



# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

## In this Issue:

**In Buy-Sell Agreements, Watch Your Language**

PG. 28

**Nominations Sought for the 2019 Christopher W. White Distinguished Access to Justice Awards**

PG. 37

**Recap of the 2019 Bench and Bar Conference**

PG. 38

The  
**Summer**  
Issue



# Nominations Sought for 2019 Awards



The Delaware State Bar Association and the Awards Committee are seeking nominations for the following awards:

**Daniel L. Herrmann Professional Conduct Award**  
**Outstanding Service to the Courts and Bar Award**  
**Distinguished Mentoring Award**  
**Government Service Award**

## AWARDS DESCRIPTION

### **Daniel L. Herrmann Professional Conduct Award**

Awarded to a member of the Delaware Bar who, over the course of time, has demonstrated those qualities of courtesy and civility which, together with high ability and distinguished service, exemplifies the Delaware lawyer.

### **Outstanding Service to the Courts and Bar Award**

Awarded to a Delaware lawyer or judge who, by exemplary service to the Delaware Courts and the Delaware Bar, has substantially assisted the courts and the Bar and has strengthened public trust and confidence in the courts in the state of Delaware and the administration of justice.

### **Distinguished Mentoring Award**

Awarded to a Delaware lawyer or judge who, by distinguished mentoring of other Delaware lawyers (or future lawyers) over a period of many years, has served as an inspiration to and a model for those lawyers in striving for and maintaining the highest standards in their professional careers and in their community involvement.

### **Government Service Award**

Awarded to a full-time government service employee in recognition of dedicated and distinguished contribution to the Administration of Justice.

*These are not necessarily annual awards. All or some of these awards will be presented only upon the recommendation of the Awards Committee and approval by the Executive Committee of the DSBA. Please note that previous nominations must be renewed to be considered.*

## **Delaware State Bar Association Awards Nomination Form**

Name of Candidate: \_\_\_\_\_

Title/Occupation of Candidate: \_\_\_\_\_

Award: \_\_\_\_\_

Date: \_\_\_\_\_

Nominator: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Brief statement of reasons that candidate is deserving of Award (see above Award criteria). Please attach sheet if necessary.

\_\_\_\_\_

\_\_\_\_\_

Nominations should be submitted by **September 6, 2019** to Mark S. Vavala, Executive Director, e-mail [mvavala@dsba.org](mailto:mvavala@dsba.org) or fax to (302) 658-5212.



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# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

## FEATURES

- 2 Nominations Sought for 2019 Awards
- 24 Guest Book Review: *The Chief: The Life and Turbulent Times of Chief Justice John Roberts*  
REVIEW BY ALEX J. MILI, JR., ESQUIRE
- 28 In Buy-Sell Agreements, Watch Your Language  
BY PHILIP M. REYNOLDS, CPA, ASA
- 31 A Gentleman Lawyer Retires: Thomas Herlihy III, Esquire  
BY DAVID J. FERRY, JR., ESQUIRE
- 32 Project Citizen Showcase  
BY PAT QUANN, EXECUTIVE DIRECTOR, DELAWARE LAW RELATED EDUCATION CENTER
- 33 The Art Connolly Race Judicata 2019  
BY PAT QUANN, EXECUTIVE DIRECTOR, DELAWARE LAW RELATED EDUCATION CENTER
- 37 Nominations Sought for the 2019 Christopher W. White Distinguished Access to Justice Awards
- 38 Recap of the 2019 Bench and Bar Conference

## COLUMNS

- 4 President's Corner
- 8 Editor's Perspective
- 14 Tips on Technology
- 16 Commission on Law & Technology: Leading Practices
- 18 Ethically Speaking
- 20 DE-LAP Zone
- 22 Book Review
- 26 Book Review
- 34 DSBA Superhero Spotlight
- 44 The Judicial Palate

## DEPARTMENTS

- 10 Side Bar
- 11 Of Note
- 11 DSBA Happenings
- 12 Calendar of Events
- 13 Section & Committee Meetings
- 41 Disciplinary Actions
- 42 Bulletin Board

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**T**his marks my first monthly President's Corner in the *Bar Journal* formerly known as *In Re*.<sup>1</sup> Let me start by saying that I am extremely humbled and honored to serve as the Delaware State Bar Association's President for 2019-20. It is an obligation I do not take lightly and I will work hard to be a good President and carry on the tremendous work done by my predecessors to further the interests of our members and increase the benefits that the Bar Association has to offer. I am fortunate to have met a great many members of the Bar over the years and am looking to meeting many more of you in the coming year.

As I began to write this, I could not help but be distracted by what is going on in the world. For better or worse, politics dominates our news these days. No matter which side of the political spectrum you fall on, there is no denying that at its best, it is bitter and divisive, with elected officials and candidates vying for attention seemingly by how loud or outraged they may be; at its worst, well, it is worse. It has not always been like that. Those of you past a certain age will no doubt recall when the late Ross Perot ran as a third party candidate for President in 1992 and asked retired Vice Admiral James B. Stockdale to stand in as his running mate. Admiral Stockdale had a long and distinguished career as a Naval officer and was ultimately awarded the Congressional Medal of Honor for his leadership of American POWs and the bravery he exhibited in resistance to his captors while imprisoned for seven years in the Hanoi Hilton during the Vietnam War. He had tremendous dignity and integrity and was an American Hero in every sense of the term. Despite all that, he is best known for a moment during the Vice Presidential debate in 1992 when he famously introduced himself by asking "Who am I? Why am I here?" Regardless of his political qualifications for the second highest office in the land, it is a shame how popular history remembers him and he deserves far, far better.

**I have been a member of the Delaware Bar and the Bar Association since 1995. During that time, I have either worked at small firms or been a sole practitioner.**

I have also previously served as Chair of the Small Firms and Solo Practitioners Section and the Real and Personal Property Section of the DSBA. I am admitted in Delaware, Pennsylvania, and New Jersey, but only ever wanted to be here in Delaware, so that is where I practice exclusively. I founded my current firm in February 2015 and while we had three full-time attorneys at one point,<sup>4</sup> including my brother, John F. Brady, he is now only practicing on a part-time basis, so these days, it is mainly just myself.

I was thinking about Admiral Stockdale as I was preparing to accept the gavel as President, in the sense that I felt it necessary to explain who I am and why I am here. To borrow a line from the Rolling Stones: "Please allow me to introduce myself."<sup>3</sup> I am a Delaware native and live in the Pike Creek area with my wife, Deborah, and our two sons who are now 19 and 17. I have been a member of the Delaware Bar and the Bar Association since 1995. During that time, I have either worked at small firms or been a sole practitioner. I

We are very much a small firm, with one paralegal and my wife serving as *de facto* office manager, receptionist, and jack of all trades.

The why I am here part dates back to my time as Chair of the Small Firms Section. Then-President, Betsy McGeever, asked me to serve on an *ad hoc* committee to assist the Executive Committee with an issue of which I can no longer completely recall.<sup>5</sup> As a result of that experience, I found myself wanting to become more involved with the Bar Association. Not long afterwards, I was appointed to serve on the DSBA Nominating Committee and later, as a Member-at-Large of the Executive Committee, on which I am now privileged to be starting my 11th year. I have enjoyed it tremendously and I encourage all of you who have any interest in serving the Bar Association to submit your name to the Nominating Committee when the application period opens later this year.<sup>6</sup>

Each year, the Bar President is tasked with selecting certain goals that he or she either wants to accomplish during their term, or at a minimum, initiate so that future Bar leaders can continue. Those of you who attended the recent Bench and Bar Conference will recall that I discussed some of my goals for the coming year. Please forgive me if I borrow a little bit from my speech in summarizing them here.

My first goal is increasing downstate involvement in the Bar Association. At the monthly Executive Committee meetings, Chairs of the various Sections of the Bar take turns presenting their annual reports of Section activity. When former President, and now Family Court Judge, Jim McGiffin was on the Executive Committee, he would always

ask the Chairs whether there was any downstate participation in their Section. That question is still asked of Section Chairs to this day, without fail, and it is affectionately referred to as “the Jim McGiffin question.” Right or wrong, the Bar Association has long been perceived as being New Castle County centric and that needs to change going forward for its long-term health and the benefit of all its members. This is not, nor can it be, a one year project and I know that my successors will continue that commitment to our downstate members and always ask the Jim McGiffin question. Of course, that also requires member participation and I am asking our downstate colleagues to become even more involved in the Bar for our mutual benefit. On a related note, this October, Delaware will be hosting the Mid-Atlantic Bar Conference, where our Bar officials will meet with our counterparts from Pennsylvania, New Jersey, New York, Maryland, and the District of Columbia. I am very pleased to say that we are holding the Conference in Bethany Beach.

Some of you know that my Dad, Jack Brady, is a long-time Delaware attorney who had a second career at Community Legal Aid Society representing clients in housing matters for almost 25 years, before finally retiring in 2009 at age 83. He was, and continues to be, my mentor. However, most attorneys are not fortunate enough to have someone who can mentor them the way my Dad has done for me. This past year, under Dave Ferry’s leadership, the Bar Association implemented a mentoring program to pair young attorneys with more experienced attorneys willing to provide advice and guidance in career, work life balance and other matters. I want to continue to expand that program and move it closer to achieving the result that Dave envisioned.<sup>7</sup>

Dave also initiated having the Bar Association host family-friendly events for members and their families. Today’s young attorneys need to have opportu-

**Right or wrong, the Bar Association has long been perceived as being New Castle County centric and that needs to change going forward for its long-term health and the benefit of all its members.**

nities to interact with members of the Bench and Bar in informal settings, without worrying about leaving their spouses or children behind.<sup>8</sup> I believe it is vital that the Bar Association offer this to our newest members and I want to see those opportunities increase in the future.

My main focus is on increasing *pro bono* service, especially in Landlord Tenant matters. A large part of my practice involves residential Landlord Tenant law. Tenants facing eviction are among the litigants most in need of competent legal assistance in our Courts and I say that

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PEGGY KRUZA



STEVEN KRUZA

**If we each give just a few hours a year to represent a needy tenant or even just talk to them over the phone and provide advice, it will make a tremendous difference to that person and lead to a more efficient administration of justice in the J.P. Courts.**

as someone who almost exclusively represents landlords. Simply put, they need our help. It is easy to say that CLASI or Legal Services Corporation or Delaware Volunteer Legal Services are there to assist them, and they are, but they cannot do it alone. For those of you who are not familiar with the eviction process, the Justice of the Peace Courts in our State have exclusive jurisdiction over matters involving possession of rental properties. That Court's motto is "Where Justice Starts." Even though the Judges in that Court do an excellent job with eviction matters, especially ones involving *pro se* litigants, Justice cannot start when an unrepresented tenant is not sophisticated enough to know their rights under the law or properly state their case to the Court or introduce evidence or subpoena witnesses to support their position.

That is where we need to step in. All of us know how to do those things. If we each give just a few hours a year to represent a needy tenant or even just talk to them over the phone and provide advice, it will make a tremendous difference to that person and lead to a more efficient administration of justice in the J.P. Courts. We will be working with the Court and legal agencies to provide training on Landlord Tenant matters, and I encourage all of you to take advantage of that if it is something outside your comfort zone so you can step up and assist. In addition, providing *pro bono* service is also one of the Four Pillars of being a Delaware Attorney, an initiative started by Chief Justice Leo Strine, that you will be hearing much more about in the coming months.

In closing, I very much look forward to serving as your President over the next year. I will echo what my predecessors

have said before me: I believe we have the best Bar Association in the country and it has much to offer all of our members. I encourage you to take advantage of those benefits and I challenge you to become more involved. 🍷

#### Notes:

1. For younger members of the Bar who have made it even this far into my column (Thank you!), the Bar Association's monthly publication was known as *In Re*: until 2010, then was renamed the *Bar Journal* for reasons unknown to me and possibly anyone at the DSBA. I still refer to it as *In Re*: half the time.
2. Rather than attempt any further, inadequate summation of Admiral Stockdale's life, I encourage you to view his biography on the United States Naval Academy website at <https://www.usna.edu/Ethics/bios/stockdale.php>.
3. "Sympathy for the Devil," from the album *Beggars Banquet*, 1968. I am a huge music fan, especially classic rock, and often make comments or arguments supported in varying degrees by references to song lyrics. I will apologize in advance for likely doing the same in some of my columns over the next year.
4. I originally founded The Brady Law Firm with Nichole ("Nikki") Whetham-Warner as my associate. Nikki later moved on to a career as a criminal prosecutor with the Attorney General's Office. However, without her invaluable assistance, not to mention friendship with various service providers whom I still utilize, there would be no Brady Law Firm.
5. I have no doubt that Betsy remembers in complete detail.
6. I did not make the cut the first time I applied. Do not be discouraged if you are not recommended at first either.
7. Two of Dave's sons are attorneys working with him at Ferry Joseph, P.A., with a third set to complete law school later this year and sit for the 2020 Delaware Bar Exam. Talk about mentoring. His wife, Mary, had an equal hand in that, as well.
8. There are many days when I yearn for the time when my sons were young and not in their late teens.

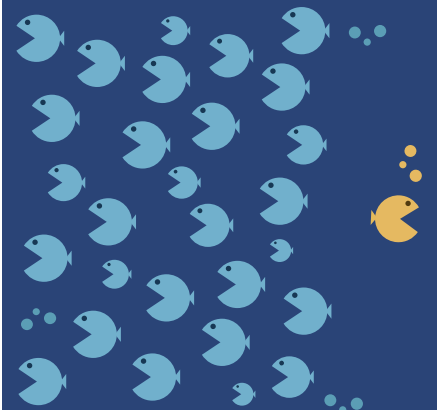
**William Patrick ("Bill") Brady** is the current President of the Delaware State Bar Association. He is a member of the Small Firms and Solo Practitioners Section, Real and Personal Property Section, Litigation Section and ADR Section of the DSBA. He has been a member of the Delaware Bar since 1995 and has served on the Executive Committee of the Delaware State Bar Association since 2009. He is the founder and managing attorney of The Brady Law Firm, P.A. and can be reached at [wbrady@bradylawde.com](mailto:wbrady@bradylawde.com).



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Whether you are an experienced attorney or one just starting out, having access to another in your field is priceless. And, if you have something to offer, it's a great experience to give back.

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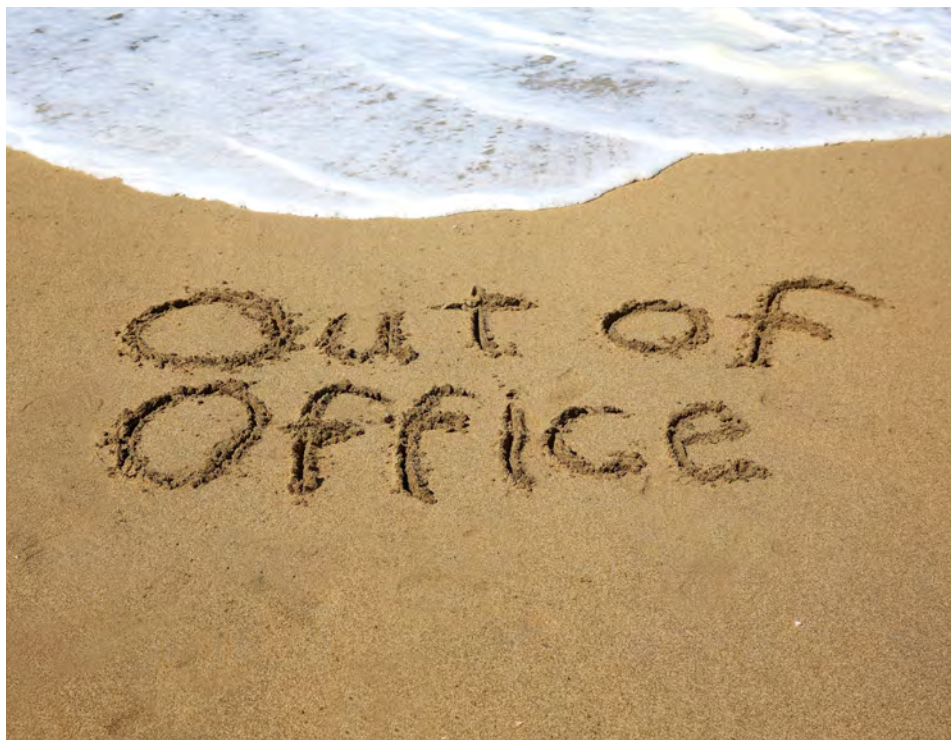
# IT PAYS TO BE A DSBA MEMBER!



# A "Work"ing Vacation

**A** decade from now, what will you remember? The extra work you got done at the office during a particular week, or a vacation with your family? At this moment, it may seem absolutely imperative to forgo a vacation because of the demands you currently face in your practice. You may be tempted to tell the family to go ahead, and you will try to meet up with them sometime during the week. I seem to face this dilemma every July.

As you read this column, summer vacations are well under way or at least on the horizon. Maybe you are off to new and exciting destinations or, like my family, undertaking a vacation you have done time and time again. For the last fifty years, my family has been taking the same vacation to the beach. It started before I was born. My family, including my 106-year-old grandmother, siblings, nieces, nephews, aunts, uncles, and cousins, will be vacationing together this year, just as we have done for decades. For more than half a century, the timing and location have been the same — Rehoboth Beach. The rental houses have varied over the years. My sister even has a log of the rental address for each particular year, dating back to the 1960s. Many of the houses are long gone giving way to new and bigger commercial projects. We have now expanded to two neighboring houses to shelter us all. Over the years, spouses and significant others have varied, but the core is always the same. We have had relatives fly in from



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the West Coast, Europe, and even Africa to make the vacation. All of the varying personalities and characters housed under one, now two roofs. A co-counsel of mine questioned: "[y]ou call this a vacation?" It is and will always be one of my favorite vacations and has been a highlight since as long as I can remember.

The driving force is my grandmother who just turned 106 in March. She still lives at home. But, for the first time, her needs almost prevented her from coming. As I write this, she is coming. She is excited, as am I. All of the traditions, of which she is a part of, will continue. My kids will not only be glad to see their great-grandmother, but also rest assured that the "Money Board" will still be maintained. Since I was a kid, in an effort to ward off the constant requests for money from grandchildren wanting to buy ride tickets or arcade splurges, she created the Money Board. It is a large plank of wood with a clothespin for each family member. On each clothespin, a respective family member's name is crudely written and each day she clips two dollar bills for your spending pleasure. On the first day, you even get a five-dollar bill which starts the vacation off on a great note. Despite being a 47-year-old professional, I join all of my other relatives and retrieve the bills each day with much joy. Other traditions include family scavenger hunts, big outlays on the beach, large group restaurant visits, and the assignment



of “house duty” and “kitchen duty” on certain days. One of my least favorite traditions is “house duty,” which on an assigned day, you have to clean the entire house, and “kitchen duty” which requires cleaning the kitchen and cooking the dinner. Trust me when I say it is quite the task to cook for that many people. All of these traditions will continue in 2019.

Now, my kids are experiencing this same tradition just like I did. And, I get to watch them muster the bravery they need to ride the Paratrooper, or tackle the daunting ocean waves. And, just as I did, they get to frolic with their cousins and other relatives who they may not see much during the year.

When beach time arrives, all of this is on the front burner, while my law practice gets shifted to the back burner. I will still work. What solo practitioner, or any attorney for that matter, truly gets to leave their law practice for an entire week? Thank you technology [sarcasm intended]. I find that you actually do more work leading up to

## What solo practitioner, or any attorney for that matter, truly gets to leave their law practice for an entire week?

the vacation so when you return to the office, the inevitable catch up is not as overwhelming. But, what I have learned is that the week of work you sacrificed for a family vacation is expendable — it has to be. The value of a vacation and the resulting decompression is well documented and I do not need to tell you that. But, what I remind myself every year is the memories that our family creates, that our children and loved ones’ experience are invaluable. We need to remind ourselves that the value greatly outweighs the inconveniences and extra effort. The memories of playing cards with my grandmother (who cheats by the way) within ear shot of my kids playing games is something I will remember 10-20 years from now. It greatly outweighs any time I would

spend in the office that week. I cannot recall what important task I may have completed in the office in July of 2009. I am sure there was the all-important and contentious case at the time, or the demanding client, but honestly it does not come to mind. I hope you are making similar memories. Have a great summer and have fun. I assure you that the 45 members of the Powell, Custer, Deaver, and Hulslander families will be making wonderful memories, just as we have done for decades! ⚖️

*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).

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## TOP 5

## LEGAL EVENTS CELEBRATING THEIR 50TH ANNIVERSARY THIS YEAR

1969 was the year of the Miracle Mets, the breakup of the Beatles, the Moon Landing, the Stonewall Riots, the Manson Murders, the Chicago 7, Chappaquiddick, and Woodstock. Here are the legal events which are now turning 50:

# 1 **Boykin v. Alabama, 395 U.S. 238 (1969)**

When a defendant enters a plea bargain "knowingly voluntarily and intelligently", they waive their Sixth Amendment right to trial by jury.

# 2 **Brandenburg v. Ohio, 395 U.S. 444 (1969)**

The government cannot punish inflammatory speech unless that speech is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

# 3 **Hunter v. Erikson, 393 U.S. 385 (1969)**

A government has denied equal protection of its laws by passing legislation dealing with racial, religious, or ancestral discrimination in housing without the approval of the majority of its voters.



# 4 **Shapiro v. Thompson, 394 U.S. 618 (1969)**

The U.S. Supreme Court established that there is a fundamental "right to travel" which is implied through interpretation of the Privileges and Immunity Clause in Article IV of the U.S. Constitution.

# 5 **Stanley v. Georgia, 394 U.S. 557 (1969)**

Recognition of the right to possess pornography.

## YOUR WORDS

## WHAT IS THE BEST SUMMER JOB YOU EVER HAD?



*"For four years, I worked by day as a beach life guard in Dewey Beach. My day ended there at 5:30 p.m. and I'd start work at 7:00 p.m. as a bartender at the Waterfront Bar in Dewey. The jobs melded into one in my mind. So, the lifeguard/bartender job was the best job (not just summer job) I ever had. If someone offered it to me now, I'd take it again without hesitation!"*

**THE HONORABLE JOSEPH R. SLIGHTS III**  
Court of Chancery of the State of Delaware  
DSBA MEMBER



*"During college I worked two summers as a camp counselor at a camp in Maine on a clear blue lake surrounded by pine trees and mountains. We were on duty from 7 a.m. to 9 p.m., six days week, but it was the best summer job I ever had because I worked for a legendary camp director and with a great group of counselors from all over the world, many of whom are still my friends."*

**ARTHUR G. (CHIP) CONNOLLY III, ESQUIRE**  
Connolly Gallagher LLP  
DSBA MEMBER

Illustrations by Mark S. Vavala

## OUR NEXT QUESTION...

What did you do on your summer vacation?

Email Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org) and your response could be in the next Bar Journal.

## New Prothonotaries Announced



Myrtle A. Thomas

Superior Court in New Castle and Sussex Counties selected new Prothonotaries. In May, upon the retirement of Joyce Collins, Sussex County Chief Deputy Prothonotary Myrtle A. Thomas took over the reigns of the Sussex County Prothonotary. Myrtle has served more than 30 years in Superior Court and has held a number of management positions. She is considered the most knowledgeable person for judgments and civil filings in the State, according to former New Castle County Prothonotary Sharon Agnew.



Kenneth Creedon

In New Castle County, Susan Hearn left the Court to work with the Office of Defense Services. Susan served as Prothonotary for three years and has been replaced by Kenneth Creedon who left his position with Superior Court Jury Services to take on the Prothonotary position. Ⓢ

Condolences to **E. Martin Knepper, Jr., Esquire**, on the death of his mother, Patsy Knepper, who died on March 27, 2019.

Condolences to the family of **Richard J. Abrams, Esquire**, who died on May 20, 2019.

Condolences to the family of **Henry "Clay" Davis III, Esquire**, who died on May 24, 2019.

Condolences to the family of **Kathleen C. Marshall, Esquire**, who died on May 27, 2019.

Condolences to the family of **Donald A. Bussard, Esquire**, who died on May 29, 2019.

Condolences to **Donald L. Gouge, Jr., Esquire**, on the death of his father, Donald L. Gouge, Sr., who died on June 15, 2019.

Condolences to the family of **Jerome K. Grossman, Esquire**, who died on July 3, 2019.

Condolences to **Darrell J. Minott, Esquire**, on the death of his mother, Ann M. Minott, who died on July 8, 2019.

Condolences to **Scott A. Firment, Esquire**, on the death of his son, **Huston Andrew Firment, Esquire**, who died on July 7, 2019.

*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). Ⓢ*

## DSBA HAPPENINGS



DSBA member **Melissa N. Donimirski, Esquire**, of Heyman Enerio Gattuso & Hirzel LLP and her husband Evan Brodsky, welcomed their baby son, Micah, on February 20, 2019. He weighed 6 pounds, 12 ounces.

DSBA members **Michael S. Swoyer, Esquire**, of Blank Rome LLP and **Kali E. Swoyer, Esquire**, of Wilbraham Lawler & Buba, P.C., welcomed their baby son, Michael Sean, on June 26, 2019. He weighed 8 pounds, 6 ounces, and was 20 inches long.



DSBA member **Molly M. DiBianca**, of Smith, Katzenstein & Jenkins LLP welcomed her baby son, Julian Cash, on April 23, 2019.

DSBA member **Matthew C. Buckworth, Esquire**, of the Department of Justice (son of member The Honorable Mark D. Buckworth) and his wife Mandy Buckworth (daughter of member Richard A. DiLiberto, Jr., Esquire), welcomed their baby daughter, Charlotte Jane Hawkins, on May 13, 2019. She weighed 8 pounds, 15 ounces, and was 20 inches long. Ⓢ



## Law Firm Team-Building Through Softball

By Le'Fenus Fenny Powers, Grant & Eisenhofer, P.A.



athletic skill is purely optional, and fun is extremely emphasized. Teaming up with DLA Piper has been essential and has made the statement "great minds think alike"

The official Grant & Eisenhofer's 2019 softball season is underway! This has been one of the most memorable and exciting seasons with a group of fine individuals, where

very true. At this time, we would like to show our gratitude towards The Wilmington Lawyers' Softball League, for creating a platform where fun, exercise, team building, and unity is instilled. This cross-sectional platform also demonstrates how to build and bring relationships between law firms in the same community even closer, no matter what end of the spectrum we reside. We have always emphasized winning and showing great attitude in terms of sportsmanship. Our motto: "Don't practice until you get it right, practice until you can't get it wrong!" Ⓢ



## 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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\*Certified Practice Monitor

# CALENDAR OF EVENTS

## September 2019

**Tuesday, September 10, 2019**

**Superior Court Mediation at the Delaware State Bar Association:  
A 6-Hour Refresher Seminar**

6.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

**Thursday, September 12, 2019**

**Social Security Retirement Lunch & Learn**

1.0 hour CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Wednesday, September 18, 2019**

**Fundamentals of Family Law**

6.3 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Thursday, September 26, 2019**

**DSBA Anniversary Series:**

**The Test of Time: Paramount Communications, Inc. v. Time Inc.**

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

## October 2019

**Tuesday, October 1, 2019**

**DE-LAP Behind the Cool Image Workshop One**

1.0 hour CLE credit in Enhanced Ethics

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Thursday, October 3, 2019**

**Movie & CLE Night at DSBA: Gideon's Trumpet**

1.0 hour CLE credit

Delaware State Bar Association, Wilmington, DE

**Tuesday, October 8, 2019**

**E-Discovery & Technology**

3.0 hours CLE credit in Enhanced Ethics

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

**Wednesday, October 16, 2019**

**Disability Awareness**

2.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James, LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, 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).**

## SECTION & COMMITTEE MEETINGS

### August 2019

Thursday, August 29, 2019 • 12:00 p.m.

#### Executive Committee Meeting

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

### September 2019

Thursday, September 19, 2019 • 3:30 p.m.

#### Executive Committee Meeting and Retreat

Wilmington Brew Works, 3129 Miller Road, Wilmington, DE

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

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# Who Would Have Thought Someone Would Invent a Better Mouse

**Y**ou may have noticed, I rarely dedicate this space to reviewing hardware or accessories. However, the occasion does arise when a product is so useful in our practice, it warrants your attention. The Swiftpoint GT mouse is just such one of those wonders — on a number of levels.

I simply cannot stand the little eraser type of pointers so unnecessarily required on the older IBM laptops.

When it comes to the perfect navigation device, I am looking for something comfortable and ergonomically designed. I want it to become an extension of my hand and not some artificial and awkward distraction when I am trying to be productive. It would be great if I could find a device small enough to be portable, so that it could easily travel with my laptop.

Well, I am pleased to tell you, the Swiftpoint GT does all these things.

## Ergonomics

The GT is small — very small. In fact, you grasp it more like a pen than a mouse. The feel is natural and flows with your movement. After a relatively short period of time, you really do not realize you are

using it. It becomes more like an extension of your hand. I also find there is less of a tendency to rest my wrist on the edge of the table. I have fortunately never suffered from carpal tunnel

syndrome; however, I have frequently needed to take breaks, when using my traditional mouse, just to flex my wrist.

## Portability

My primary attraction to the GT was its portability. Since I find the touch pad awkward and distracting, I have tried a small portable traditional mouse. But, the design is wrong. You simply cannot make a mouse smaller and expect it to feel and work like a grown-up one. The GT, on the other hand, is great. It has its own case and even a little USB charging stand on which it can rest when not being used.

## Functionality

From a functionality viewpoint, I would characterize this as a smart navigation device. It has a number of buttons with a scrolling wheel. Quite frankly, it has more functionality than I have managed to master. I just wheel, aim, point and click, and it all seems to work.

## Tablet Use

The GT markets itself as iPad and Android friendly. A number of apps work with the GT across platforms. Unfortunately, Microsoft Office is not one of them. As an avid iPad user, the one thing I really miss is the ability to use a mouse when I am attempting to be productive with my iPad and keyboard. Touching the screen to navigate certainly has become second nature;



Swiftpoint GT Mouse can be purchased at [www.swiftpoint.com](http://www.swiftpoint.com) and includes a travel case and a wireless USB receiver.

We all have our preferences and, in my case, strong dislikes for certain types of productivity tools. When it comes to navigation tools, I prefer a mouse. I dislike touch pads and trackballs; and



however, it is not the most productive method of working in apps such as Word or Excel. I look forward to Microsoft Office being added to the Swiftpoint list.

### Conclusion

If you would like to add a new dimension to your productivity, the Swiftpoint GT is something you ought to add to your computing tools. It is a new experience and one that should make you smile. ⚖️

**Richard K. Herrmann** is a partner at Morris James LLP, handling many forms of complex litigation, including intellectual property, commercial, and technology. He can be reached at rherrmann@morrisjames.com.

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



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# Snail Mail to Touch Tone Phones

## How Do Lawyers Communicate with Clients?

BY BRIAN S. LEGUM, ESQUIRE

Every day I put pen to paper, mailing letters to clients through the United States Postal Service. However, this form of communication, “snail mail,” has lost its standing on the hierarchy of methods used to communicate with clients. Is it not a tedious task to physically type a letter? I dictate, and my computer types for me.

While nothing is more personal than meeting face-to-face, technology has transformed the way we communicate within the legal world. Look around the room — how many people do you see on a smartphone? Whether it be through email, text message, Facebook, Instagram, Snap Chat, or the newest startup, everyone is virtually connected to the network on multiple platforms.

With the widespread use of alternative forms of communications, it is essential that lawyers understand how to use them, as well as maintain the standards of professional responsibility required of the profession. Utilized correctly, firms can more efficiently communicate with clients, potentially lower cost, and expand their marketplace. By utilizing programs such as ZipWhip, FaceTime, and Skype, just to name a few, constant client contact should be fast, efficient, and easy.

### Texting Clients from Your Office Phone Number

In the legal field, we require more than blasting our client’s email with



marketing materials or sending them appointment reminders. Clients are more appreciative of organic communication. Everyone is texting. Short message service (SMS) has become what e-mail wanted to be in 1997. Instant answers, data sharing, send and receive are services that are incredibly easy to use. One of the best ways to communicate with people is via text message, but giving your client your personal cell phone is dangerous in many ways. So, use your office phone line.

ZipWhip is an example of a service that allows text messages to be sent from your office line via a desktop application and/or smartphone app. Clients can text documents, photos/screenshots, or recordings up to a certain size. Additionally, programs such as ZipWhip integrate with CRM tools such as Clio and Salesforce so this

information is connected with your client tracking.

Similar to sending a letter through the USPS, ZipWhip is a protected texting service. However, if someone was interested in hacking or stealing your messages, a skilled hacker would still have a difficult time. ZipWhip connects directly to Tier 1 and Tier 2 wireless carrier networks, so texts are sent and stored securely with industry-leading anti-spam safeguards. Nevertheless, be sure to read the terms and agreement if deciding to use a service like ZipWhip before sharing sensitive information that may breach the attorney-client privilege.

### Secure Video Chatting

Facetime and Skype can be used for more than just reconnecting with friends and family. Utilizing video-

sharing applications can give clients a feeling of importance without the inconvenience of travelling for a specific time to come to the office. Video conferencing software is perfect to alleviate the stresses of scheduling for depositions. Making life easy on opposing counsel and clients is always a good thing. If dates are constantly conflicting, offer a Skype deposition. The benefit of services such as Skype for Business is that the applications are usually available not only on computers but also smartphones.

Another benefit of services like Skype is the call-recording feature. If you want to ensure you have the correct details, you simply have to rewind the call. Skype also allows for file transfer and instant messages. Skype uses encryption technology to secure all "Skype-to-Skype voice, video, file transfers, and instant messages." Like ZipWhip and other services, there are loopholes that hackers can expose. Be


## While nothing is more personal than meeting face-to-face, technology has transformed the way we communicate within the legal world.

sure to read Skype's terms and agreement before sharing information that may breach the attorney-client privilege. Moreover, there are several video conferencing products available with various levels of security features.

### Office Phone = Smartphone

Voice over Internet Protocol or VoIP is becoming essential in business. Instead of the plain ordinary telephone line and a super long cord, VoIP services such as Comcast Business VoiceEdge, allow your office phone to be as mobile as you are. In addition to having a physical phone at your desk, VoIP services allow your computer,

laptop and/or smartphone to be transformed into your office phone through installing a "softphone" application. With minimal requirements, a softphone service could also be a great option to cut cost without losing quality. Comcast Business Voice Edge offers a softphone with most of their business bundles.

Other softphone services exist such as Vonage, PanTerra, and Voiply. As an attorney, it is crucial to review the terms of every softphone service with respect to levels of privacy and protection. 

**Brian S. Legum** is an associate attorney of Kimmel, Carter, Roman, Peltz & O'Neill, P.A. where he practices in the fields of personal injury and workers' compensation. Mr. Legum is a member of the Delaware Supreme Court Commission of Law and Technology, the Richard K. Hermann Technology Inn of Court and the Delaware Hispanic Commission.



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# Obligations of Successor Counsel

**Y**ou just got a new case and client. Congratulations. However, this windfall comes with obligations.

I am sure you adhered to the previous advice found in this column (and everywhere else) to be cautious about accepting cases where there has been prior counsel. At the very least, I hope that you carefully questioned the prospective client as to why prior counsel was discharged — or why the client was terminated by the attorney. I also hope that you obtained the

the lawyers involved, and the total fee is reasonable. However, Formal Opinion 487 concluded that successor counsel is not bound by the requirements of Rule 1.5(e) either at the time of engagement or after recovery because Rule 1.5(e) applies only to situations where two lawyers are working on a case together and not to situations where one lawyer is replacing another. The opinion goes on to suggest that successor counsel may only disburse a fee to prior counsel with client consent or pursuant to an order of a tribunal of competent jurisdiction.

ABA Formal Opinion 475 (December 7, 2016) concluded that the lawyer receiving an earned fee has an obligation under Model Rules 1.15(a) and 1.15(d) to hold the those funds in an account separate from the lawyer's own property; to appropriately safeguard the funds; to promptly notify the other lawyer who holds an interest in the fee of the receipt of the funds; and to promptly deliver to the other lawyer the agreed upon portion of the fee, including a full accounting, if one is requested.

Model Rule 1.15 provides that:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation....

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or *third person*, except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other prop-

## If you are taking on the matter after diligently screening both the case and client, your first obligation in being successor counsel arises.

client's permission to call prior counsel to get their version of why the prior attorney-client relationship soured.

If you are taking on the matter after diligently screening both the case and client, your first obligation in being successor counsel arises. The client should receive a new, written fee agreement. Per ABA Formal Opinion 487 (June 18, 2019), in a contingent fee matter, successor counsel from a firm different from the prior counsel must also notify the client, in writing, that a portion of the contingent fee earned may be paid to the predecessor.

Rule 1.5(e) permits a division of a fee between lawyers not of the same firm if the client is advised in writing and does not object to the participation of all of

The Committee also noted that successor counsel must advise the client, again in writing, that predecessor counsel may have a potential claim against the recovery for work done before the prior attorney-client relationship was terminated. This presumably would include any potential *quantum meruit* claim of predecessor counsel. While admitting that Rule 1.5(b) and 1.5(c) do not specifically address the successor counsel issue, the Committee relied on Model Rules 1.5(b) (requiring communication of the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible) and 1.5(c) (requiring that contingency fee agreements be in writing).

Where successor counsel receives a fee subject to division with other counsel,

erty that the client or *third person* is entitled to receive and, upon request by the client or *third person*, shall promptly render a full accounting regarding such property. (Emphasis added.)

The Committee concluded that “or third person” as used in the rule includes prior counsel, triggering the obligations to safeguard those funds. It should be noted that ABA Model Rule 1.5(e) differs from the Delaware Professional Conduct Rules’ version. The ABA version permits the division of a fee between lawyers who are not in the same firm if the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation. Delaware’s rule merely requires that the client be advised in writing of the fee sharing between attorneys not of the same firm, and that the client does not object to the “participation of all of the lawyers involved.” As a result, it is unclear as to the application of the ABA opinions to referral fees.

However, the Delaware Supreme Court has ruled that a Delaware lawyer may not assert noncompliance with Rule 1.5(e) as a defense to an oral agreement with an out-of-state lawyer who is not charged with compliance with that rule or a similar rule of another jurisdiction. *Potter v. Pierce*, 688 A.2d 894 (Del. 1997). See also *In re McGuire*, 725 A.2d 417 (Del. 1999) in which an attorney’s failure to obtain a written agreement with a client regarding the joint representation with another lawyer prevented the Delaware attorney from receiving a share of the fee.

As successor counsel, you may receive the client and the case, but you may encounter difficulties receiving the client file from prior counsel. ABA Formal Opinion 471 (July 1, 2015) makes it clear that prior counsel (and all counsel) have an ethical obligation to surrender papers and property to which the former client is entitled. However, defining “entitlement” can be tricky. ABA Informal Ethics Opinion 1376 (1977) previously addressed the issue of a lawyer’s ethical duty to deliver files to a former client.

Formal Opinion 471 affirmed the position taken in Informal Opinion 1376 and reiterated that a lawyer need not surrender drafts or mark-ups of documents, internal legal memoranda or research materials, internal conflict checks, personal notes, hourly billing statements, firm assignments, notes regarding an ethics consultation, and documents that might reveal the confidences of other clients.

Model Rule 1.15 also provides that a lawyer must not only safeguard a client’s property, but also must promptly deliver it to the client upon the client’s request. Rule 1.16(d) (dealing with the termination of the attorney-client relationship) requires that the lawyer take steps reasonably practicable to protect the client’s interest, including but not limited to “surrendering papers and property to which the client is entitled.”

Although the Model Rules do not define “papers and property,” Informal Opinion 1376 opined that it includes all documents provided by the client to the attorney, significant correspondence, and all pleadings. The Committee noted that the lawyer need not deliver to the client “internal notes and memos.” However, other jurisdictions have concluded that the client is entitled to anything for which the client has paid a fee to counsel to create or produce.

Delaware’s Rule 1.16(d) permits prior counsel to “retain papers relating to the client to the extent permitted by other law.” As successor counsel, you may well encounter a file lien asserted by your predecessor which denies both your new

client and yourself access to the client file, subject to the significant limitations on the assertion of that right contained in Rule 1.16.


Finally, you may have an obligation, as successor counsel, to advise the client of any malpractice committed by your predecessor. *Goldfisher v. Superior Court*, 183 Cal.Rptr. 609, 615 m.2 (1982); Ill. State Bar Assoc. Formal Op. 94-70 (1994). This reporting requirement may also apply to malpractice committed by co-counsel (N.Y. State Bar Assoc. Ethics Op. 1092 (2016)) as well as your own malpractice (ABA Formal Op. 481, 2018).

## Conclusion

Make sure that you take a good look at that “gift horse” before you accept it.

Have a great summer!

*“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.delawgroup.com](http://www.delawgroup.com).



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# Change is Certain; Adaptation is Crucial

**It is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change.**

**- Charles Darwin**

**W**hether it is planned or unplanned, voluntary or involuntary, big or little, sudden or gradual, the only thing in life that is certain is change! And, in today's technological world, change is happening faster than ever.

Change may range from minor everyday events to major life events. It can be about our behaviors or our environment. It can be about bad stuff or good stuff. We cannot prevent it! However, we can improve the way that we understand change, react to change and most importantly adapt to change.

Hence, change is not something to fear nor resist. Rather, by embracing and adapting to it, change can force us to learn more about who we are and what we can do while gaining confidence in our transitional journey.

## Understanding Change

The definition of "change" is the act, or instance, of making or becoming different. Perhaps you are confronting planned change or change that you did not plan. Perhaps you are experiencing loss and grief that is forcing unwanted change. Maybe you are losing your edge at work and need to find new ways to use your skills. Whatever the change — you are not alone. Life is fluid and we all experience change.

Knowing that change is inevitable is important; but understanding the process of adaptability to change is crucial.

The father of stress research, Hans Selye, in his book *The Stress of Life*, states: "Life is largely a process of adaptation to the circumstances in which we exist — resisting change wears down our bodies, taxes our minds, and deflates our spirits." He

explains further that the secret of health and happiness lies in successful adjustment to the ever-changing conditions in our personal and professional world.

Moreover, change is often similar to moving through grief. Whether planned or unplanned, change is a loss of something we knew. The steps of moving through loss are as follows:

1. Reacting to loss with shock, numbness, and disbelief.
2. Beginning the difficult journey of understanding that the loss is real.
3. Allowing oneself to experience the pain of grief in all of its forms.
4. Identifying how one's environment has changed and begin to develop new roles, routines, and skills in response to the changes.
5. Eventually coming to a point where we choose to say "Yes" to life again.

In his book, *How to Survive Change...You Didn't Ask For*, M.J. Ryan offers a clear game plan for accepting a new reality, thoroughly exploring the available options and taking concrete steps toward regaining control over planned or unplanned change. His general guide to adaptability to change includes "Seven Truths About Change":

1. Change is the one thing you can count on.
2. It is not personal.
3. Your thinking is not always your friend.
4. Change isn't the enemy, fear is.
5. There's a predictable emotional cycle to change.
6. You're more resilient than you may think.
7. Your future is built on a bedrock that is unchanging.<sup>2</sup>

## Adaptability To Change and Transition

Any changes, even basic change, often will necessitate many other changes in order to completely transition to a new situation.



In *Psychology Today*, Abigail Brenner, MD offers seven key points to help you transition through change while taking the fear and drama out:

---

1 Before you embark on your next transition, “map” your trip as best you can, knowing that things don’t always work out as you plan or hope they will. Have a realistic expectation and reasonable timetable for the change to occur through transition. Some transitions take a relatively short period of time; others years, sometimes decades, and in rare cases, a lifetime.

---

2 Take the time to review what you have learned about change and your response to it to make the best possible choices and decisions, unless, of course, the change is one that places you in imminent danger, such as life-threatening illness, unexpected personal crisis, or natural disasters, where you have no choice but to take immediate action. In that case, once the necessary actions are taken and the dust finally settles, then you can go back and review in order to figure out what the transition meant and what to do next.

---

3 Create a life timeline reflecting major life transitions, as well as a loss timeline reflecting loss as the main theme of the transition. Pay special attention to the main emotions for each of these transitions and how you expressed them through your feelings.

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4 Define your life themes and life lessons. This goes well beyond charting the chronological order, the “facts” of your life. Themes are easily recognizable, especially when they present as recurring and repetitive behaviors. Doing the same thing over and over again will not bring a different result, although sometimes, you may get lucky. What have you learned from life so far and how does that impact your life moving forward?

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**Knowing that change is inevitable is important; but understanding the process of adaptability to change is crucial.**

5 Emotions and feelings are commonly thought to be the most reliable indicators of who you are and how you express yourself. Go a step beyond this to identify what you believe, or rather what you were programmed to believe. It is a worthwhile exercise to take the time to question yourself about what you believe, even if doing this ultimately does not change your mind. Sometimes, the actions we take and the choices and decisions we make are based on ideas that no longer serve us (if they ever did in the first place). Going beyond limiting beliefs may pave the way for changing the way you transition moving forward.


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6 Since the archetype for life is the journey, creating a “road map” will help you plan your life moving forward, much as you would prepare for a trip. Charting your trip tells you where you have been so far, where you are intending to go, what your obstacles have been, and places you keep on returning to. Drawing your journey, or using guided imagery or creative visualization, allows you to visually see or imagine where you have been and then envision where you want to go.

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7 Transitions should be seen in their evolving, flowing movement, upward and downward, as well as backward and forward. Transitions are never just linear events. This model for our life allows us to constantly revisit and reassess experiences that have already happened and to draw upon those experiences for valuable information about subsequent transitions within our lives. In this way we can proceed in life more confident that we have the necessary resources and skills, as well as the hard-earned wisdom to accomplish whatever we set out to do.<sup>3</sup>

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Change is the essence of life itself. By embracing and promoting positive change, we learn more about who we are and what we can do. For more information on this subject or if you, or someone you know, would like to talk about specific change in your life, contact DE-LAP’s confidential and free service at (302) 777-0124 or email [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org). Follow us Facebook and Twitter and listen to our new Podcast for lawyers. 

#### Notes:

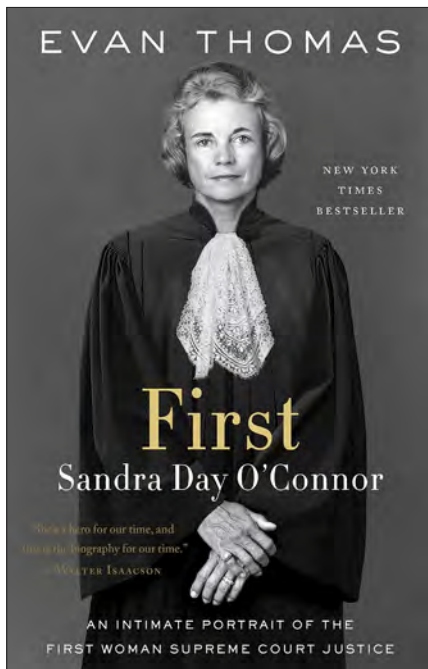
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# First Rate



## *First, Sandra Day O'Connor*

By Evan Thomas

Random House, 2019

Judicial biographies consist of two parts — the personal profile and the judicial analysis. With the personal profile, the biographer tells the story of the subject's coming of age, professional background, their life before the bench, and their life outside the bench. Once on the bench, judicial biographies often lapse into a chronology of “greatest cases” (or “worst cases,” depending on how the biographer feels about the subject) that goes through the various important cases in which the judge took part, how the cases were decided, and how those cases have stood the test of time. Done right, the reader comes away feeling as if they not only know the judge well, but as though they have gained tremendous insight into the judge and the judge's decisions and judicial philosophy. Done wrong, the reader comes away feeling as though he or she has been studying a list of cases for a law school exam without necessarily learning that much about the judge.

In *First, Sandra Day O'Connor*, author Evan Thomas has produced a first-rate biography of exceptional style and grace that paints an extraordinary portrait of an extraordinary woman who has lived an extraordinary life. O'Connor's is a remarkable story that must be read to be believed and appreciated.

Nothing about her early childhood or, indeed, most of her life before becoming the nation's first female Supreme Court Justice, would have suggested that Sandra Day O'Connor was destined for her starring role. She grew up on the Lazy B ranch, her family's roughly 250 square mile (or 160,000 acre) ranch along the Arizona-New Mexico border. The small ranch house had no running water or electricity until she was seven, and until she was nine, she had no siblings or other childhood friends to play with at the ranch. But, she learned the value of hard work and self-reliance. When she was six, O'Connor moved to El Paso, Texas and stayed with her grandmother while attending school, returning to the ranch on holidays and for summers. Her father had been accepted into Stanford University, but never attended, deciding to manage the Lazy B instead; as a result, both he and O'Connor's mother could not have been happier when Sandra Day was accepted into Stanford. She attended the college and then the law school, where she met and dated future Supreme Court Chief Justice William Rehnquist (but turned down his marriage proposal).

Although O'Connor graduated third in her class (Rehnquist was valedictorian), no California law firm in 1952 would hire a woman attorney and so she took a job working for the San Mateo County district attorney for no pay. Shortly thereafter she married John O'Connor, who was a year behind her in law school; and, after he was drafted and served his time in the army, the two of them decided to locate to Phoenix, Arizona. John joined one of the largest firms in the City (at the time it had 10 attorneys) and Sandra joined with another lawyer and opened a small practice in a shopping center. Sandra later joined the Arizona Attorney General's office before leaving the practice of law to stay at home and raise her sons. That hiatus, though, was short-lived. The O'Connors had been active in Republican politics and were well-connected. In 1969, O'Connor was appointed to fill a vacancy in the State Senate, and she won the elec-

tion on her own the following year. In 1972, she became the Senate's Majority Leader, where she earned a reputation as a skilled negotiator. In 1974, she was elected to the Maricopa County Superior Court. In 1979 she was appointed to the Arizona Court of Appeals, where she was serving in 1980, when Ronald Reagan was elected President.

## O'Connor's is a remarkable story that must be read to be believed and appreciated.

During his campaign, Reagan had promised to appoint the first female Justice to the Supreme Court — but when the time came, whom would he appoint? There were five women's names on the list of potential nominees put together by the White House, including O'Connor's, although how O'Connor's name got to the list is not entirely known. It is believed that Rehnquist first suggested her name, but that has never been confirmed; however, Rehnquist would voice his support for her as the White House considered candidates. Chief Justice Warren Burger, who had met O'Connor in 1979, was impressed by her and put her on the Judicial Fellows Committee, also weighed in on her behalf. Arizona Senator Barry Goldwater called the President to lobby for O'Connor, and Dennis DeConcini, Arizona's other Senator and a moderate Democrat, issued a statement calling for the President to nominate her. She got the nomination, was confirmed 99-0 (one Senator was away from Washington), and, in 1981, at age 51, joined the Marble Palace.

Once on the Court, O'Connor gradually drifted to the Court's center and was known as more of a pragmatist unwilling to issue sweeping opinions and preferring to take an incremental approach. However, despite her reputation, O'Connor sided with the conservatives much more often than the liberals in 5-4 decisions. From 1994 through 2004, in 5-4 decisions, she sided with Rehnquist, Antonin Scalia, Anthony Kennedy, and Clarence Thomas 82 times, and only 28 times with John Paul Stevens, David Souter, Ruth Bader

Ginsburg, and Stephen Breyer. Nevertheless, she was considered the swing vote. During the 1999-2000 term, for example, O'Connor was in the majority in 16 of the 21 5-4 decisions issued that term.

Whatever one may think of her judicial record and approach, though, one undeniable fact shines through in *First*. O'Connor is a true original and a person

that anyone would be glad to have as a friend. Her upbringing on the Lazy B has served her well. She is down-to-earth, practical, no-nonsense, yet has a terrific sense of humor. In May 1990, when she was asked to speak at the one hundredth anniversary celebration for the California-based firm of Gibson, Dunn & Crutcher, she happily obliged. Speaking before a packed room of partners, important firm clients, the governor, the mayor of Los Angeles, and others, she started off by observing that 38 years earlier the firm had allowed her to apply for a secretarial position, but if they had hired her as an attorney, she calculated that she might be number 10 in a firm of 650 lawyers. As it happened, though, she had settled for a smaller firm of nine and had risen to number seven. What had been nervous chuckles grew to much laughter, and O'Connor finished her introductory comments by saying that "all was forgiven" because it had been a Gibson Dunn partner, William French Smith, who had recommended her to the Supreme Court.

O'Connor once told a friend that getting appointed to the Supreme Court was "like getting struck by lightning." If so, then the Court and the nation were exceedingly fortunate in lightning's choice, because no one could have been a better first choice. ⚖️

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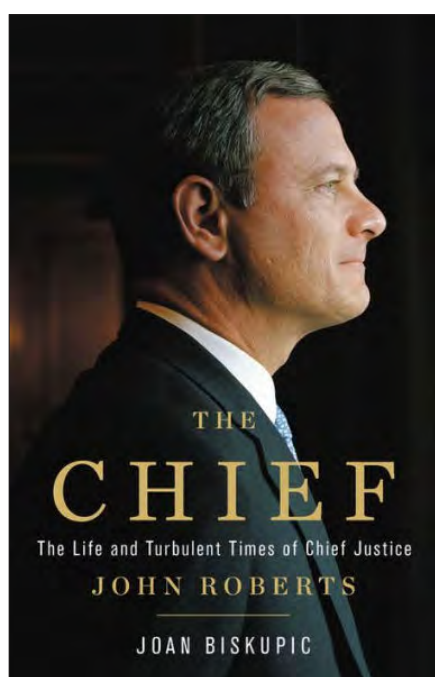


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# The Continuum Between Chief Justices Marshall and Taney

REVIEW BY ALEX J. MILI, JR., ESQUIRE



## *The Chief: The Life and Turbulent Times of Chief Justice John Roberts*

By Joan Biskupic  
Basic Books, 2019

Chief Justice Roberts’s metaphor of judges as baseball umpires presumes that life experiences do not (or should not) influence judicial decision-making. Justice Sotomayor has contrarily contended that “a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn’t lived that life.” In *The Chief: The Life and Turbulent Times of Chief Justice John Roberts*, CNN legal analyst Joan Biskupic chronicles Roberts’s life experiences and how they shape his leadership and legacy as the seventeenth Chief Justice of the U.S. Supreme Court.

As with her previous biographies of Justices O’Connor and Scalia, Biskupic’s comprehensively researched portrait of Roberts is distilled through journalistic economy of prose honed as former Supreme Court correspondent for *Washington Post*. The engaging and humanizing account of a man pre-destined for success begins at an academically rigorous boarding school in Long Beach, Indiana, where Roberts excelled and was its first student to attend Harvard. After finishing his undergraduate studies in three years and continuing his education at Harvard Law School, Roberts clerked for then-Justice Rehnquist (whom Roberts would replace as Chief Justice twenty-five years later) in the 1980 Term that ended just as the Reagan revolution was beginning.

Though Roberts has publicly stated that the judicial branch is apolitical (particularly in response to President Trump’s pejorative labelling of “Obama judges”), Biskupic juxtaposes Roberts’s judicial decisions with his pre-judicial stint in the executive branch as a dutiful foot soldier for the conservative Reagan agenda of the early 1980s. Among other conservative initiatives of that era, Roberts was tasked with dismantling various federal affirmative action policies (decades before giving his tautologous lesson that “the way to stop discrimination on the basis of race is to stop discriminating on the basis of race” in *Parents Involved v. Seattle School District No. 1*). Roberts was also tasked during the Reagan administration with scaling down the pre-clearance procedures of the Voting Rights Act of 1965 (the same pre-clearance procedures that he emasculated altogether in *Shelby County v. Holder*).

Roberts’s handiwork for the Reagan administration earned the number two spot at the Solicitor General’s Office in the successive Bush administration and an eventual nomination to the D.C. Circuit in 1992. When that nomination lapsed upon the election of President Clinton, Roberts spent the next decade distinguishing himself as a top Supreme Court advocate (ultimately arguing a grand total of thirty-nine cases), which positioned him well for re-nomination to the D.C. Circuit after President Clinton left office.

Once confirmed to the D.C. Circuit in 2003, Roberts strategically crafted judicial opinions that telegraphed his conservative bona fides, without also building a paper

trail that could fuel a Borkean show-down if he were ever nominated to fill a Supreme Court vacancy. When two such vacancies arose before the 2005 Term, Roberts was confirmed as Chief Justice by more than a three-quarter supermajority vote.

The chronicle of Roberts's life from elite boarding school all-star to handily confirmed Chief Justice provides an insightful lens through which to view Roberts's jurisprudence. The second half of Biskupic's biography offers excursions with Roberts through affirmative action, campaign finance, government-mandated healthcare, and voting rights. Some excursions follow expected paths, such as Roberts's majority opinion in *Shelby County v. Holder* that declares an official end to Justice Department oversight of elections that Roberts began deconstructing three decades earlier in the Reagan administration. Other excursions follow unexpected paths, such as Roberts joining the Court's liberal bloc to uphold the Affordable Care Act (*National Federation of Independent Business v. Sebelius*), a "switch in time to save nine" that is reminiscent of Justice Owen Roberts's uncharacteristic eleventh-hour coalition with the Four Horsemen to provide the determinative fifth vote to uphold FDR's New Deal agenda (*West Coast Hotel v. Parrish*).

Apart from the jurisprudence of the Roberts Court, the final three chapters examine the institutional fracturing of the Supreme Court in recent years (hence the "turbulent times" referenced in the book's subtitle). Before Justice Scalia's death in 2016, such fracturing could be gleaned from the public distrust of the Court as a perceived political institution (the coordinated courtroom protests of 99Rise to mark the five-year anniversary of *Citizens United*) and from the individual Justices' distrust of each other (the dueling concurrence and dissent in *Schuetz v.*

**The chronicle of Roberts's life from elite boarding school all-star to handily confirmed Chief Justice provides an insightful lens through which to view Roberts's jurisprudence.**

remainder of 2016, the tactical stalling of Merrick Garland's nomination to replace Scalia, the Senate's bare majority vote to confirm Justice Gorsuch through the procedural maneuvering of the nuclear option, and the tumultuous high-stakes battle to confirm Justice Kavanaugh by an even slimmer majority.

The foregoing evolution (or perhaps devolution) of the modern Supreme Court demands an institutional leader who can hold intact the "least dangerous" branch that Alexander Hamilton envisioned in Federalist No. 78. Toward that end, Biskupic observes that a Chief Justice's institutional leadership aspires to replicate the legacy of Chief Justice John Marshall (revered author of *Marbury v. Madison*) while eschewing any historical stain that would even remotely resemble the legacy of Chief Justice Roger Taney (disdained author of *Dred Scott v. Sanford*). Any comparison to Marshall must await the completion of Roberts's full tenure as Chief Justice. Some critics of Roberts will suggest that his jurisprudence on affirmative action, voting rights, and same-sex marriage already tilt toward Taney. No matter where history will place Roberts on the Marshall/Taney continuum, Biskupic proves that the leadership and legacy of a titular Chief Justice are inevitably presaged by the life experiences of the human being who comes to occupy the center seat of the High Court Bench. ⚖️

**Alex Mili** is Chief Deputy Register of Wills for New Castle County. He can be reached at alex.mili@newcastlede.gov.

*Coalition to Defend Affirmative Action* where Roberts and Sotomayor attacked each other's personal motives for their respective decisions in the case). After Scalia's death, the linear progression of such fracturing became all the more resounding with the slew of 4-4 decisions issued during the

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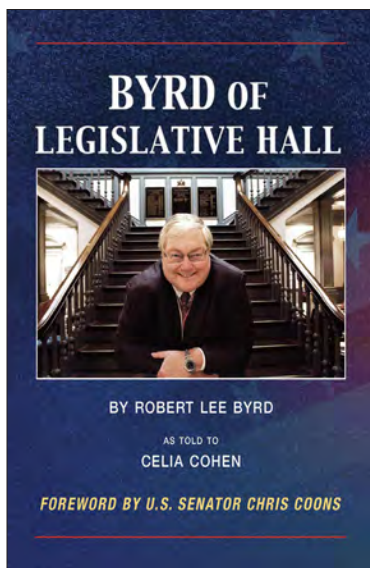
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# Let the Good Times Roll



## *Byrd of Legislative Hall*

By Robert Lee Byrd  
(as told to Celia Cohen)  
Regent Press, 2019

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

**T**here is an old saying attributed to German Chancellor Otto von Bismarck that “laws are like sausages, it is better not to see them being made.” While there is certainly much truth to this saying, a new book, *Byrd of Legislative Hall*, suggests that the Chancellor’s famous saying may not be all that true — sometimes it can actually be quite fascinating and fun to watch the legislation being made.

Written by one of Delaware’s leading lobbyists, Bob “Byrdie” Byrd, *Byrd of Legislative Hall*, tells tales from the last 50 years or so of Delaware politics and the story “behind the story” of various legislative and political goings on. Written in a very conversational style, it feels as though Byrd is speaking directly with the reader and telling stories as if the reader were a good friend — and some of the stories are pretty amazing.

Ever wondered why Delaware motorcyclists do not need to wear a helmet, but nevertheless must have a helmet with them on their bike? Byrdie can tell you (and he does). The Anheuser-Busch Clydesdales were supposed to march in the parade at Return Day in 2008, but did not. Byrdie knows why. Delaware was among the first states to ban smoking in indoor public areas like restaurants, bars, offices, and casinos. The casino ban ended up driving a lot of business to other states and cost Delaware millions of dollars. Casinos were supposed to be carved out of the ban, but that did not happen — and Byrdie was there. CSX’s plans for an intermodal facility in Elsmere, the rezoning for the Brandywine Town Center, the passage of the slots legislation, the naming of a new Senator when Joe Biden was elected Vice-President — Byrd was involved behind the scenes in lots of pivotal Delaware

moments, and he shares his observations on many of them. It all makes for fun reading.

As children, of course, we were taught civics with a certain solemnity and respect and idealism. Although these ideals do not always turn out to be true, that does not mean they are unimportant or that we shouldn’t strive for them. Byrd understands this too. In the postscript to his work, he ends with a poignant reminder and plea, writing that:

Today’s politics are getting uglier and uglier and, politicians forget that they have to govern, not just get reelected. It is easy to criticize and demagogue the issues, we seem to be doing more of that.

It is more difficult to sit down with your opponents, no matter the issue or the political party, and have realistic meaningful discussions in an attempt to reach compromise. That is what the founding fathers wanted and that’s the way our system works best. It has always been my goal to reach consensus and allow my opponents to save face.

Hopefully this [book] will be a guide for future generations to understand that government and politics can be fun, but at the same time understand that this is a very serious business and that you are touching the lives of thousands of people.

Certainly Bob Byrd has provided an entertaining and fun book; but let us hope that the real lesson — that of realistic meaningful discussion, consensus-building, and responsible governance — is taken to heart by all those who read it. Certainly we should demand no less from our elected leaders. ⚖️





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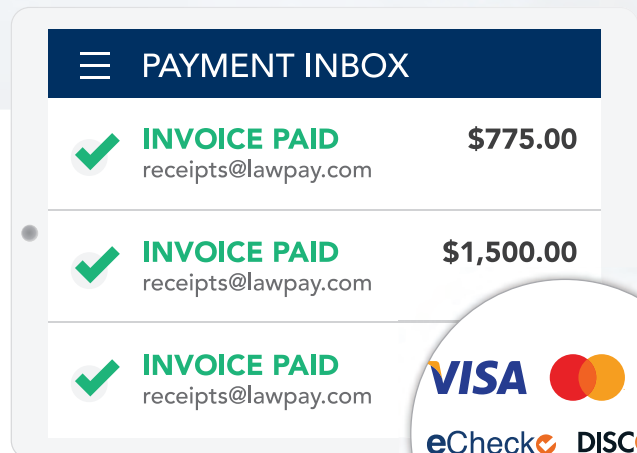


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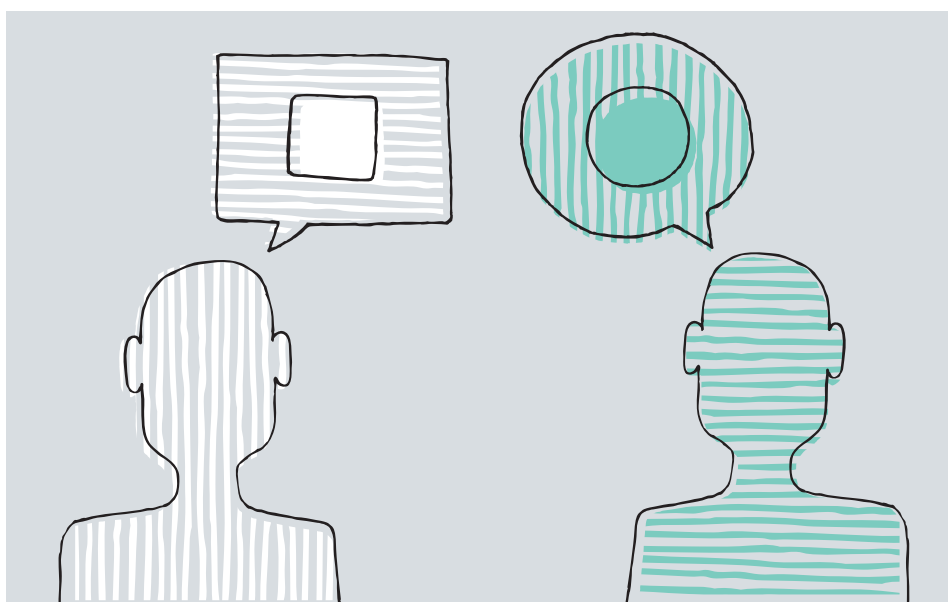


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# In Buy-Sell Agreements, Watch Your Language

BY PHILIP M. REYNOLDS, CPA, ASA



**E**very profession has its own special language. Accountants have GAAP and COGS. Finance professionals worry about APR and ROI. Consumer finance has balloon notes and FICO scores. Economists talk of marginal differences and the invisible hand. Lawyers have *bona fide*, *amicus curiae*, *habeas corpus*, and, everyone's favorite, *pro bono*. And, tax law has IRC Section this or that.

In each case, these terms mean much more to those who work in the profession than they do to anyone else. To outsiders, a profession's specialized vocabulary often seems designed to confuse those who do not work in the profession. But in fact, specialized vocabularies are meant to express ideas, sometimes

extremely complex ideas, in a very succinct way.

As long as specialized terms are used correctly and well-understood, all is well. But sometimes, a specialized term becomes more widely used than understood. Such is the case with the business valuation term, fair market value.

## Standards of Value

The word value can mean different things to different people, and different things to the same person at different times. Because the word value can have different meanings in different contexts, it should be carefully defined in each case. In the area of business valuation, these various definitions are known as standards of value.

There are several standards of value that are commonly encountered and they differ in significant ways. The following definitions or descriptions of different standards of value generally apply to business appraisers. When the courts or attorneys use the same terms, they may use them without defining them and without a clear understanding of the definitions used by business appraisers.

## Fair Market Value

Fair market value, probably the most widely-known standard of value, is the legally-required standard in estate and gift tax, income tax, and other federal and state tax cases. To a business appraiser, the term fair market value is defined as:

The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's-length in an open and unrestricted market, when neither is under compulsion to buy or sell, and when both have reasonable knowledge of the relevant facts.

An arm's-length transaction is a transaction between unrelated parties with opposing interests. The wording of the definition of fair market value may vary a little from one business appraiser to another, but the meaning will always be pretty close to this definition.

So, what price would a hypothetical well-informed, willing and able buyer pay in an unforced, arm's-length, free-market transaction for an interest in a privately-held (*i.e.*, not publicly-traded) business? What price would a similar seller accept under similar conditions?

First, such a buyer would recognize, in general, that, because the interest is not traded in a public market, it is illiquid (*i.e.*, difficult to sell), and he would demand a discount for this lack of marketability. Second, if the interest is a minority (*i.e.*, non-controlling) interest, he would demand a discount for this lack of control. In both cases, the seller would recognize the same limitations of the interest and would accept such discounts.

Thus, under the fair market value standard, discounts for lack of marketability and lack of control (or, perhaps, a control premium) must be considered.

### Other Standards of Value

**Fair Value** applies in situations including financial reporting, shareholder disputes, and divorce, but its definition can differ depending on the case. For financial reporting purposes, the Financial Accounting Standards Board (FASB), in Statement of Financial Accounting Concepts No. 7, defined fair value as:

The amount at which [an] asset (or liability) could be bought (or incurred) or sold (or settled) in a current transaction between willing parties, that is, other than in a forced or liquidation sale.

But, this definition of fair value is only for financial reporting purposes. In, say, a divorce case, the term fair value may have an entirely different meaning.

For many years, the term fair value was not well defined and was used to mean different things in different cases. More recently, except in financial reporting cases, it has come to mean the pro rata value of the entire business *without* applying control premiums or discounts for lack of control or lack of marketability or any other premiums or discounts.

This makes *fair value* very different than fair market value, where such premiums and discounts must be considered.

**Market Value** is a term often used in real estate appraisal and is defined by the Federal National Mortgage Association (FNMA or Fannie Mae) as:

The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and each is acting in what he or she considers his/her own best interest;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold and unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

People often confuse the terms *fair value* and *market value* with the term *fair market value*.

**Investment Value** is the value to a *specific* buyer, seller, or owner. This is in contrast to fair market value, which is the value to a *hypothetical* buyer and seller. For example, a business might be worth more to another business in the same or a related industry than it would be to a business or individual with no connection to that industry because

**To outsiders, a profession's specialized vocabulary often seems designed to confuse those who do not work in the profession. But in fact, specialized vocabularies are meant to express ideas, sometimes extremely complex ideas, in a very succinct way.**

of the possible synergies involved in a consolidation or because of a reduction in competition.

**Book Value** is not really a business valuation term. It is an accounting term. For a business, book value is the difference between total assets and total liabilities. For an individual asset, it is generally the historical cost adjusted for things like depreciation or amortization.

**Intrinsic Value** is a term used more in security analysis than in the related field of business valuation. Intrinsic value is the value inherent in a thing. For example, the intrinsic value of a gold coin would be the value of the gold it contains, though the value of the coin to a collector could be much more than that. To a security analyst, the intrinsic value of a publicly-traded stock would be its central tendency, without regard to daily fluctuations in price. While not often used by business appraisers, the term does appear in judicial opinions of value.

### Blended Definitions of Value

Because judges and attorneys may not be aware of the importance or definitions of standards of value that business appraisers apply, they often fail to define the word value. Even when they do specify a particular standard of value, they may then apply a different standard or a mixture of two or more standards of value. They may say that they are applying a fair value standard, but then

Buy-Sell Agreements (continued on page 30)



they use fair market value. Or, they may indicate that they are looking for fair market value, but end up with fair value while calling it intrinsic value.

### So What?

Why is this important and what does it have to do with buy-sell agreements? It is important because a buy-sell agreement is a contract. When a business appraiser agrees to value a business or business interest pursuant to a buy-sell agreement, he is bound by the terms of the agreement. If a buy-sell agreement calls for fair market value, then the appraiser is bound by that standard of value, even if one of the parties to the agreement later says he meant fair value.

For example, if three partners start and operate a business and one later decides to sell his interest to the other two, he may expect to receive one-third of the total value of a controlling interest in the business. If the buy-sell agree-

**When writing buy-sell agreements, attorneys should know standards of value and be sure that clients understand them as well.**


ment specifies that he will receive the fair value of the interest, then he would likely receive about what he expects. But, if the agreement specifies that he will receive the fair market value of the interest, then he would likely receive a much lower amount because of the discounts for lack of control and lack of marketability. The difference can be many thousands or even millions of dollars.

### Summary

When writing buy-sell agreements, attorneys should know standards of value and be sure that clients under-

stand them as well. A buy-sell agreement is a contract and business appraisers are legally bound to apply it as it is written. If an attorney writes a buy-sell agreement and specify fair market value when clients are expecting fair value, the clients may not be happy with the outcome and may feel ill-served. An attorney should consider having buy-sell agreements reviewed for valuation issues by a certified business appraiser before having them executed.

• • •

*This article was submitted for publication in the Bar Journal. It is not intended as legal advice and the views expressed in this article are not to be interpreted as those of the Delaware State Bar Association. Additional information about the author is available at [www.fsvs.biz](http://www.fsvs.biz).* 

**Philip Reynolds** is a Delaware CPA and an ASA (Accredited Senior Appraiser) in business valuation with twenty years of experience in business valuation. He can be reached at [preynolds@fsvs.biz](mailto:preynolds@fsvs.biz).



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The law firm of Baird Mandalas Brockstedt, LLC is pleased to announce that Victoria K. Petrone, Esq., has joined the firm.

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## Thomas Herlihy III, Esquire A GENTLEMAN LAWYER RETIRES

BY DAVID J. FERRY, JR., ESQUIRE

**M**y long-time colleague and friend Thomas Herlihy, III retired from the practice of law on June 30, 2019. Tom practiced as a distinguished member of the Delaware Bar for 59 years.

Tom was born in Wilmington, Delaware. His father, Thomas Herlihy, Jr., was a distinguished member of the Bar, former mayor of Wilmington and a Municipal Court judge. His brother, Jerome O. Herlihy, was also a distinguished member of the Bar and a long time Superior Court judge. Tom served as Deputy Attorney General from 1961 to 1963 and as Chief Deputy Attorney General in 1964. He also served as Chairman of the Alcohol Beverage Control Commission from 1969 to 1972. He was a graduate of Dartmouth College and the University of Virginia Law School. Tom was a partner in his family's law firm of Herlihy & Herlihy for many years before he became of counsel to Ferry Joseph, P.A. He was an old-fashioned family lawyer who practiced in nearly all areas of the law at one time. In later years, his practice was focused on estate and trust planning, estate and trust administration, elder law, Medicaid planning, and guardianship matters. Tom served as the Chair of the Law & Elderly Section in the

**Tom has an amazing ability to stay active and enjoy life to the fullest.**

early days of that section's existence. He was a member of the Delaware State Bar Association, Estates & Trusts Section, National Academy of Elder Law Attorneys, and was on the board of a number of charitable and non-profit organizations over the years.

Tom will likely be remembered by many members of the Bar and others for his excellent portrayal of Abraham Lincoln. Tom spoke at many events over the years portraying Abraham Lincoln. Tom had a striking resemblance to the sixteenth President of the United States. More importantly, Tom also had the persona of Honest Abe. He was an excellent attorney, counselor, and advisor. Probably all of his clients thought of



him as a friend as well as their lawyer. Tom has been one of the leading examples of the Delaware lawyer.

Tom has enjoyed something of a part-time retirement over the past several years before announcing his full-time retirement. Tom has enjoyed fairly spectacular vacations all over the world, visiting Germany, Alaska, China, Egypt, Mexico, and many other places with his family and he continues to look forward to even more family vacations immediately after his retirement. Tom has an amazing ability to stay active and enjoy life to the fullest.

I enjoyed working with Tom from the time I was a young lawyer and had cases with and against him. I especially enjoyed the last thirteen years when he worked in an of counsel position with my firm. Every person in my firm enjoyed working with Tom and, although we are all sad to see him leave, we wish him a long, happy, and well-deserved retirement. 🕒


**David J. Ferry, Jr.** is the immediate Past President of the Delaware State Bar Association. He is a founding partner of the firm of Ferry Joseph, P.A. He can be reached at [dferry@ferryjoseph.com](mailto:dferry@ferryjoseph.com).



# Project Citizen Showcase

BY PAT QUANN, EXECUTIVE DIRECTOR  
DELAWARE LAW RELATED EDUCATION CENTER

The Delaware Law Related Education Center, Inc. held its annual State Showcase on April 12, 2019 with eight separate Portfolios to be judged. The First Place Portfolio came from Newark Charter School, and was called "Preventing Plastic Pollution." Cab Calloway received 2nd Place at the Showcase for their "Paving the Way to the Future" Portfolio, which received a Student Choice Award. Newark Charter won 3rd Place for their "Vaping in Delaware School Curriculum" Portfolio, which also received a Student Choice Award. Cab Calloway won 4th Place For their "Save your Breath" Portfolio.

Portfolio Judges for the Showcase were: Carol Anderson, Scott Bacon, Jen Baur, Mary C. Boudart, Esquire, Lynn Buffington, Michael Feldman, Jen Howell, Chris Kenton, Fred and Julia Longacre, Fran O'Malley, Susan Simmons and Barry and Sandi Townsend. The Showcase was held at the Delaware State Bar Association and was funded by the Delaware Bar Foundation. 



From Cab Calloway: Chase O'Neal, Caitlin Pollutri, Olivia Knestaut, and Ella Gonser with their 2nd Place Portfolio, "Paving the Way to the Future."



From Newark Charter: Isabella Porter, Avery Tingey, Aileigh Corbett Maansi Pant with their 3rd Place Portfolio, "Vaping In Delaware: School Curriculum."



From Newark Charter: Chow-Fong Kust, Natalie Yang, Camille Veron, and Leah Williams with their 1st Place Portfolio, "Preventing Plastic Pollution."



From Cab Calloway: Ashley Bao, Nicole Wang, Minna Chen, and Mimi Tacheva their 4th Place Portfolio, "Save your Breath."



# The Art Connolly Race Judicata 2019

BY PAT QUANN, EXECUTIVE DIRECTOR  
DELAWARE LAW RELATED EDUCATION CENTER

**T**he 14th Annual 5K Walk/Run was held on Saturday, April 20, in the Brandywine Park. The event was sponsored by the Young Lawyer's Section of the Delaware State Bar Association and 135 people participated. We are grateful to Kelly's Logan House, which served as our host, and to Arthur ("Chip") G. Connolly III, Esquire, who served as the starter for the race.

The Art Connolly Race Judicata 2019 was organized by Shannon D. Humiston, Esquire, of McCarter & English, LLP and Chair of the Young Lawyer's Section. Justin E. Mann, Esquire, of Greenberg Traurig LLP served as the coordinator and he was assisted by Lucas A. Whited, Esquire, of Richards, Layton & Finger, P.A., Sara M. Kirkpatrick, Esquire, of Morris Nichols, Arsht & Tunnell LLP, and Michael Patrick Minuti, Esquire from McCann & Wall LLC.

We thank our Business Sponsors; DLS Discovery, LLC, and Just Legal for their support. We are grateful to all the volunteers who helped with registration and other activities at the event, including students from Howard High School of Technology and Charter School of Wilmington.

Other volunteers included Mary Ann Miller, Sorelis Duran, and Alison Macindoe. Funds and donations raised by the race will benefit the programs of the Delaware Law Related Education Center, Inc. The Art Connolly Race Judicata raised nearly \$9000 for the Center. We deeply appreciate the generous support from the sponsoring firms and individuals.

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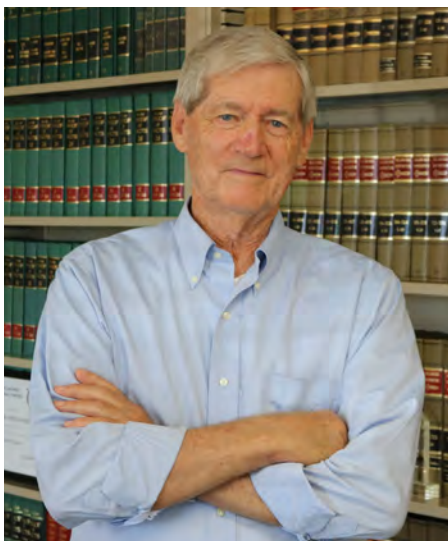
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## James D. Griffin

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### PRACTICE AREAS

Commercial Law, Wills, Estates  
and Trusts, Eminent Domain,  
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Law, and Education Law

DSBA MEMBER SINCE  
**1969**

Interview By LaTonya Tucker  
Director of Bar Services & Membership

Photo By Antonio Byrd  
Director of Media & Cinematography

**A**t the Delaware State Bar Association, we realize that not all superheroes wear capes. They are meeting with clients, reviewing motions, preparing briefs, sitting in trials, but nonetheless still saving the day. We are fortunate to have such committed individuals as members of our organization. Every other month we will recognize a DSBA member that in the words of Superman, works hard to protect “truth, justice, and the American way.”

• • •

Our “spotlight” member, James D. Griffin, has been a member of the Delaware State Bar Association since 1969 and is admitted to practice in Delaware, the U.S. District Court for Delaware, the Third Circuit Court of Appeals, and the U.S. Supreme Court. In addition to serving the legal community, Jim spent years serving our county in the United States Marine Corps. Not only is Jim a successful attorney and military veteran, he also has a passion for the great outdoors and is a Master in the sport of fox chasing on horseback, which originated in England.

### Why did you decide to practice law?

Well, the law was something I was interested in while I was a senior in college. I got permission to take a course at the local law school, and I really enjoyed it. After I graduated, I went into the Marine Corps for four years and my plan was to go to law school afterward and use the GI bill, which I did. While serving in the military I did a lot of fun court-martial representation. You can do that as a non-lawyer as long as you’re an officer. That experience confirmed my interest in the law.

### What gives you the most satisfaction in your work?

Helping people resolve their issues — feeling like you are being useful.

### This year the DSBA will be carrying out the Superhero theme, so the next question — Who is your hero/heroine?

My wife, Patricia Griffin — She is a master in the Court of Chancery — and my kids.

### Why did you join the Delaware State Bar Association?

It appeared to me that most lawyers were members of the Bar Association and membership offered an opportunity to get continuing legal education and keep those requirements fulfilled. And, I wanted to be a contributing member of the Bar. I have held various positions — President of the County Bar, member of the Board of Bar Examiners, and the old Censor Committee, which was a precursor to the ODC.

### If you could have any superpower, what would it be?

To eliminate war and hunger with the snap of a finger — those seem to be the issues that keep us unsettled.

• • •

Jim, the Delaware State Bar Association would like to thank you for 50 years of committed service to our organization. 🗣️

Want to nominate someone for the DSBA Superhero Spotlight? Send an email to LaTonya Tucker at [ltucker@dsba.org](mailto:ltucker@dsba.org).





## Insurance Services for Delaware Attorneys

The Delaware State Bar Insurance Services (DSBIS) offers comprehensive, highly customized insurance solutions and risk control services to protect lawyers from professional exposures and provide enhanced member services.

Powered by USI, DSBIS brings decades of risk management experience, a proprietary risk analysis process and a local team supported by the expertise of more than 4,400 USI professionals nationwide to reduce cost and lower risk for your firm.

Since 1940, our Wilmington office has provided the insurance solutions and services that lawyers count on to protect their families, their firms and their employees. At DSBIS, we've got you covered.

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# Nominations Sought for the Delaware State Bar Association's 2019 Christopher W. White Distinguished Access to Justice Awards

The DSBA and the Awards Committee are seeking nominations for the 2019 Distinguished Access to Justice Awards formerly known as the Distinguished *Pro Bono* Service Awards. The change in name is based on a desire to be more inclusive in designating those deserving of recognition. The awardees will be announced during Celebrate *Pro Bono* Week.

## The Christopher W. White Distinguished Access to Justice Awards Ceremony

Thursday, October 24, 2019, Chase Center on the Riverfront

**There are five categories for which individuals, firms, or organizations can be nominated.**

### The Leadership Award

This award is presented to a legal organization (legal department or law office) that has demonstrated outstanding leadership in the field of *pro bono* service to Delaware's indigent population based on the following criterion including, but not limited to:

- The number of *pro bono* hours the organization contributes to the direct representation of indigent clients.
- The number of cases the organization accepts for *pro bono* representation.
- Flexibility and accessibility in accepting cases.
- The organization's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.
- Financial support to agencies providing legal services to Delaware's indigent population.
- The percentage of attorneys in the organization who accept *pro bono* cases.
- Fostering a culture, which recognizes the value of *pro bono* service.

### The Commitment Award

This award is presented to a member of the Bar who has demonstrated a sterling commitment to *pro bono* work throughout his or her career by dedicating time and energy to the support and provision of legal services. The criterion includes, but is not limited to:

- The number of *pro bono* hours devoted to legal representation of indigent clients over the lawyer's career.
- The number of cases accepted for *pro bono* representation over the lawyer's career.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need over the lawyer's career.

### The Achievement Award

This award is presented to a member of the Bar who has shown an exemplary recent contribution to *pro bono* services (generally in the past one to three years) and stands as a role model to other attorneys. The criterion includes, but is not limited to:

- The number of *pro bono* hours recently devoted to legal representation of indigent clients.
- The number of cases accepted for *pro bono* representation.
- Consistency, flexibility, and accessibility in accepting cases.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.

### Service to Children Award

Awarded to an individual lawyer, legal professional, or organization principally including lawyers, which demonstrates outstanding commitment to, and work for, children in the provision of legal or community services. It may be given to volunteers or those employed in the provision of legal services for children. This award is given as warranted, not necessarily annually.

### Legal Professional *Pro Bono* Service Award

Awarded to a person, qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity, who performs *pro bono* legal work in the pursuit of Access to Justice. This is a newly-created award that is given as warranted, not necessarily annually.

## Delaware State Bar Association Awards Nomination Form

Name of Candidate: \_\_\_\_\_

Title/Occupation of Candidate : \_\_\_\_\_

Award: \_\_\_\_\_

Date: \_\_\_\_\_

Nominator: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Brief statement of reasons that candidate is deserving of Award (see above Award criteria). Please attach sheet if necessary.

\_\_\_\_\_

\_\_\_\_\_

**Nominations should be submitted to Susan Simmons, Director of Continuing Legal Education and Access to Justice Coordination, e-mail [ssimmons@dsba.org](mailto:ssimmons@dsba.org) or fax to (302) 658-5212. The deadline for nominations is August 12, 2019.**

# DELAWARE STATE BAR ASSOCIATION BENCH AND BAR CONFERENCE

FRIDAY, JUNE 14, 2019  
CHASE CENTER ON THE RIVERFRONT  
WILMINGTON, DE

# 2019



Attendees at the 2019 Bench and Bar Conference.



Outgoing DSBA President David J. Ferry, Jr., Esquire (L), and Incoming President William Patrick Brady, Esquire (R).

“I think this was the best Bench and Bar, ever!” More than one person made this remark after DSBA’s annual event which brought together all of the Courts’ judicial officers and over 450 attorneys from large firms, small firms, and government on June 14 at the Chase Center on the Riverfront.

The day began with a powerful plenary session speaker, Brigadier General John G. Baker, the Chief Defense Counsel for the Military Commissions at Guantanamo Bay (GTMO). General Baker’s discussion of the way prisoner’s rights were denied in his opinion captivated a packed Wilmington Hall. He called the military commissions a “failed experiment [which was] flawed in both design and in execution.” He spoke on why good lawyering and good judging matters and how vital it is to justice and our society that “ethical lawyers and judges continue to persevere.” General Baker’s comments did not focus on the alleged atrocities of those he was sworn to represent, but rather on the fact that they had been denied effective representation of counsel, particularly when one realizes they have not even received a trial date for the past 18 years. A few people gasped when they heard the tale of one defendant who was force-fed during his hunger strike in order to be given extraordinary interrogation procedures. In essence, the general said,

this was a man kept alive and forced to participate in his own torture.

After his main talk, the General spent about a half hour answering the questions of the audience.

General Baker had been found in contempt for allowing attorneys to withdraw from representing one alleged terrorist because they were not permitted to adequately represent their client, having been restrained from sharing information with the defendant. Ultimately, the D.C. District Court overturned General Baker’s conviction, finding the judge lacked the authority to unilaterally convict the general.

After the plenary session, the DSBA held its annual meeting, welcoming incoming DSBA President William Patrick Brady and thanking outgoing President David J. Ferry, Jr. for his service. Also at the meeting portion of Bench and Bar, Francis J. “Pete” Jones received the First State Distinguished Service Award from former Justice Randy J. Holland.

After the meeting, attendees selected one of four potential CLE sessions, which focused on civil practice, chancery practice, family law, and criminal trials.

Finally, all shared in a common meal, enjoying the delicious lamb chops (what else to include) and, of course, the University of Delaware Moo-Mobile ice cream cones. 🍦





Chief Justice Leo E. Strine, Jr. introducing the Keynote speaker.



Brigadier General John G. Baker, the Chief Defense Counsel for the Military Commissions at Guantanamo Bay (GTMO), delivering the Plenary Keynote.



DSBA President David J. Ferry Jr., Esquire, welcoming attendees to the Annual Meeting.



First State Distinguished Service Award recipient Francis J. "Pete" Jones, Jr., Esquire, (L) and award presenter Randy J. Holland, Esquire (R) .



Michael Houghton, Esquire (L), and Thomas P. McGonigle, Esquire (R), presented a Report on the Economic Impact of the Legal Profession on the State of Delaware.



## RECOGNITION OF INDIVIDUALS WHO HAVE BEEN MEMBERS OF THE DELAWARE BAR FOR MORE THAN 50 YEARS

SEE PAGE 40 FOR A FULL LIST OF 50 YEAR AWARDEES.



Bar Members admitted in 1966.



Bar Members admitted in 1967.



Bar Members admitted in 1968.

## DSBA WOULD LIKE TO THANK THE SPONSORS AND EXHIBITORS OF THE 2019 BENCH AND BAR CONFERENCE:

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## 50 YEAR DELAWARE BAR MEMBERS

### CLASS OF 1966

William Alsentzer  
\*The Honorable John E. Babiarz  
Paul Boswell  
\*Stephen Casarino  
Bernard Dempsey  
Richard Elliott  
James Erisman  
Clifford Hearn  
\*The Honorable Jerome O. Herlihy  
Jeffrey Hertzfeld  
Arthur Inden  
The Honorable Jay James  
John Matuszeski  
\*H. Edward Maull  
Richard Pell  
Sheldon Sandler  
Rodman Steele

### CLASS OF 1967

John Abramo  
William Baggott  
William Campbell  
Fletcher Campbell  
William Chasanov  
\*Paul E. Crawford  
John Dull  
Wayne Elliott  
Jefferson Hill  
Glenn Hitchens  
\*John G. Mulford  
\*Walter L. Pepperman  
John Stull  
\*Thomas Sweeney  
William Taylor  
Richard Wier

### CLASS OF 1968

Daniel Durkin  
Vance Funk  
Michael Goldman  
Robert Halbrook  
\*Karl Haller  
\*The Honorable Jack B. Jacobs  
Norman Levine  
\*David Roeberg  
Daniel Twer  
Paul Welsh

\*Pictured on the previous page

### IMMEDIATE AND PERMANENT RESIGNATION

**In the Matter of Jeffrey K. Martin**  
**Supreme Court No. 233, 2019**  
**Effective Date: June 4, 2019**

On June 4, 2019, the Delaware Supreme Court accepted the resignation of Jeffrey K. Martin, Esquire from the bar of the Supreme Court of the State of Delaware. Mr. Martin had already been suspended from the practice of law in the state of Delaware since 2014. On November 28, 2018, the United States District Court for the District of Delaware ("District Court"), suspended Mr. Martin from the practice of law for six months in the federal court. In re Jeffrey K. Martin, Esquire, Misc. A. No. 14-242-LPS-RGA, Stark, J. (D. Del. Nov. 28, 2018). The Delaware Supreme Court accepted Mr. Martin's immediate and permanent resignation from the bar in lieu of further reciprocal discipline in the state of Delaware based on the District Court's Order.

### PRIVATE ADMONITION

**Supreme Court File No. 186, 2019**  
**Effective Date: June 13, 2019**

On June 13, 2019, the Delaware Supreme Court ordered a Delaware lawyer be privately admonished for violations of the Delaware Lawyers' Rules of Professional Conduct ("Rules") in connection with misrepresentations on his Certificate of Compliance filed with the Supreme Court. The Court approved a Report and Recommendation of Sanctions that was submitted by a panel of the Board on Professional Responsibility. The Board's Report concluded the lawyer had violated the Rules by making misrepresentations to the Court on his Certificate of Compliance.

### PRIVATE ADMONITION

**Supreme Court File No. 213, 2019**  
**Effective Date: July 9, 2019**

On July 9, 2019, the Delaware Supreme Court ordered Respondent be

privately admonished for violations of Rules 1.8(a), (d), (e) and (i) of the Delaware Lawyers' Rules of Professional Conduct ("Rules") by entering into a business transaction with a client and failing to obtain the client's informed consent, by negotiating an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation of the client, by providing financial assistance to a client in connection with pending litigation, and by acquiring a proprietary interest in the client's litigation. In recommending the Private Admonition, the Board considered as mitigating factors absence of prior discipline, full and free disclosure, character and reputation, imposition of other penalties, and remorse. Ⓢ

## Insurance Services for Delaware Attorneys

The Delaware State Bar Insurance Services (DSBIS) offers comprehensive, highly customized insurance solutions and risk control services to protect lawyers from professional exposures and provide enhanced member services.

Powered by USI, DSBIS brings decades of risk management experience, a proprietary risk analysis process and a local team supported by the expertise of more than 4,400 USI professionals nationwide to reduce cost and lower risk for your firm.

Since 1940, our Wilmington office has provided the insurance solutions and services that lawyers count on to protect their families, their firms and their employees. At DSBIS, we've got you covered.

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## POSITIONS AVAILABLE

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### BUSINESS TRANSACTIONS ASSOCIATE — WILMINGTON:

Morris James is expanding its business transactions practice and seeks an attorney with zero to three years of experience in commercial business transactions. We will consider a wide range of transactional experience that could include negotiating and documenting mergers, asset sales, spin-offs, stock issuances, joint ventures, and other transactions. Candidates should have strong academic credentials and be admitted to Delaware or registered to sit for the July 2019 Delaware Bar Exam. This position offers a competitive starting salary, plus health benefits and the possibility of bonus and raises based on performance. Email resume and writing sample to Brett Fallon at bfallon@morrisjames.com.

**WOMBLE BOND DICKINSON (US) LLP** has a Corporate Associate opening in the Wilmington office. This person will work closely with the Captive Insurance Team, a practice area that supports the risk management function. Ideal candidates must have at least three to four years of experience in the areas of either corporate transactions or insurance regulation. This position involves high levels of direct interaction with clients. Candidate must be licensed in Delaware or have ability to become licensed. EOE. Send cover letter and resume to Kelly.Fox@wbd-us.com.

**SMALL LAW FIRM IN HOCKESSIN** seeking an associate to join our growing practice. Practice areas include wills, trusts and estates, residential and commercial real estate and business law. Delaware bar admission is required. Previous experience preferred but not required. We offer benefits and salary commensurate with experience. Please send your resume to jlatonick@crosslandlaw.com.

**HUDSON, JONES, JAYWORK & FISHER, LLC** seeks a new Associate Attorney with 0 to 5 years' experience for its Dover office. Practice areas to include various areas of law. The successful candidate will have excellent oral and written communication, negotiation skills, time management skills, analytical skills, and the ability to multi-task. This is an opportunity to grow your own practice with direct responsibility for client development. If interested please submit a cover letter and resume to mbelt@delawarelaw.com.

**LANDIS RATH & COBB LLP** is seeking a corporate/commercial litigation associate with 3 to 5 years of experience interested in being a part of a growing litigation practice, collaborative work environment and the opportunity for professional growth. Delaware bar admission required. Competitive salary and benefits offered. Please email confidential resume and writing sample to Rebecca Butcher at butcher@lrclaw.com.

**GORDON, FOURNARIS & MAMMARELLA** is seeking associates with two-four years of experience to work in our National Trusts & Estates and our Business Advisory/Taxation practice areas. We offer very competitive benefits and compensation and an outstanding office environment. We are located adjacent to parkland in a beautiful historic building in the Rockford Park vicinity of Wilmington Delaware. Please email your cover letter and resume to hiring@gfmlaw.com, or mail to Gordon, Fournaris & Mammarella, P.A., 1925 Lovering Avenue, Wilmington, DE 19806. ATTN: Hiring.

**GORDON, FOURNARIS & MAMMARELLA, P.A.** seeks an Estate Administration Paralegal. The candidate will report directly to our senior Estate Administration Attorney and will have duties including compiling asset reports, preparing inventories, accountings and tax returns, filings with the Register of Wills, e-filing, maintaining trust and estate accounts and records and correspondence with clients, attorneys, and financial account representatives. The candidate must be proficient in Excel and word and generally have good computer skills. Excellent compensation and benefit package offered. Send cover letter and resume to rcook@gfmlaw.com.

**SMALL FIRM IN WILMINGTON, DE** seeks entry- to mid-level Delaware-barred associate. Practice is primarily litigation before the Court of Chancery. Competitive salary and benefits. Strong academic credentials, strong writing skills, corporate litigation experience, and portable business are a plus. Collegial and supportive environment to practice high-quality corporate litigation. Inquiries from more senior Delaware attorneys with litigation, particularly corporate, experience and portable — or willingness to develop — business also welcome. Send cover letter and resume to evanwilliford@thewillifordfirm.com.

FRIEDLANDER & GORRIS is seeking a junior to mid-level litigation associate. Email resume and cover letter to: Angela Smyth, [asmith@friedlandergorris.com](mailto:asmith@friedlandergorris.com).

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# Cole Schotz P.C.

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Candidates must be highly organized and possess the ability to prioritize, be a team player, and have excellent written and verbal skills. Strong working knowledge of Microsoft Word, Excel and Adobe plus. College degree and/or paralegal certificate and 2 to 3 years of experience preferred. We offer a competitive starting salary and a comprehensive benefits program. Please email resume, which must include salary requirements, to:

Gayle P. Englert  
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# You Say Tomato, I Say Tart

## THE TOMATO IS THE CROWN JEWEL OF SUMMER'S BOUNTY.

WHETHER SLICED AS A CAPRESE SALAD OR STUFFED FOR A TOMATE FARCIE, THE TOMATO CALLS FOR SAVORING. IN THIS SUMMER ISSUE, I SHARE MY FAVORITE RECIPE FOR THIS JUICY FRUIT — TOMATO TART.

### INGREDIENTS:

#### For the crust:

- 2 cups flour
- 10 tablespoons salted butter, chilled
- 1 jumbo egg
- 3 tablespoons cold water

#### For the filling:

- Dijon mustard
- Gruyère or Comte cheese
- 3 large tomatoes or more smaller ones
- Black Sicilian olives, pitted
- Extra virgin olive oil
- Sea salt
- Fresh ground pepper
- Fresh basil



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Place the flour in a large mixing bowl. With a sharp knife, cut the butter into small cubes and add to the flour. With your fingers, rub the pieces of butter into the flour until the butter is broken into tiny pieces. Then make a well and add the egg and drizzle in the water. Begin to knead the dough quickly into a ball. Add just a little more cold water if necessary so the dough forms a ball. Place in plastic wrap and chill.

Preheat the oven to 425 degrees. On a lightly floured surface, roll out the dough and add flour to prevent the dough from sticking to the rolling pin and work surface. Roll the dough until it is about 1/4 inch thick and large enough to cover the bottom and sides of a buttered ceramic tart pan. Prick the crust with a fork in several places to prevent the bottom from bubbling. Pre-bake the crust in the middle level of the oven for about 5 minutes.

Remove the crust from the oven and spread a thin layer of mustard on the bottom of the tart shell. Then place slices of the cheese onto the mustard. Slice the tomatoes and arrange them in a decorative pattern on top of the cheese layer. Top with a handful of black olives. Drizzle with olive oil and add salt and pepper to taste. Bake for about 40 to 45 minutes or until the crust is golden brown and the tomatoes are tender. Sprinkle with a chiffonade of basil and serve while hot.

While this Provençal tart makes for a colorful appetizer, it can also be a light main course alongside an arugula salad. Wishing you a happy summer! 🍷



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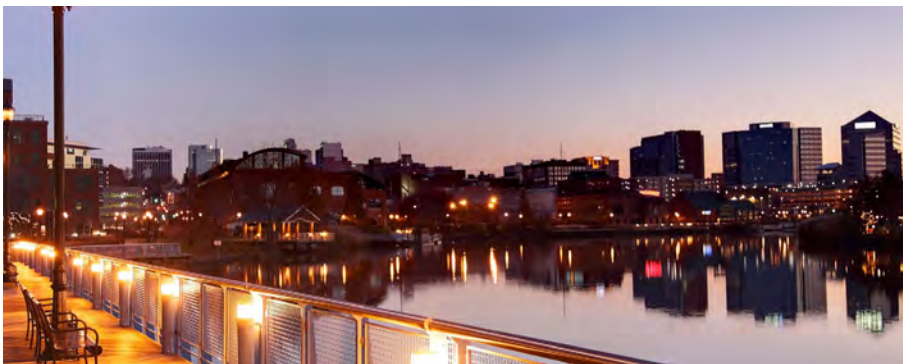
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**MARILYN & NATHAN HAYWARD**, founders of the 1916 Fund at the DCF, pictured at the Delaware Theatre Company with Executive Director Bud Martin

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