>4</sup>

**3** Watch Netflix documentary series *High on the Hog: How African American Cuisine Transformed America*, hosted by food writer Stephen Satterfield. I promise it will make your mouth water.

**4** Attend "Desegregating Delaware: Louis Redding and Education in the First State" on Saturday, February 5, at 11 a.m. via Zoom. Lead interpreter Gavin Malone of the Old State House discusses the national impact of two cases that attorney Louis Redding litigated in the 1950s which started the process of desegregating Delaware's education system. Call (302) 744-5054 to register (registration is required).

**5** Attend "Free and Fettered: Black Sailors and the War of 1812" on Thursday, February 17, 2022, beginning at 4:00 p.m. via Facebook (pre-recorded). Historical interpreter Tom Pulmano of the Zwaanendael Museum describes the lives of Delaware's Black sailors who served as free, enslaved or impressed men during the War of 1812. Contact (302) 645-1148 or [zmuseum@delaware.gov](mailto:zmuseum@delaware.gov) to register.

**6** Attend "Highlights of African American History in Delaware" on Friday, February 25, 2022, via Facebook (pre-recorded). Historical interpreters Joan Foster and Juliette Wurm of the New Castle Court House Museum tell the stories of the Hawkins Family, the Colored Conventions, the Buttonwood and Booker T. Washington schools using information from the Museum's exhibits. Contact (302) 323-4453 or [NCCHmuseum@delaware.gov](mailto:NCCHmuseum@delaware.gov).

**7** Visit the African burial ground at the John Dickinson Plantation on Saturday, February 26, 2022, 2 p.m. (in-person, free, registration required). A guided visitation leads participants to the African burial ground which is believed to be the final resting place for enslaved and free Black men, women and children who died on the plantation. The historical context and archaeological research of the site will be addressed. John Dickinson Plantation, 340 Kitts Hummock Road, Dover. Register by calling (302) 739-3277.

**8** Take a road trip to the Legacy Museum and the National Memorial for Peace and Justice in Montgomery, Alabama. Milton native Bryan Stevenson, the founder and Executive Director of the Equal Justice Initiative, led the creation of these sites.<sup>5</sup>

**9** Learn about the impact and importance of the over 100 Historically Black Colleges and Universities (HBCUs), including our own Delaware State University.<sup>6</sup>

**10** Collect a coin: Maya Angelou is the first Black woman to appear on a quarter.<sup>7</sup> 

### References:

- <https://news.delaware.gov/2022/01/18/hca-black-history-month-2022/>.
- <https://asalh.org/black-history-themes>.
- <https://www.history.com/.amp/topics/black-history/black-history-facts>.
- <https://archives.delaware.gov/historical-markers-map/gateway-to-freedom-the-tilly-escape/>.
- <https://museumandmemorial.eji.org/visit>.
- <https://sites.ed.gov/whhbcu/one-hundred-and-five-historically-black-colleges-and-universities/>.
- <https://www.usmint.gov/coins/coin-medal-programs/american-women-quarters/maya-angelou>.



**Beth Fenton** is the Vice Chair of the Diversity, Equity & Inclusion Committee of the DSBA and a Partner in the Wilmington office of Saul Ewing Arnstein & Lehr LLP. Her practice focuses on business torts litigation. She can be reached at [elizabeth.fenton@saul.com](mailto:elizabeth.fenton@saul.com).

# 2022 DELAWARE LEGAL DIRECTORY

The Delaware Legal Directory is the only comprehensive up-to-date listing of all Delaware attorneys and judges. The Delaware Legal Directory also contains contact information for the Delaware Court System, Firm Administrators, and related offices frequently contacted by legal professionals.

THREE WAYS  
TO FIND THE  
INFORMATION  
YOU NEED

CONVENIENTLY  
AVAILABLE IN THREE  
FORMATS: ONLINE,  
MOBILE APP, AND  
ON-DEMAND PRINT



The **Online Legal Directory**, available on the DSBA website, allows DSBA members to quickly access up-to-date information for all Delaware judges and attorneys through an easy-to-use online portal with robust search options.



Easily connect with your colleagues right from your mobile device. Always up-to-date, the **Legal Directory App** for DSBA members is a simple solution to search for Delaware judges and attorneys, and then email, call, or text right from the app.



Still want a **Printed Legal Directory**? DSBA Members, staff, and non-members may easily order a Printed Directory online through the DSBA website (for a fee) with multiple delivery options. Visit [www.dsba.org](http://www.dsba.org) to place your order!



## The Delaware State Bar Association Insurance Program

*Advised and Administered by USI Affinity*



The Delaware State Bar Association Insurance Program, advised and administered by USI Affinity, offers a proprietary, comprehensive Lawyers' Professional Liability program. Along with other business insurances to attorneys and law firms in Delaware.

As a leading insurance broker for Lawyers' Professional Liability, USI Affinity has been protecting Lawyers for over 50 years. We understand the business and the risks that attorneys and law firms face every day.



### Lawyers Professional Liability

The DSBA Insurance Program Lawyers Professional Policy offers proprietary savings and coverages specifically designed to mitigate risk and close gaps in coverage.



### Directors and Officers Liability

Directors & Officers Liability insurance protects the past, present, and future directors and officers of a law firm from losses arising from "wrongful acts".



### Employment Practices Liability

EPLI coverage can be specifically designed to help protect the personal assets of a privately owned firm's directors and officers, as well as the financial well being of the firm itself.

Contact USI Affinity Today:

**1.855.USI.0100**

[LPLCoverage@usi.com](mailto:LPLCoverage@usi.com)



AFFINITY