



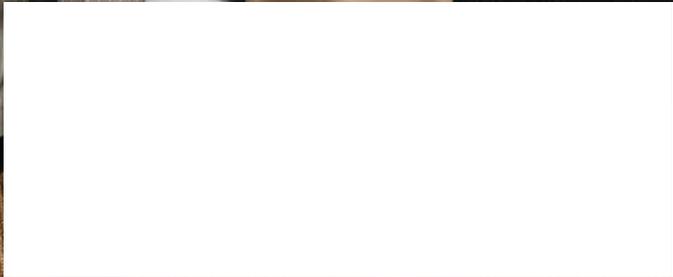
THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

**DR. MARTIN LUTHER KING, JR.
BREAKFAST AND STATEWIDE DAY
OF SERVICE COMMITTEE MEMBERS**

- Gregory B. Williams, Esquire**
- Laina M. Herbert, Esquire**
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- Wali W. Rushdan II, Esquire**

For more information about the event, see page 39.



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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 or by mail at: Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE 19801 by February 11, 2022.

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The Nominating Committee consists of:

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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)
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Constance A. Dorsney (2024)
LaKresha Roberts Moultrie (2024)
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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.

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THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

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Dr. Martin Luther King, Jr. Day of Service

In 1986, after legislation was passed in 1983, the first federal holiday celebrating Dr. Martin Luther King, Jr.'s birthday was observed. Then, in 1994 Congress passed the King Holiday and Service Act of 1994¹ to honor the life and legacy of Dr. King. Since then, the third Monday of January is celebrated as a Day of Service: "A Day On, Not a Day Off."

There are many ways to get involved in a Day of Service. The DSBA has been providing such opportunities for a number of years. This year, members of the DSBA, their family, and staff can volunteer time on January 17 at:

- Emmanuel Dining Room East (11:30 a.m. to 1:00 p.m.)
- Emmanuel Dining Room West (11:30 a.m. to 1:00 p.m.)
- Food Bank of Delaware (Milford: 1:00 a.m. to 4:00 p.m.)
- Food Bank of Delaware (Newark: 1:00 p.m. to 4:00 p.m.)
- Friendship House (Wilmington: 1:00 p.m. to 3:30 p.m.)
- Wills for Seniors (Wilmington: 9:00 a.m. to 1:30 p.m.)
- Expungement Clinic (Wilmington: 10:00 a.m. to 1:30 p.m.)

Visit www.dsba.org/mlk to registration for an event.



There are also ways to provide service on a national or international level

Today, the King holiday serves multiple purposes: It honors the total legacy of King; focuses on the issue of civil rights; highlights the use of nonviolence to promote change; and calls people into public service.²

(and some without having to leave your home). Here are a few ideas:

Letters Against Isolation

Started during COVID-19 by college and high school students Shreya and Safron Patel as an effort to support their self-isolating grandparents, this program has spread to serve seniors in the U.S., Canada, the UK, Australia, and Israel. Volunteers send handwritten letters to seniors. Visit www.lettersagainstisolation.com for more information.

Operation Gratitude

This organization honors military, veterans, and first responders through hands-on volunteerism. Volunteers can send care packages, make a paracord bracelet, or write a letter. Visit www.operationgratitude.com/express-your-thanks-virtual/ for more information.

CareerVillage.org

This organization serves under-represented youth with a wide range of backgrounds and provides them access to career advice through volunteers. "We

do that by crowdsourcing the answers to every question from every student about every career. Together, we're building a massive open-access reference source that every online learner can access anytime, anywhere." Professionals who volunteer will be notified when there is a question within their field and then can post an answer. The student asking the question will be notified of the answer, and many other students will have access to the question and response, providing an even greater impact. Visit www.careervillage.org for more information.

By the People

A project for the Library of Congress, volunteers transcribe historical documents to improve search, readability and access to handwritten and typed documents. Visit crowd.loc.gov for more information.



There are many more opportunities both locally and nationally.³ Giving back and supporting our communities is so important. I hope you will join me in a "Day On." If you participate in a

volunteer event or program, I am sure that like me, you will find that you get more much from the experience than you give. 🕒

Notes:

1. Congressional Record, volume 140 issue 65 (Monday, May 23, 1994). Accessed December 13, 2021. <https://www.govinfo.gov/content/pkg/CREC-1994-05-23/html/CREC-1994-05-23-pt1-PgS24.htm>.
2. "How the Martin Luther King Jr. Birthday Became a Holiday." National Constitution Center – constitutioncenter.org. Accessed December 13, 2021. <https://constitutioncenter.org/blog/how-martin-luther-king-jr-s-birthday-became-a-holiday-3>.
3. "MLK Day." AmeriCorps. Accessed December 13, 2021. <https://americorps.gov/newsroom/events/mlk-day>.

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.



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Lessons in Leadership

Earlier this summer, I had the opportunity to participate in Richards, Layton & Finger, P.A.'s Women's Initiative event, Lessons in Leadership by Esteemed Women on the Delaware Bench with guest panelists The Honorable Tamika R. Montgomery-Reeves, Justice, Supreme Court of the State of Delaware; The Honorable Kathaleen S. McCormick, Chancellor, Court of Chancery of the State of Delaware; The Honorable Jan R. Jurden, President Judge, Superior Court of the State of Delaware; The Honorable Natalie J. Haskins, Judge, Family Court of the State of Delaware; and moderator Anne C. Foster, Esquire, Director and General Counsel, Richards, Layton & Finger, P.A.

I found the information shared by the panelists to be applicable to my practice and life outside of the office. For me, the takeaway from the event was that we can all be better colleagues, co-workers, teammates, friends, spouses, parents, and children by trying harder to do the things that each of the panelists discussed. I am grateful two of the panelists have agreed to share some of their remarks again here.



How would you describe your leadership style?

Justice Montgomery-Reeves: I am not entirely sure how to describe my leadership style. It changes based on the situation. But I have a few thoughts that affect how I lead. First, I believe that everyone has something to learn, and everyone has something to teach. I am constantly asking the people around me, no matter their title or rank, what they think about situations. I listen and take those answers to heart. Second, I believe in treating others the way that you want to be treated. My personal goal is to treat those around me with dignity and respect, which is what I want. Third, I am a loyal team player, and I look for people who exhibit the same. Fourth, I don't think there is any work that is above or beneath me. If something needs to be done, I will do it. I also look for people like that. Finally, I try to pay close attention to people around me, and I try to figure

out their strengths and weaknesses. Then, I try to give them assignments that play to their strengths and help them to grow.

Judge Jurden: It's difficult for me to characterize my leadership style, but overall I try to lead by consensus. I have learned over the last six years it's often difficult and time consuming to do so. I have also learned there are instances where that leadership style can't work. Sometimes, you just have to make the decision and you can't wait for others to come around. It's not ideal, because it's important to have buy in and you

don't want to lead by dictating, but sometimes it's necessary. I think it is critical for a leader to listen carefully, give everyone an opportunity to voice their views, learn from others, treat everyone with respect and dignity, give people responsibility and make sure

they have what they need to do their jobs well, and work as a team, always.

You often have a combination of more experienced and less experienced lawyers appearing before you in teams. Would you share some thoughts on working in teams?

Justice Montgomery-Reeves: I think it is important to trust your team and to make them feel valued. I also think a leader should be invested in the growth and development of her team members, and she should give the team members opportunities to grow. For example, let the associate argue that discovery motion, especially if that person handled the entire document collection, review, and production, wrote the brief, and has to prepare the argument for the partner to present.

Can you describe an experience you had earlier in life that had a significant impact on your current leadership style?

Justice Montgomery-Reeves: My clerkship year probably had the greatest impact on my leadership style as a judicial officer. I clerked for Chancellor Chandler. He was titan in corporate law. He was very smart, and he worked hard. He got to work early; he stayed at work late. He was constantly studying all things corporate law. But you would have never known that based on how he acted with his assistant, law clerks, or anyone else that he met. He never behaved as if he was “the Chancellor” and had all the prestige that comes with that. He was, to everyone he met, Bill Chandler, a person who cared deeply about other people, about making sure everyone felt heard and treated fairly, and about reaching the right outcome.

He always cared about what we thought. He treated us as if we were all part of a big team and we all had a very important role to play. And it didn't matter who was around; he was always like that. He is an all-around great per-



Justice Tamika R. Montgomery-Reeves was sworn in as a Justice of the Supreme Court of Delaware on December 5, 2019. Justice Montgomery-Reeves served as a Vice Chancellor of the Delaware Court of Chancery from November 2015 to December 2019. Prior to her appointment, Justice Montgomery-Reeves was a partner in the Wilmington, Delaware office of Wilson Sonsini Goodrich & Rosati.



President Judge Jan R. Jurden has served on the Superior Court since May 2001 and elevated to President Judge of the Superior Court on January 13, 2015. Prior to joining the Bench, President Judge Jurden was a litigator with Young, Conaway, Stargatt & Taylor, LLP.

son to learn from and work with. And he remained in touch with me and other law clerks, after we left. He followed our legal careers and offered to help us in any way possible.

That experience taught me a lot. It reinforced lessons about the value of hard work and always working to get better at my craft. It taught me that everyone has something to teach and something to learn. And it taught me that most people work harder and better when they are inspired and feel like they are a part of something rather than when they are terrorized.

I try to emulate that and make sure the people around me have an experience similar to mine.

Judge Jurden: There are several experiences over the last 50 plus years and so many people who have had a significant impact on my current leadership style. I will tell you about two. They may seem small, but to me, they were and are huge.

The first happened was when I was about nine years old. My mother decided to become President of our Neighborhood Civic Association because no one else wanted to take on what was sure to be a thankless job. She approached that job as she did with everything else in her life — with

determination, enthusiasm, a strong desire to serve and help others, patience, grace, humility, a sense of humor, a willingness to listen, and a remarkable ability to build consensus — even over the most contentious issues. I was in awe of her. And although she has been gone 11 years now, I still think about the lessons she taught me — even when she wasn't aware she was teaching me. The second happened when I was in the Army, stationed overseas and working for a Colonel who was a highly respected and decorated soldier in command of approximately 4,000 soldiers. For a year I sat at a desk right outside his office and I soaked in a lot of valuable lessons on leadership. The Colonel modeled it for me. He cared deeply about his troops and exhibited that at every opportunity. He was authentic and direct. He worked harder than anyone else in the brigade. He encouraged and rewarded teamwork and welcomed ideas. He had the rank to make every decision without consulting his staff, but he always sought (and valued) their input. To me, he embodied every trait you would want in a leader.

Over the years since then I have been very fortunate to learn from so many other great leaders and mentors. And I am still learning.

CONTINUED >

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EDITOR'S PERSPECTIVE

CONTINUED >

What qualities do you see in successful attorneys and what qualities do you look for in law clerks?

Justice Montgomery-Reeves: I look for people who are honest, kind, curious, thoughtful, thorough, careful, reliable, and hard-working; I want a team player who has a positive attitude.

Judge Jurden: These are not in order of priority — it would be too difficult to determine that: honesty; authenticity; compassion; kindness; hard-working; earnest; caring; works well in a team setting; humility; thoughtfulness; reliable; possesses a good sense of humor; likes people; good communication skills; intellectually curious; loves the law; loves helping other people; likes to research and write; professional; respectful; and good listening skills.

What Delaware judges have been an influence on you, whether in terms of your decision to go on the bench, your judicial style, etc.?

Justice Montgomery-Reeves: I have been lucky to work with many other judges from whom I learn all sorts of nuggets that I take with me. The judges and nuggets are too many to name so I will limit my comments to my fellow panelists. Judge Haskins is one of the most relatable people I have met. She meets people where they are and makes them super comfortable with her all the time. That is a great quality to have on the bench that I try to emulate.

Chancellor McCormick has more grit than anyone I know. She does not run from anything. She really doesn't. She bares down when things get tough, and she just fights her way through it, whatever "it" is. She is not going to let anything defeat her. She is going to mas-

ter whatever she is faced with. I love that about her, and I channel that as well.

And President Judge Jurden is one of the most kind and empathetic people I have met. She is and has always been that way to me. But she is also like that in court. I read transcripts of her hearings, and you can see it on the page. She truly cares about people. She really tries to make sure people feel heard and get a fair shake. She cares about justice. She cares about the system.

I think those are wonderful qualities that all judges should have. So, I am lucky to be surrounded by lots of great judges, and I try to learn from them all.

Judge Jurden: Judge Joe Slights, Judge Susan Del Pesco, Judge Haile Alford, Justice Randy Holland, Judge Alex Smalls, Chief Magistrate Judge Mary Pat Thyng, Judge Len Stark — just to name a few. There are many more. I have been so fortunate to work with, and learn from, so many great judges. 

Bar Journal Content Editor **Laina M. Herbert** is an associate at Grant & Eisenhofer P.A. in Wilmington, Delaware. She may be reached at lherbert@gelaw.com and additional information about the author is available at www.gelaw.com.



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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

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.



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TOP 5

FIVE THINGS YOU MAY NOT KNOW ABOUT DR. MARTIN LUTHER KING, JR.

1 His name was Michael until he was five when his father went to Germany and was inspired by Martin Luther. His father, also Michael, changed his name to Martin Luther King, Sr. and his son to Martin Luther King, Jr.



2 Martin Luther King, Jr. went to college at the age of 15. He was so smart that he enrolled in Morehouse College at the age of 15 in 1944, skipping grades 9 and 12 along the way.



3 He didn't want to be a minister like his father, grandfather, and great-grandfather, but was convinced he had a gift from Morehouse president Benjamin Mays. And so he did.



4 The first time Martin Luther King, Jr. preached from the steps of the Lincoln Memorial was actually six years before his "I Have a Dream" speech. In 1957, he led a Prayer Pilgrimage for Freedom, speaking on voting rights.



5 Ten years before his assassination, he was stabbed by a woman named Izola Ware Curry who plunged a seven-inch blade into King's chest. Doctor's said that it came so close to killing him that a sneeze would have fatally punctured his aorta.



Source: www.history.com

OF NOTE

Condolences to the family of **Wilmer C. Bettinger, Esquire**, who died on September 29, 2021.

Condolences to **The Honorable John K. Welch** and **Edward P. Welch, Esquire**, on the death of their father, **Charles E. Welch, Esquire**, who died on November 27, 2021.

Condolences to **Deborah J. Massaro, Esquire**, on the death of her mother, Virginia Mary Massaro, who died on December 4, 2021.

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

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.

Quick-Look ETHICS

Q&A



A BI-MONTHLY CONTRIBUTION
BY LUKE W. METTE, ESQUIRE

When must a Delaware lawyer report another lawyer's conduct to the Office of Disciplinary Counsel? Does a Delaware lawyer have a self-reporting obligation? At what point does a Delaware lawyer abuse the disciplinary process?

MANDATORY REPORTING OF OTHER LAWYERS. Rule 8.3(a) of the Delaware Lawyers' Rules of Professional Conduct (DLRPC) provides, "[a] lawyer who **knows** that **another lawyer** has committed a violation of the Rules of Professional Conduct **that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness** as a lawyer in other respects, **shall inform** the appropriate professional authority." (Emphasis added.) The reporting obligation under the DLRPC is therefore limited — to knowledge of another lawyer's violation of only a subset of the Rules. In addition, DLRPC 8.3(c) does not require reporting of information protected by DLRPC 1.6 (information related to the representation of a client), and DLRPC 8.3(d) deems as privileged communications between a lawyer and members of certain lawyer assistance programs.

MANDATORY SELF-REPORTING. A Delaware lawyer's self-reporting obligation is found not in the DLRPC, but rather in the Delaware Lawyers' Rules of Disciplinary Procedure ("DLRDP"). DLRDP 16(k) provides, "[a]ny lawyer subject to the disciplinary jurisdiction of the Court who is **charged with or convicted of a felony**, whether within or outside of this State, **shall** within

10 days of such charge or conviction report the matter to the ODC." (Emphasis added.) Hopefully, that's rare circumstance.

ABUSIVE REPORTING OF OTHERS. On the other end of the spectrum are situations when the disciplinary process is abused. Comment [20], Scope, to the DLRPC reminds us that "**the purpose of the Rules can be subverted** when they are invoked by opposing parties as procedural weapons." (Emphasis added.) See also *In re Appeal of Infotechnology, Inc.*, 582 A.2d 215, 220 (Del. 1990); DLRPC 3.1 (requiring a good-faith basis in law and fact for asserting an issue in a proceeding).

EVERYTHING ELSE IN BETWEEN. In between the extremes of mandatory and abusive reporting is permissive reporting. The Preamble/Scope to the DLRPC again provide some guidance. Ours is largely an independent, self-regulated profession. See DLRPC, Preamble [10-12]. Deciding whether to make a permissive report to ODC itself requires professional judgment. 📧

Luke W. Mette is a partner at Armstrong Teasdale LLP. He has been a Delaware lawyer for 33 years and was Chief Disciplinary Counsel in Delaware from 2019-2021. He can be reached at LMette@atllp.com.

Professional Guidance Committee

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

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CALENDAR OF EVENTS

January 2022

Tuesday, January 4, 2022 • 1:00 p.m. – 2:30 p.m.

Daubert and Expert Testimony 2022

1.5 hours CLE credit

Live Seminar at DSBA with Zoom Option

Wednesday, January 5, 2022 • 10:00 a.m. – 11:00 a.m.

Reducing the Risk of Malpractice in Family Law Cases 2022

1.0 hour CLE credit in Enhanced Ethics

Live Seminar at DSBA with Zoom Option

Monday, January 17, 2022 • 8:00 a.m.

Dr. Martin Luther King, Jr. Breakfast and Statewide Day of Service

Chase Center on the Riverfront, Wilmington, DE

Tuesday, January 18, 2022 • 8:30 a.m. – 12:00 p.m.

Workers' Compensation Breakfast Seminar 2022

3.3 hours CLE credit including 1.0 hour in Enhanced Ethics credit

Live Seminar at Chase Center on the Riverfront, Wilmington, DE

Wednesday, January 19, 2022 • 10:00 a.m. – 12:00 p.m.

Talking to a Jury

2.0 hours CLE credit in Enhanced Ethics

Live Seminar at DSBA with Zoom Option

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.



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SECTION & COMMITTEE MEETINGS

January 2022

Wednesday, January 5, 2022 • 12:30 p.m.

Women & the Law Section Meeting

Zoom Meeting, see Section listserv message for link and password

Tuesday, January 11, 2022 • 12:00 p.m.

Litigation Section Meeting

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

Wednesday, January 19, 2022 • 9:00 a.m.

ADR Section Meeting

Zoom Meeting, see Section listserv message for link and password

Thursday, January 20, 2022 • 12:00 p.m.

Executive Committee Meeting

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

Tuesday, January 25, 2022 • 12:00 p.m.

Multicultural Judges and Lawyers Section Meeting

Zoom Meeting, see Section listserv message for link and password

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

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 or (302) 658-5279 to have your Section or Committee meetings listed in the Bar Journal.

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Cooperation to Collaboration

BY ALEINE M. COHEN, ESQUIRE, CIPP/US

Technology is interwoven into the fabric of our everyday lives. From banking and healthcare to remote work and entertainment, it is practically incomprehensible to imagine our lives without these advantages. Although technology can enhance our work and personal lives in so many ways and can appear seamless to the user, it is not always so simple to implement behind-the-scenes. For this article, I will share my experience counseling a technology client through one significant enterprise system migration. While there are some core similarities with this practice and the principles of technologists, I do not presume to be a technologist even for an article on “Tips on Technology.” What I enjoy about technology, privacy, and cyber security law is that these practices are fundamentally rational in their complexity. Each legal and technical element relies on another and must cooperate and collaborate to achieve success. Whether I am drafting an Anything-as-a-Service contract, considering the privacy impact of a project or contractual engagement, or negotiating security terms, there is a logical approach to this legal practice with the intended outcome to solve problems and help people.

I feel the most important tip is that you build a strong relationship of trust with a client so both parties can see the interrelated legal and business steps in the technology process. The client should view legal as part of the implementation. Legal is not a checkbox before (or after) implementation. Legal should partner with the business to provide informed counsel so it can support and enable that business.

Having developed this trust with my then-client,¹ the Delaware Department of Technology and Information (DTI), I was presented with the multi-year plan for a system migration to a new email and collaboration platform for my input. Can an entity decommission or upgrade a service? Of course. Is this just a technology decision? Absolutely not.

At the time we began dialogue to scope that multi-year plan for procurement, technology needs, and technology-related legal needs, we could not have foreseen the COVID-19 pandemic. Nor could we have appreciated how vital a collaboration platform would be for a rapidly dispersed, remote workforce. The plan, while multifaceted, had a methodical process to migrate to a cloud email and productivity platform and decommission an on-premises email and archival email system that had functionality limitations. As a result of this plan,

DTI migrated to the Microsoft Office 365 productivity platform, inclusive of Teams.² That process yielded solutions that helped people during the pandemic and beyond!

The Tech Project and its Invaluable Pandemic Support: Communication and Collaboration

DTI’s slogan is Delivering Technology that Innovates. Its Cloud First policy is part of that delivery. Delaware, as the First State, was the first state to move to the cloud.³ Tactically deciding to broker certain services with external partners allows the State of Delaware to respond to scale in consumption and cost while delivering service and security industry best standards.

DTI decided to migrate its enterprise email and email archival system to the cloud. The on-premises system was going out of support and the maintenance costs were increasing. The archival system had licensing and configuration constraints that made data retrieval for litigation holds and other electronic record requests time consuming. With the cloud options, the State would be able to have one system to handle email and productivity. The cloud service provider would handle the servers and infrastructure. This would allow DTI to deliver services, such as SharePoint sites, to the end users more quickly. All of these factors had a goal of simplifying IT support and improving the end user experience.

A productivity platform offers more than email and document creation tools. This offering allowed the State workforce to create chat channels, file share during a conference calls, use a white board, create breakout rooms, etc. No chat tool will replace the watercooler comradery of an office, but these technologies can help bridge that communication gap as workforces are evolving to a hybrid work model. These tools also offer an organized place to discuss a topic and share content. Using a whiteboard can allow teams to collaborate as if they were

in a situation room together. Creating a breakout room can be useful for attorneys and judges for a variety of tasks, including ADR or courtroom activity. With a remote workforce, breakout rooms in a conference call can also be helpful for brainstorming and team-building. These have been essential tools for my practice and could elevate any attorney's productivity with colleagues or clients in a dispersed work model.

Having a productivity suite in place during the pandemic enabled the State of Delaware to communicate and collaborate in an effective manner so it could deliver emergent, essential services.

E-Discovery

When advising on technology decisions, counsel must consider e-discovery.

Counsel needs to have a competent understanding of the technology so they can advise on retention issues and litigation holds. Changing an email and archival solution impacts the enterprise. The tip here to providing competent counsel on a technical decision is not complex: ask questions and do not make assumptions. Have humility in understanding the business and technical process so you can provide informed counsel.

After getting a foundational understanding of the situation, I engaged the Delaware Division of Public Archives and the Delaware Department of Justice (DDOJ) to explain the process and coordinate on retention and litigation holds respectively. The legacy solution stored a massive trove of data, so we had to account for retention schedules, litigation holds, and business continuity. Litigation holds are not static. This was a dynamic process, in which we engaged DDOJ litigation teams throughout. Cooperation remains critical in this ongoing project.

Privacy and Cyber Security

Counseling a technology client requires understanding privacy and cyber security laws.

The State of Delaware's email solution is an enterprise solution, not unlike that of a large corporation. With the addition of a cloud productivity suite that permits file sharing and storage, the solution must contemplate a variety of privacy laws, such as the Health Insurance Portability and Accountability Act (HIPAA). DTI, on behalf of the covered entities in the State of Delaware, and the selected cloud service provider entered into a Business Associate Agreement (BAA) pursuant to HIPAA. Because of the existence of this enterprise BAA, public health agencies could use this productivity tool to collaborate remotely and provide essential services during the pandemic.

DTI, on behalf of the State of Delaware, takes seriously its duty to use constituent and visitor data in a secure and an appropriate manner. Before this migration project, I had assisted DTI in drafting the current Data Usage and Cloud Services Terms and Conditions Policies and Agreements (the T&Cs). Those T&Cs deliver core tenets which ensure that a brokered service provider respects the individual's data in delivering a service to the State of Delaware. Each negotiation of the T&Cs takes its own course. My basic negotiation tip is to remember the reason behind these security and data usage terms. Keeping this reasoning in mind, counsel can find a bridge with each other to reach an agreement. Ultimately, the T&Cs boil down to protecting data and individual privacy while mitigating security risks with a brokered service. While working with the selected cloud service provider on this transaction, we recognized the best-in-class security being offered with their cloud solution. My tip for an effective transactional negotiation is to not fight a paper tiger. Instead, try to understand what the service provider affords to tailor the agreement as necessary to the specific transaction and risk profile. Again, cooperation in this phase of the project was critical to delivering a collaborative solution.

The Tech Tip Takeaway *Legal Has a Role in Solving Problems and Helping People*

The legal and technical tips along the way in this project happened to have an outsized benefit: the collaboration solution was in place in advance of an unanticipated global pandemic that made collaboration technology vital. 🌐

Notes:

1. After representing DTI for several years, I joined DTI leadership as Deputy Chief Information Officer.
2. There are several phases of this migration, but for this article we can recognize the concept that the migration is underway.
3. DTI Digital Innovation webpage, <https://dti.delaware.gov/digital-innovation/cloud-first/>.



Aleine M. Cohen serves as Deputy Chief Information Officer for the Delaware Department of Technology and Information (DTI). Prior to joining DTI leadership, she represented DTI as general counsel for six years in the Delaware Department of Justice (DDOJ) as a Deputy Attorney General. During her tenure in the DDOJ, she led the Departments and Agencies Unit in the Civil Division as Assistant Unit Head and then Unit Head. She has practiced federal, state, and local law in privacy, cyber security, technology, intellectual property, and finance, among other fields. Before counseling government agencies, Aleine had a litigation and transactional practice at a global law firm in the Intellectual Property and Technology group. She can be reached at aleine.cohen@delaware.gov.



Threatening to File a Disciplinary Complaint Against Another Lawyer

The short answer as to whether it is improper to threaten another lawyer with a disciplinary complaint is “probably.” The longer answer is this month’s column. “Ethically Speaking” has dealt with the propriety of threatening criminal charges to gain leverage in a civil matter at least twice. The October 1995 column “Dropping the Dime,” pointed out that former Disciplinary Rule 7-105(A) of the Model Code stated:

A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

The accompanying Ethical Consideration 7-21 went on to explain:

The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce the adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting this legal right and thus the usefulness of the civil process in settling private disputes is impaired. As if all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

The Model Code has long been replaced by the Model Rules. Model Rule 4.4, adopted by the Delaware Lawyers’ Rules of Professional Conduct, deliberately omitted the prohibition against threatening criminal prosecution. The drafter’s Comments note that the former ban is redundant to Rule 3.1 (prohibiting assertion of frivolous claims); Rule 4.1 (duty to be truthful in statements to others); Rule 4.4 (use of means that have no substantial purpose other than to embarrass, delay, or burden); and Rule 8.4 (committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness).

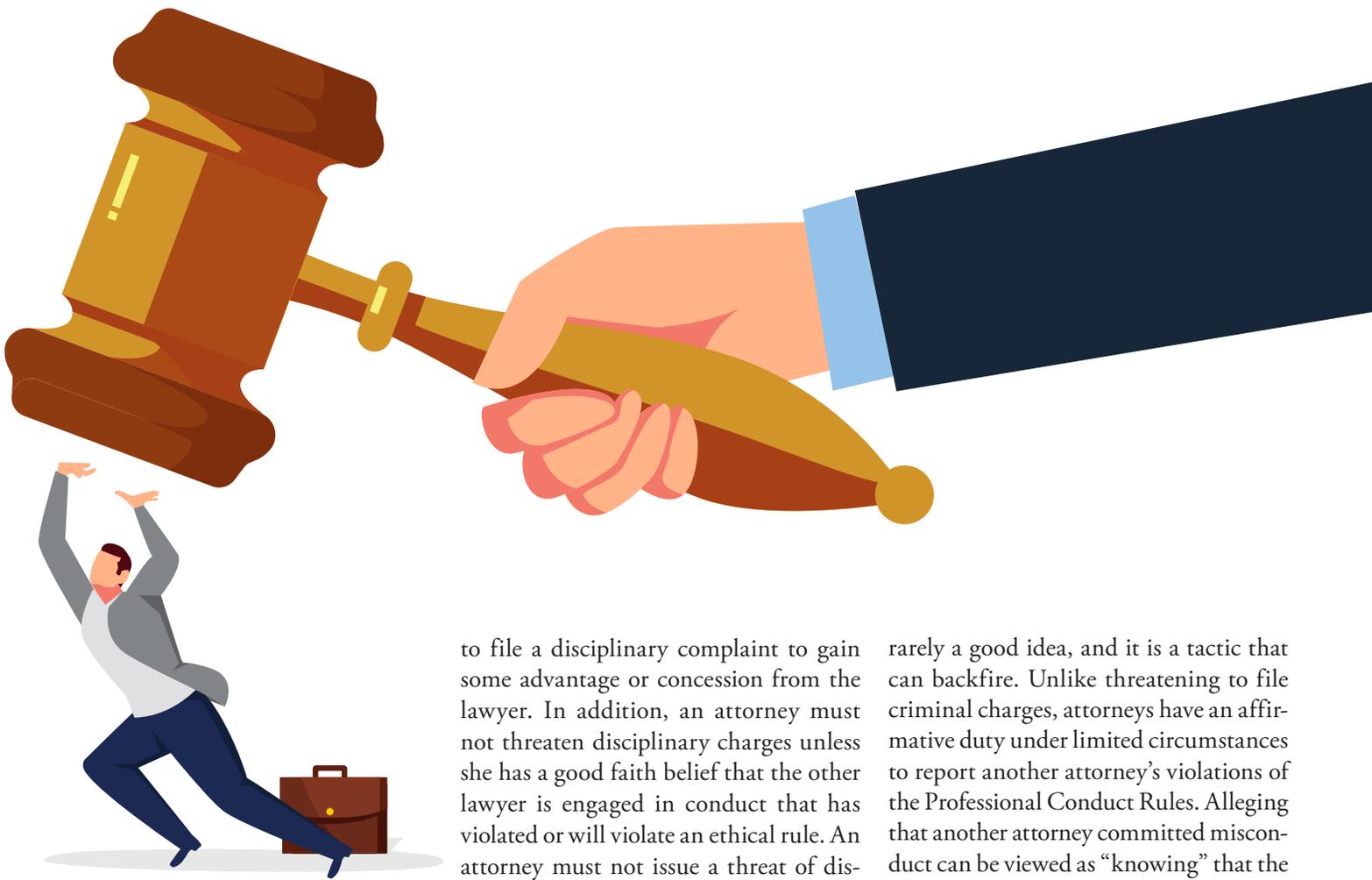
The ABA further clarified the change to the Rules when it issued ABA Formal Opinion 92-363 (July 6, 1992) stating that “...a threat to bring criminal charges for the purpose of advancing a civil claim would violate the Model Rules if the criminal wrongdoing were unrelated to the client’s civil claim, if the lawyer did not believe both the civil claim and the potential criminal charges to be well-

founded, or if the threat constituted an attempt to exert or suggest improper influence over the criminal process. *If none of these circumstances was present, however, the threat would be ethically permissible under the Model Rules.*” (Emphasis added.)

“Ethically Speaking” returned to this topic in June 1997 in a column entitled, “The Impertinence of Being Earnest.” Just three months after the October 1995 column, the Delaware State Bar Association Committee on Professional Ethics issued Advisory Opinion 1995-2 responding to the question as to whether an attorney could use the threat of presenting criminal charges against an opposing party in a civil matter in order to obtain an advantage for a client; and whether the attorney or client may agree as part of a civil settlement to refrain from reporting the opposing party’s potentially criminal conduct to prosecuting authorities.

The Committee concluded that an attorney may use the threat of presenting criminal charges against an opposing party in order to gain relief for a client in

This issue is trendy given the use of threats of disciplinary complaints before and during disqualification motions as well as attorney fee disputes. But it is rarely a good idea, and it is a tactic that can backfire.



a civil claim without violating the Delaware Professional Conduct Rules if the criminal matter is related to the client's civil claim. In reaching this opinion, the Committee distinguished the inquiry from a previous disciplinary case in which a Delaware attorney was sanctioned for threatening criminal charges.

Does the same analysis apply to the threat to file a disciplinary complaint against another lawyer? Delaware has neither a Rule nor case law that directly addresses this. Threatening to file a disciplinary complaint against another lawyer, however, may constitute a violation of the Professional Conduct Rules.

Some jurisdictions have rules barring the threat of disciplinary charges (for example, Illinois, California, District of Columbia, Texas, and Florida). Other jurisdictions have advisory opinions declaring such threats to be unethical. New York City Bar Association Formal Opinion 2015-5 cautions that an attorney under Rule 8.3(a) (duty to report another lawyer's misconduct) may not threaten

to file a disciplinary complaint to gain some advantage or concession from the lawyer. In addition, an attorney must not threaten disciplinary charges unless she has a good faith belief that the other lawyer is engaged in conduct that has violated or will violate an ethical rule. An attorney must not issue a threat of disciplinary charges that has no substantial purpose other than to embarrass or harm another person or that violates other substantive laws, such as criminal statutes that prohibit extortion, citing Rules 1.6; 3.1; 3.4(a)(6); 3.4(e); 4.4(a); 8.3(a); 8.4(a); 8.4(b); 8.4(c); or 8.4(d). In other words, under this New York opinion, attorneys cannot use a disciplinary charge or threat in order to gain leverage for a client. If the conduct is really an ethical violation, the attorney may have a duty to report which cannot be bargained away. (See, "Ethically Speaking," "Is There Really a Duty to Report Misconduct?" (*In re*., November 1996)

The Kentucky Bar Association Ethics Committee issued a November 1982 opinion which concluded that making a threat to report a violation of the disciplinary rules by another attorney is unprofessional and unethical and may subject a lawyer to disciplinary action.

This issue is trendy given the use of threats of disciplinary complaints before and during disqualification motions as well as attorney fee disputes. But it is

rarely a good idea, and it is a tactic that can backfire. Unlike threatening to file criminal charges, attorneys have an affirmative duty under limited circumstances to report another attorney's violations of the Professional Conduct Rules. Alleging that another attorney committed misconduct can be viewed as "knowing" that the attorney engaged in conduct which Rule 8.3 requires to be reported. Failure to report some conduct is itself a violation.

Instead of trying to bargain away the complaint or extorting for an advantage, the NYC Bar Association Opinion advises confronting opposing counsel with the suspected violation, providing an opportunity to the attorney to explain or deny it, and if appropriate and necessary, notifying the attorney that you intend to file a disciplinary complaint.

Happy New Year!

"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. 

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



Breaking Free from What Holds You Back

In January, the common “buzzword” is “change.” Whether it is voluntary or involuntary, small or large, gradual or sudden, self-improvement and change is often on our minds. Most of us are sincere in this goal to break free and achieve change; but all too often anxiety and procrastination can hold us back from realizing our goals.

Most everyone has considered some plan of action for self-improvement or change during their life’s journey. It can be about our behaviors and our

environment. Whatever the reason, when we are contemplating or confronted with change, first we need to remember that we are being given an opportunity to redefine ourselves and to choose an outcome that will allow us to grow and fulfill our need for perfection.

Second, as captain of our ship, it takes concentration, willpower, and a strategy to embark and stay on a new course. The reason changes are difficult to institute and maintain is that there are so many variables to manipulate. These vari-

ables include psychological, sociological, environmental, and biological elements, all of which can act as deterrents that often cause procrastination, anxiety, and failure. Albeit, we know too that there are a hundred of books offering tips on how to change. While these books can help educate and even inspire, they cannot instill willpower or a desire to change. Only we can. In order to break free and realize change, we need to cultivate, not create, the burning desire within to obtain this goal.

Accordingly, change is not something to fear, resist, or delay. Rather, by embracing and promoting positive change, we learn more about who we are and what we can do. We can grow and gain confidence through change.

Think about one area in your life that you need to cope with or one habit that you wish to stop. Do you know how to draft your personal blueprint for change?

In designing a blueprint for change, it is imperative that you know and understand the different stages or processes involved in change. In *Changing for Good: The Six States of Change* written by James Prchaska, John Norcross, and Carlo DiClemente, a clear definition of each stage is offered: pre-contemplation; contemplation; preparation; action; maintenance; and termination. Knowing that there are stages to change is important; but understanding the process is imperative.



Pre-contemplation

Your normal behavior is based on the picture or mental map you have of your own personal world. In this world, you may or may not be aware of the want or need for change. Additionally, in this stage, the individual often plays a game with his/her defenses. In other words, rather than welcome the process of change, an individual might deny the need for it by minimizing and justifying the behavior or situation. Think of it as a football game; your team, the Ravens, have the ball on offense and the defense, the Steelers, will do everything possible to stop you from scoring or even keeping the ball. Unfortunately, our personal defenses often do the same.

In order to design a blueprint for change and implement it successfully, we need to be aware and mount a strong offensive line against the defense. This is done in several ways that includes being aware of your defenses; looking for information related to problem behavior (procrastination, fear, anxiety); thinking about information from self-help books and articles on how to overcome these problems; and reading about people who have successfully changed and recalling information people have personally given you about the benefits of changing.

Contemplation

During this stage, our emotions and voices are often all over the place. More specifically, we search for absolute certainty that we should make the change. In fact, some individuals may wait for the magic moment or awakening while others may indulge in wishful thinking and even premature action. At some point, however, generally the individual begins to return to consciousness and asks the right questions to design his/her own unique blueprint and goals by researching. Simply, an individual does a self-reevaluation. During this stage, you may own up to your own fears or excitement about the change both to friends and to yourself.

Preparation

In this stage of change, you actually prepare to make a change. This stage

SIDEBAR

COPING WITH CHANGE

In order to implement change, it is imperative that you design your blueprint to prepare for change. Some strategies for coping with change are:

- Change what you can, accept what you can't.
- Respond, don't react.
- To predict the future, create it.
- Don't isolate.
- Ask questions.
- Remove failure as an option.
- Seek counseling to quash fear and anxiety as needed.
- Retreat can move you forward; it is about progress not perfection.
- Reframe your thinking.
- Take time to reflect, but plan ahead.
- Strive to maintain some normalcy.
- Create some comfort and reward along the way,
- Make gratitude part of your day and count your blessings.

includes making tough choices, dealing with the anxiety of those new tough choices, taking baby steps (action steps) toward change, setting a date of change, and developing a plan of action.

Action

The action stage is just what it suggests, it is when you take your blueprint for change and start acting on it. Realistically during this stage, you may encounter pitfalls. Perhaps you prepared too lightly. Perhaps you are unwilling to make the sacrifices to change. Perhaps you are looking for the myth of the “magic bullet” and the easy solution to the change. Whatever the “perhaps,” it can destroy the mission.

Remember that “burning desire” within mentioned above, we can overcome pitfalls and implement the change we desire — no matter what the issue by finding an active diversion. It is imperative that you are aware of your triggers and cues. Remember too, it is all about progress not perfection.

Maintenance

Maintenance is a way to strategize for success and every blueprint for change

should address it. In order to experience successful, long-term change, one should be aware of the danger times and danger signs. Furthermore, one should remain vigilant against internal challenges such as overconfidence, daily temptation, and self-blame.

Termination

Depending on the desired change, termination may not occur. Rather, there may be a lifetime of careful maintenance. In other cases, the change is conquered and terminated.

• • •

Finally, if you change your thoughts, you change your life. Just get started with small, baby steps and break free from what is holding you back. If you or someone you know would like more information on this topic call the Delaware Lawyers Assistance Program (DE-LAP) (302) 777-0124 or email cwaldhauser@de-lap.org and visit the DE-LAP web page at www.de-lap.org. 

Carol P. Waldhauser is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at cwaldhauser@de-lap.org.

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Invisible in Plain View

BY MARY M. MCDONOUGH, ESQUIRE

The “Creating Space in the LAW: Leadership, Advocacy & Women” column offers this article outside of our normal publication schedule to acknowledge January as National Slavery and Human Trafficking Prevention Month. In 2010, President Barack Obama chose January as the month to highlight this issue to honor the Emancipation Proclamation, issued by President Abraham Lincoln on January 1, 1863. Please visit www.state.gov/national-slavery-and-human-trafficking-prevention-month/ to learn more about human trafficking and how you can defend against this scourge. Many thanks to our guest columnist for bringing this issue to our attention.

The term “sex trafficking” typically triggers images of internationally smuggled women sold or rented for sex in the U.S. While that scenario, unfortunately, is accurate, it does not reflect all the victims of sex trafficking in this country. A substantial number are American females — adults — as well as children and teens.

January is human trafficking awareness month. There is not much public awareness of sex trafficking or prostitution in any month of the year beyond often stereotypical depictions in the media. The term “prostitution” can elicit images of the glamorized world shown in movies like *Pretty Woman*. As is often the case in the real world, the glamorized world in the movies looks nothing like the world inhabited by the women who participated in a Delaware treatment court for prostituted and trafficked individuals.

When I worked as a Commissioner in the Court of Common Pleas, I suspected that quite a few of the women who appeared before me on nonviolent misdemeanor charges like drug possession and shoplifting were involved in prostitution. However, it was a woman who was in court for not paying a motor vehicle fine who really opened my eyes. This woman, who appeared to be in her late 40s, pleaded with me to send her to prison for the fine she owed. The courtroom was packed, so

I asked if she could wait until the end of the court calendar to address her case, and she patiently waited.

When only court personnel were left in the courtroom, I asked the woman why she wanted to be in prison. Through tears, this middle-aged woman explained that her father had put her into prostitution when she was a teenager and that this “life” was all she had known since then. She explained that she had turned to drugs to numb the awful pain and the rest of her life was a blur of prostitution.

The beleaguered woman said she could not take it anymore, explaining why prison would be much better for her. She would have a warm place to stay with three meals a day and be safe from violence and sex with strangers. I explained why I could not sentence her to prison, as she requested. Instead, all I could offer her were referrals to women’s shelters, food programs, and sexual assault counselors. I did not help her in the ways she truly needed help. And apparently, no one had helped her either when she was young and became the victim of sex trafficking as a minor when her father became her pimp/trafficker.

How many other prostituted women and kids are “invisible in plain view” in our criminal justice system? If the middle-aged woman in court for a motor vehicle fine had asked simply for a payment plan, she would have given no clue

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of her traumatized past and present. With the stigma attached to prostitution, it is no wonder it took her decades to disclose what she was going through to people in the criminal justice system.

That woman became the catalyst for starting a treatment court in Delaware; lack of funding could no longer be an obstacle. And it was a survivor of prostitution in our State, the late February O'Donnell, who helped start the Human Trafficking Treatment Court that operated in New Castle County from 2012-2017. To learn more about this treatment court, please see Mary McDonough & Yolanda Schlabach, *Human Trafficking Court: Lessons Learned, Much More to Do*, Del. Law., Summer 2016.

Some jokingly refer to prostitution as the “oldest profession” but seriously view prostitution as a matter of choice. Whenever February would hear comments like this, she would say, “How many five-year-old girls do you know who say, ‘When I grow up, I want to be a prostitute?’” She would more likely consider prostitution the “oldest form of oppression” rather than a profession.

When these victims are children, it is, per se, sex trafficking because minors cannot exercise choice. Once a girl — and the reality is that most victims of commercial sexual exploitation are female — turns 18, is she magically given a choice about whether to engage in “survival sex.” There are not many “exit ramps” from the “life” for these girls, and the reality is that the vast majority of adult women who are prostituted do not have a real choice either. Still, prostituted women often face the same question at times asked of domestic violence victims, “Why doesn’t she just leave?” — with a heavy layer of stigma added.

Suffice to say, sexism and stigma are a toxic combination and are part of the story of commercial sexual exploitation in the U.S. Thankfully, survivors of prostitution and trafficking are a great antidote to this stigma. February O'Donnell's legacy

is being carried on today by other survivors. For example, my colleague, Julie Hammersley, MS, a Master's level clinician and survivor, conducts outreach to incarcerated women and residents of the Salvation Army's Restore Now program as well as to homeless women through a program Julie started called the Nightlight Project.

Survivors of prostitution and trafficking also have much better vision for spotting currently exploited victims who may otherwise be invisible in plain view. I have learned the most about commercial sexual exploitation from the women who participated in our treatment court over the five years it operated. We need to listen more to the survivors — and more people are beginning to do so. The Delaware Human Trafficking Council, for example, added its first membership position this year for a trafficking survivor to have a voice and a vote at the table.

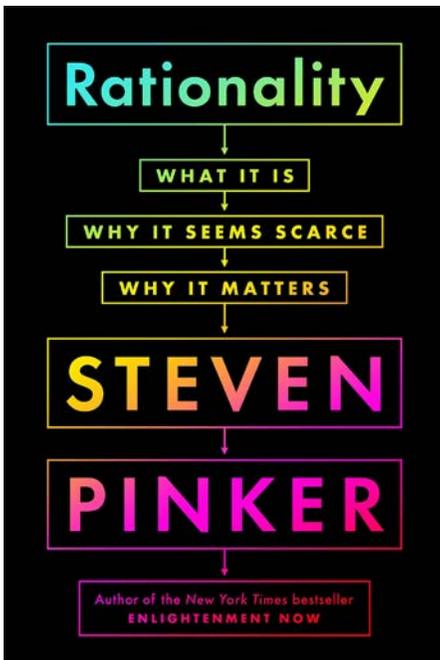
In thinking about this topic, it is worth considering the role of gender in how we look at prostitution. Few women pay for sex. Typically, men are the customers of prostitution and sex trafficking. Females are usually the ones whose bodies are rented or sold for sex. If the gender roles were reversed, I wonder what impact it would have on public policy. It may improve our collective vision — our ability to see what is currently invisible in plain view — if we consider the role of gender and stigma in trying to help the victims of commercial sexual exploitation. ⚖️

Mary McDonough is the Policy Director at the Delaware Human Trafficking Council and a retired judicial officer who has worked in public sector jobs for 43 years. The views expressed herein are solely those of the author. They do not represent those of her employers, the Delaware Division of Substance Abuse and Mental Health, and the University of Delaware, where she teaches a course in human trafficking. She can be reached at mary.mcdonough@delaware.gov.





A New Year's Resolution for Everyone



Rationality: What It Is, Why It Seems Scarce, Why It Matters

By Steven Pinker
Viking, 2021

We live in an ever-more-polarizing world, or so it seems. There is “fake news” everywhere. For any position on any topic, there is something on the world wide web that “supports” that position. The Holocaust never happened. The moon landing was faked. There was a gunman on the grassy knoll. Hillary Clinton won the 2016 presidential election. Donald Trump won the 2020 presidential election. There is “fake news” out there for everyone, of any political or socio-economic persuasion, and, contrary to what some might think, it is not just the “other side’s” problem (whatever or whoever the “other side” might be).

As human beings, though, we are rational creatures and we have accomplished much and will accomplish even more in the future. Why is it, then, that rationality seems in such short supply? Why does so much of public discourse, or what passes for public discourse, seem so full of “irrational” arguments? How do we return rationality to our everyday lives? These and more are the questions that Steven Pinker attempts to answer in his new book, *Rationality: What It Is, Why It Seems Scarce, Why It Matters*.

Part of the problem may simply be that rationality is hard. I know I’m right, and I know you’re wrong, but why do I have to explain myself? I will just impose my will, my view, my beliefs, because, after all, I know I’m right. As Professor Pinker explains:

Instead of feeling any need to persuade, people who are certain they are correct can impose their beliefs by force. In theocracies and autocracies, authorities censor, imprison, exile, or burn those with the wrong opinions. In democracies the force is less brutish, but people still find means to impose a belief rather than argue for it. Modern universities — oddly enough, given that their mission is to evaluate ideas — have been at the forefront of finding ways to suppress opinions, including disinviting and drowning out speakers, removing controversial teachers from the classroom, revoking offers of jobs and support, expunging contentious articles from archives, and classifying differences of opinion as punishable harassment and discrimination....

If you know you are right, why *should* you try to persuade others through reason? Why not just strengthen solidarity within your coalition and mobilize it to fight for justice? One reason is that you would be inviting questions such as: Are you infallible? Are you *certain* that you’re right about *everything*? If so, what makes you different from your opponents, who also are certain they’re right? And from authorities throughout history who insisted they were right but who we now know were wrong? If you have to silence people who disagree with you, does that mean you have no good

Pinker's book is more than just a call to return rationality and persuasion and civility to our discourse, it is a close examination of what it means to be rational and how to make rational arguments and rational decisions.

arguments for why they're mistaken? The incriminating lack of answers to such questions could alienate those who have not taken sides, including the generations whose beliefs are not set in stone.

And another reason not to blow off persuasion is that you will have left those who disagree with you no choice but to join the game you are playing and counter *you* with force rather than argument. They may be stronger than you, if not now then at some time in the future. At that point, when you are the one who is canceled, it will be too late to claim that your views should be taken seriously because of their merits.

But rationality is more than just ditching brute force and engaging in discussion and argument and persuasion. Rationality involves reason. Logic. Perspective. Proper framing of questions and answers. And learning to ignore the many fallacies and biases that can cloud judgment. Pinker's book is more than just a call to return rationality and persuasion and civility to our discourse, it is a close examination of what it means to be rational and how to make rational arguments and rational decisions.

One bias that infects decision making is the fear that something could happen based on a story about someone else. In 2019, a Cape Cod surfer became the first shark fatality in Massachusetts in some 80 years. Despite the relative safety from shark attacks, every beach town erected large billboards with shark warnings and supplied additional medical kits. Meanwhile, between 15 and 20 people are killed in car crashes on Cape Cod every year. Perhaps the money could have been better spent on traffic safety.

Similarly, there are some 55 million school children in school on any given school day, and, during the course of an average school year, 35 students will be the victims of a shooting or other violent death. Billions have been spent on improving school safety, but many more student deaths occur in car accidents or accidents around the home or any other number of places. Still, parents worry incessantly about school safety, even though the single safest place a student can be on any given school day is in a school.

A plane crashes and suddenly people reduce their flying; but, as Superman said to the airplane passengers in *Superman Returns* after stopping an airplane from crashing, "I hope this hasn't put you off of flying. Statistically speaking, it's still the safest way to travel." And yet, after we read or hear of some gruesome accident or event, we assume that it could happen to us, and then spend vast sums that, arguably, could be better spent on making our lives safer in other ways.

Of course, the modern media doesn't help. The old saying that "if it bleeds, it leads," is still true. Constant reporting of horrific events can easily skew one's perspective. Moreover, political report-

ing rarely seems to discuss the merits of proposed legislation or policy. Rather, the reporting focuses on who "won" or "lost," as if the political process is a sporting event, rather than a serious endeavor with real world consequences. Waiting to see what's in legislation until after it passes is no way to persuade (or govern).

Pinker concludes his book with an explanation of why rationality matters. He tells us: "My greatest surprise in making sense of moral progress is how many times in history the first domino was a reasoned argument. A philosopher wrote a brief which laid out arguments on why some practice was indefensible, or irrational, or inconsistent with values that everyone claimed to hold. The pamphlet or manifesto went viral, was translated into other languages, was debated in pubs and salons and coffeehouses, and then influenced leaders, legislators, and popular opinion. Eventually the conclusion was absorbed into the conventional wisdom and common decency of a society." Reasoned argument — rationality — is vital to progress. Not bullying. Not brute force. Not insults. Not condescension. Perhaps *Rationality* can be the first domino in a return to reason and civility and a sense of common purpose in our civic discourse. 🗨️

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.



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2021 Awards Luncheon

Honoring Recipients from 2020 and 2021

Tuesday, December 7, 2021 | Riverfront Events / Hyatt Place

After being postponed for all of 2020, the Annual Awards Luncheon was held at Riverfront Events / Hyatt Place on December 7, 2021 and over 100 people celebrated awards presentations for both 2020 and 2021. The most prestigious award, the Daniel L. Herrmann Professional Conduct Award was given to William D. Johnston, Esquire, for his long service to the Delaware Bar and recognized his reputation in the community as an outstanding lawyer who demonstrates courtesy and civility in all that he does. Perhaps the most emotional moment was when Jeffrey Alexander Young, Esquire, accepted the 2020 Outstanding Service to the Courts and Bar award on behalf of his late father, Judge Robert B. Young. The awards were presented by the 2020-2021 President, Michael F. McTaggart, Esquire, and the current President, Kathleen M. Miller, Esquire. Congratulations to all the award recipients! 🎉



1. 2020 Young Lawyers Distinguished Service Award: Meryem Dede, Esquire, of Office of Defense Services. 2. 2021 Young Lawyers Distinguished Service Award: Wilson A. Gualpa, Esquire, of Morris James LLP. 3. 2020 Women's Leadership Award: The Honorable Vivian L. Medinilla of the Superior Court of the State of Delaware. 4. 2021 Women's Leadership Award: Karen C. Bifferato, Esquire, of Connolly Gallagher LLP.



5. 2020 Government Service Award: Lawrence W. Lewis, Esquire, of the Delaware Department of Justice 6. 2021 Government Service Award: Kenneth Kelemen of Judicial Information Center. 7. 2020 Distinguished Mentoring Award: Dawn M. Williams, Esquire, of Office of Defense Services 8. 2021 Distinguished Mentoring Award: Tarik J. Haskins, Esquire, of Morris Nichols Arshat & Tunnell LLP. 9. 2020 Outstanding Service to the Courts and Bar Award: The Honorable Robert B. Young (posthumously) accepted by Jeffrey Alexander Young, Esquire. 10. 2021 Outstanding Service to the Courts and Bar Award: Mark S. Valala, Esquire, of the Delaware State Bar Association 11. 2020 Daniel L. Herrmann Professional Conduct Award: William D. Johnston, Esquire, of Young Conway Stargatt & Taylor, LLP. 12. The 2021 Awards Luncheon at Riverfront Events / Hyatt Place in Wilmington.



Esoteric Eats

I have a long mental list of foods and culinary techniques that I would like to try at home. Included among them are making croissants from scratch, smoking my own salmon, and preparing a terrine with an egg center. Perhaps some of these will make it to my 2022 New Year's resolutions...and maybe some of the more obscure foods, drinks, and techniques hidden in my crossword will inspire some resolutions for your home kitchen. The first reader to respond with the correct solution will win a bottle of Lambrusco. Bon Appétit and Bonne Année 2022! 🍷

- Aspic
- Barding
- Concasse
- Dredge
- Escabeche
- Flambe
- Galantine
- Hull
- Iru
- Jeroboam
- Lambrusco
- Mise en place
- Nappe
- Offal
- Panage
- Quenelle
- Rasher
- Salometer
- Tempering
- Ugli
- Vandyke
- Witloof
- Xocoatl
- Yokan
- Zitoni

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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.

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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.

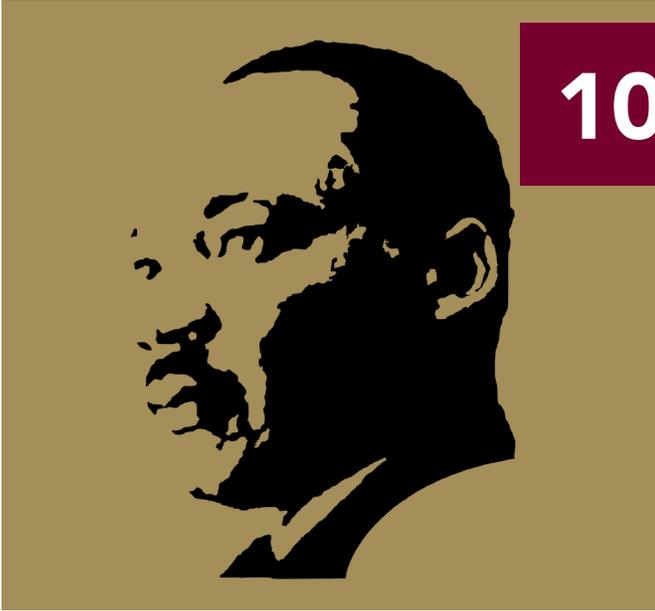
COMMUNITY SERVICE AWARD

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. 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.



10 LIFE LESSONS

We Learned from Dr. Martin Luther King, Jr.

BY SAMUEL D. PRATCHER III, ESQUIRE
AND MARK S. VAVALA, ESQUIRE

1 DON'T BE AFRAID TO DREAM: Dr. King preached his dream from the steps of the Lincoln Memorial and he lived his life in pursuit of that dream. He knew the consequences of that dream and he didn't get to see "the promised land," but he nonetheless dared to proclaim it.

"I have a dream that one day little black boys and girls will be holding hands with little white boys and girls."

2 LOVE WILL ALWAYS WIN OVER HATE: In a world that tells us to hate the different person, fear the stranger and reject the opinions of those we disagree with, Dr. King rejected that philosophy.

"Let no man pull you so low as to hate him."

3 NEVER GIVE UP: Despite being incarcerated over 30 times, threatened, hated, and cursed, Dr. King preached a gospel of perseverance.

"If you can't fly, then run. If can't run, then walk. If can't walk, then crawl. But, whatever you do, you have to keep moving forward."

4 EDUCATE YOURSELF AND BE CURIOUS OF ALL VIEWPOINTS: Dr. King saw the value of learning and the danger of closing your mind to understanding others.

"Nothing in the world is more dangerous than sincere ignorance and conscientious stupidity."

5 LIVE A LIFE OF SERVICE: This, above all else, is the purpose of our existence.

"Everybody can be great...because anybody can serve. You don't have to have a college degree to serve. You don't have to make your subject and verb agree to serve. You only need a heart full of grace; a soul generated by love."

6 BE FORGIVING.

"Forgiveness is not an occasional act; it is a constant attitude."

7 STAND UP FOR JUSTICE: Because injustice anywhere is a threat to justice everywhere, Dr. King fought his battles against those things which degraded, marginalized, and threatened those who should have been protected by justice.

"Our lives begin to end the day we become silent about things that matter."

8 BELIEVE IN GOD: A man of faith, Dr. King's actions were guided by a duty to follow his religious precepts, but unlike many false believers, he focused on loving the poor and downtrodden.

"I just want to do God's will and he's allowed me to go to the mountain!"

9 DON'T JUST BE COMFORTABLE: Dr. King knew that it was easy to preach from places of security, but true grace came from putting one's self in peril in defense of others.

"The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

10 DESPITE THINGS LOOKING BLEAK, NEVER DESPAIR: Dr. King lived during a time where unthinkable horrors were done to human beings because of their religious beliefs or the color of their skin. And, yet, even in the worst of it, his message was belief in the goodness of his fellow man and in the eventual fulfillment of the "dream."

"We must accept finite disappointment but never lose infinite hope." ☪

Samuel D. Pratcher III is an attorney at Pratcher Krayner LLC and Co-Chair of the Dr. Martin Luther King, Jr. Annual Breakfast and Statewide Day of Service Registration. He can be reached at sdpratcher@PKInjury.com.

Mark S. Vavala is the Executive Director of the Delaware State Bar Association. He can be reached at mvavala@dsba.org.

THE DELAWARE STATE BAR ASSOCIATION PRESENTS

DR. MARTIN LUTHER KING, JR.

2022 Annual Breakfast & Statewide Day of Service

DATE/TIME

Monday, January 17, 2022
Breakfast: 8:00 a.m.

LOCATION

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

TICKETS

\$35.00/person

Registration available online at
www.dsba.org



KEYNOTE SPEAKER

DEBORAH ARCHER

President of the American Civil Liberties Union
(ACLU)

Please visit the DSBA Website at www.dsba.org to purchase tickets or to volunteer for a service project. Please direct all questions to the Delaware State Bar Association at (302) 658-5279 or to the event co-chairs, Samuel D. Pratcher III, Esquire, at sdpratcher@pkinjury.com and Nicole M. Mozee, Esquire, at nmmozee@gmail.com.



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.

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