



# THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

## The Wellness 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.

## DSBA BAR JOURNAL

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

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OF THE DELAWARE STATE BAR ASSOCIATION

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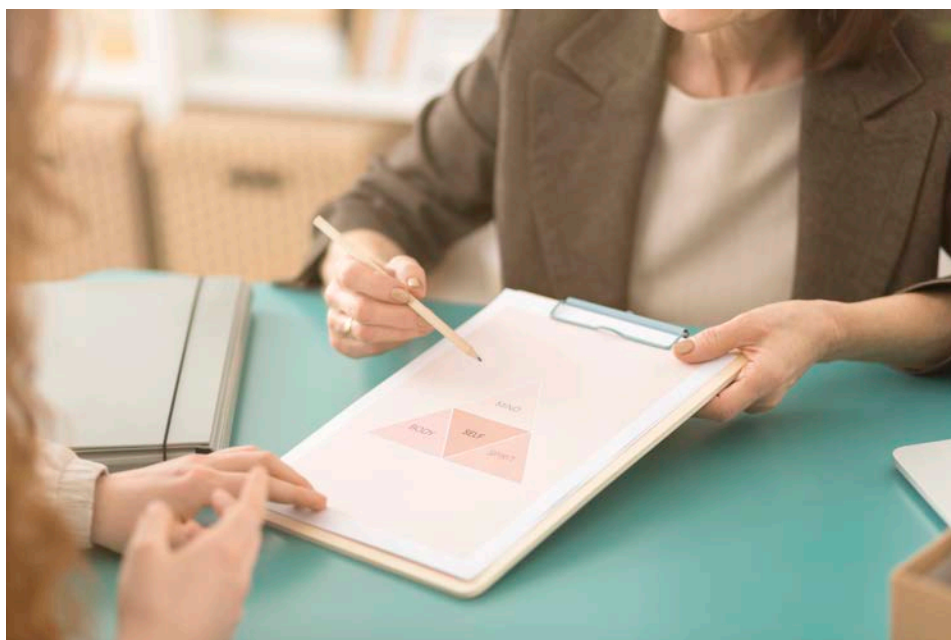
## PRESIDENT'S CORNER

By David J. Ferry, Jr., Esquire

# Wellness: Awareness and Assistance

**T**he legal profession places a great deal of emphasis upon the results we produce in the course of our practice. In turn, this can also create highly stressful environments as a means to reach these goals. While such an atmosphere often produces many noteworthy and highly touted results, it can also harvest some side-effects as well, including issues that directly impact the well-being of our legal community. According to the Anxiety and Depression Association of America, nearly one in five Americans suffers from depression, schizophrenia, or bipolar disorder. Sadly, lawyers are more likely to suffer from substance abuse, depression, and other assorted mental health problems than the general population. Recent statistics indicate that lawyers are twice as likely as the general population to suffer from these problems. As such, mental health warrants our full attention in that it touches nearly every part of our legal community, from major law firm partners and associates to law school students grinding away in the hopes of becoming members of the legal profession in the future.

Fortunately, there are a variety of ways that the Delaware Bar can both destigmatize mental health within our legal community, along with recommending practices to improve the Bar's rules and programming to provide enhanced support to our members throughout the state. This often begins on the individual level by raising awareness of mental health so as



to educate others, as well as making it easier to spot the signs and symptoms before it becomes an issue. From there, encouraging community members to both talk about mental health and share their stories of dealing with it can only help to further shed light on the matter. Of equal importance, encouraging non-judgmental speech goes a long way in promoting such an agenda, as it helps to remove the stigma that has long been unfairly linked to mental health issues. For a more personal experience, interested parties can get involved by distributing educational information regarding mental health screening that not only explains mental health issues, but also acts to further encourage awareness to the broader public. Similarly, volunteering with local mental health awareness organizations has proven to be an effective tool in the past toward eradicating misconceptions associated with such disorders.

These kinds of goals can be reached on a broader level as well. Just recently, the University of Pennsylvania Law School became the first top-ranked law school to require attorney mental health training for students. This pilot program aims to integrate sessions regarding the well-being of lawyers into mandatory coursework, with a particular focus upon the mindfulness of attorneys. Firms can also implement wellness initiatives as a means to support their attorneys and staff to help manage the stresses associated with our profession. Industry-wide, the American Bar Association started a pledge cam-

paign last year with the goal of reducing mental health and substance abuse issues involving attorneys. A key component of this pledge requests firms to adopt and implement educational initiatives for both attorneys and staff to recognize and address issues pertaining to overall well-being. On a local level, the DSBA and DE-LAP (Delaware Lawyers Assistance Program) work together to keep the DSBA's members aware of the services available to them in an effort to sustain lawyer well-being.

The well-being of our members is critical to the overall success of the Delaware State Bar Association. This means shifting the definition of a good attorney to one who is also healthy and balanced while engaged in the practice of law. Failing to do so will take our profession in a direction that will only be harder to rebound from if this issue is not addressed directly and with a clear agenda toward success. Perhaps more importantly, cultivating an atmosphere that assists our attorneys in addressing issues pertaining to mental health ultimately benefits our clients and community as well.

If you have not already done so, you should review the DE-LAP articles that appear in the *Bar Journal*, be mindful of the recommendations and goals spelled out in the Delaware Supreme Court's work-life balance initiative, adopt a healthy lifestyle, seek and follow good medical advice, engage in some form of physical activity, and always seek advice and assistance. 🧘

**David J. Ferry, Jr.** is the current President of the Delaware State Bar Association. He also serves as Chair of the Court of Chancery Rules Subcommittee for Guardianship, Trusts and Estates, and is a member of the Jurisdiction Improvement Committee, the Professional Guidance Committee, the Board of Directors of Legal Services Corporation of Delaware, Inc., and the Estates & Trusts Section and the Elder Law Section of the DSBA. He has been a member of the Delaware Bar since 1982, and has served on the Executive Committee of the Delaware State Bar Association since 2010. 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).



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## EDITOR'S PERSPECTIVE

By Benjamin A. Schwartz, Esquire

# I Talk with My Hands!

**A** number of years ago, I was retained to represent a medical office in a Delaware Human Relations case. One day, a phone call came in to the medical office:

"Hi, I'm calling for my friend. She's hearing impaired. She was referred to your office but needs someone who knows sign language. Do you have anyone who can communicate using sign language, or will you be able to provide an American Sign Language interpreter?"

The response from the clinical staff member who took the call was intended to be warm and reassuring, but definitely was not received as such:

"Oh, she won't need a sign language interpreter. I'm Italian. I talk with my hands!"

Instead of making an appointment and hoping for the best, the patient filed a complaint alleging denial of equal accommodation with the Human Relations Commission.

To my client's great surprise (I might even call it shock), "talking with one's hands" is not the same as providing equal accommodation via an ASL interpreter to patients or customers who, as a result of a hearing disability, require assistance to communicate with their medical treatment provider.

• • •

As a jury trial lawyer — particularly a trial lawyer who mainly handles plaintiff's personal injury cases — I spend a great deal of time thinking about communicating effectively with juries. I have read dozens of books on trying cases to juries. I have read Gerry Spence, Louis Nizer, Moe Levine, you name it. I listen to podcasts such as Brian Panish's *Get in the Game* and Michael Cowen's *Trial Lawyer Nation*. I



attend conferences where other trial lawyers speak about trial techniques. In fact, I just enjoyed a half-day presentation at the Maryland Association for Justice Annual Convention by Keith Mitnik from Orlando, Florida. I would fairly estimate that I consume a huge volume of information concerning trial technique each year, and I have been at this for almost twenty years.

But nobody ever talks about what to do with your hands when you are speaking.

• • •

As I type this article, it is a lazy, rainy Sunday afternoon. I was paging through the May-June 2019 edition of the *Harvard Business Review* and came across an "IdeaWatch" interview by writer Nicole Torres of Erasmus University with Professor Joep Cornelissen. The piece, titled "When You Pitch an Idea, Gestures Matter More Than Words,"<sup>1</sup> makes the argument that to effectively convince others to take action, your hand gestures are more important than the words you choose.

Of course, I presume *HBR* readers tend not to be trial lawyers litigating medical malpractice cases, but rather perhaps entrepreneurs seeking commitments from venture capitalists to fund new business ideas.

Cornelissen's study involved a fictitious company that made a device that helped people recover from sports injuries. He conducted a "qualitative field study" where he observed seventeen actual entrepreneurs pitching investors on their own business ideas. He identified and coded all of the gestures they used. The gestures included "beat" gestures, described as repetitive hand motions marking the rhythm of the presenter's speech. Other hand gestures were "cohesive"

gestures, marking the start or end of an idea or sentence, or reinforcing particular points. And yet, other hand gestures were “symbolic” gestures, gestures that reproduce the form of an object, point to a prop, describe a movement, or express a feeling. After coding all of the different types of hand gestures, he hired an actor to present to investors. Four versions of the presentation were made: one involved frequent hand motions, one used a lot of figurative language, one used both, and one used neither. The presentation using only the frequent hand gestures was determined to be most persuasive: people who saw that presentation were on average 12 percent more interested in investing.

According to the Professor, the key take-aways from the study included the following:

- The hand gestures gave investors a better sense of what the product would look like, making an unfamiliar idea more concrete through visualization.

- A presenter should not fill her or his presentation full of hand gestures (that would be off-putting), but rather select one or two in order to make the presentation much more convincing: “If you can be strategic and find one or two killer gestures that really mark your ideas or where you are with a venture — or that clarify what the product or service is about — that could do wonders.”

- Make sure the motions are aligned with the speech. The hand gestures must emphasize the one or two points the speaker is trying to convey.

• • •

I would never want to deny someone equal accommodation under the law, but maybe that medical-provider client of mine was actually onto something in another context. Maybe the hand gestures we make — at least those that are the result of thoughtful, intentional consideration — are as important as, if

not more important than, the words we use to convey ideas.

I am not planning to pitch any venture capitalists on a new business idea any time soon, but you can be sure that prior to my next jury trial, arbitration, or oral argument, I am going to think about the one or two key points I need to make, and I will be intentional in selecting one or two hand gestures to make at the right time to help emphasize those points. 🗣️

#### Notes:


1. Torres, Nicole. “When You Pitch an Idea, Gestures Matter More Than Words.” *Harvard Business Review*. April 16, 2019. Accessed May 21, 2019. <https://hbr.org/2019/05/when-you-pitch-an-idea-gestures-matter-more-than-words>.

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

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## OF NOTE

Condolences to the family of **Donn Devine, Esquire**, who died on May 5, 2019.

Condolences to the family of **George E. Rohrmann, Jr., Esquire**, who died on May 9, 2019.

Condolences to **The Honorable M. Jane Brady**, on the death of her father, William Henry "Bill" Brady, Jr., who died on May 10, 2019.

Condolences to the family of **The Honorable John A. Parkins**, who died on May 25, 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

### Announcements

The distinguished art gallery located in 919 Market Street (Gallery 919 Market) recently displayed the photography of DSBA member, Erin K. Radulski, Esquire. Erin works as an attorney for Geico by day, but has a passion for both travel and photography. Her beautiful collection includes nature, buildings and culture from her visits to Europe in the past 10 years. 



### Open Call for Articles!

Do you have a great idea?



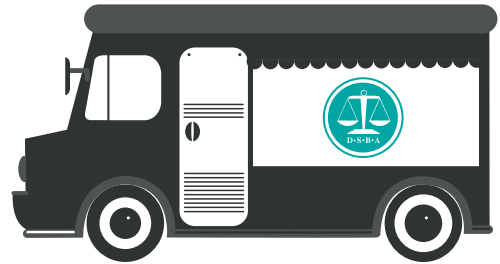
For information on submitting articles for publication in the Bar Journal, please contact Rebecca Baird at [rbaird@dsba.org](mailto:rbaird@dsba.org).

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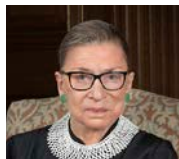
5/2: THE HON. ABIGAIL M. LEGROW  
5/9: CHRISTOPHER D. TEASE  
5/16: CHRISTINA M. THOMPSON  
5/23: TIMOTHY A. DILLON  
5/30: EVELYN H. BRANTLEY



## TOP 5 | FUN FACTS ABOUT THE U.S. SUPREME COURT



- 1 Harry Blackmun (Justice 1970-1994) starred as Justice Joseph Story in the movie *Amistad*.



- 2 The richest US Supreme Court Justice presently serving is Ruth Bader Ginsburg, who has a net worth of \$18.1 million.



- 3 Justice Salmon P. Chase is on the \$10,000 bill which is no longer used by the Treasury.



- 4 Justice James Clark McReynolds was such a racist and anti-Semite that none of his colleagues on the Supreme Court attended his funeral.



- 5 The Supreme Court of the U.S. has ruled that tomatoes are a vegetable, not a fruit. (*Nix v. Hedden*, 1883).

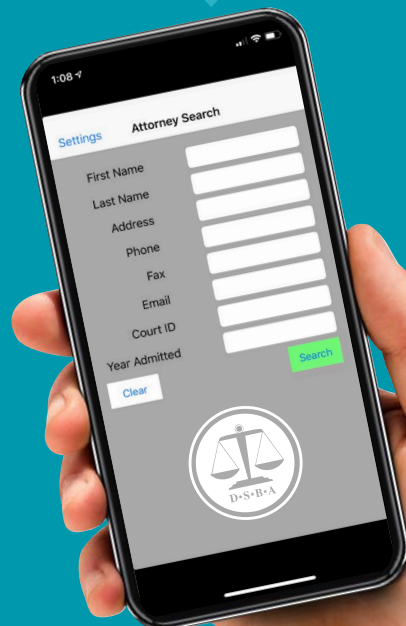
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This committee provides peer counseling and support to lawyers overburdened by personal or practice-related problems. It offers help to lawyers who, during difficult times, may need assistance in meeting law practice demands. The members of this committee, 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

### June 2019

**Friday, June 14, 2019**

#### **Bench & Bar Conference**

3.0 hours CLE credit in Enhanced Ethics

Chase Center on the Riverfront, Wilmington, DE

### 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

**Wednesday, September 12, 2018**

#### **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, 2018**

#### **Fundamentals of Family Law**

6.0 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**

#### **Time Warner Litigation**

3.0 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).

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## SECTION & COMMITTEE MEETINGS

### June 2019

**Wednesday, June 19, 2019 • 12:00 p.m.**

**LGBT Section Meeting**

Reed Smith LLP, 1201 North Market Street, Suite 1500, Wilmington, DE

**Wednesday, June 19, 2019 • 12:00 p.m.**

**Tourism & Hospitality Section Meeting**

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

**Thursday, June 20, 2019 • 12:00 p.m.**

**Executive Committee Meeting**

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

**Monday, June 24, 2019 • 4:00 p.m.**

**Taxation Section Meeting**

Herdeg du Pont & Dalle Pazzi, LLP, 15 Center Meeting Road, Wilmington, DE

### July 2019

**Monday, July 1, 2019 • 12:00 p.m.**

**Senior Lawyers Committee Luncheon Meeting**

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

**Friday, July 19, 2019 • 9:00 a.m.**

**ADR Section Meeting**

Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington DE 19801

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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## TIPS ON TECHNOLOGY

By Kevin F. Brady, Esquire

# Emoji

## Their Meaning and Role in Discovery

**E**moji and emoticons are popular forms of personal communication, and, as a result, they have begun to show up in litigation as evidence. Initially, it is important to understand what they are and what they mean. The first part is easy, but the second part can be challenging.<sup>1</sup>

An emoji is a small image or pictograph 🍌, while an emoticon is created from text, primarily using punctuation marks :-( [sad face]. The meanings of many emoji are more or less obvious, although some are still open to interpretation. For example, 🙏 could mean please, thank you, prayer, high five, or Namaste.

However, the meanings of many others are not at all obvious. For example, 😩 [Tired Face] is interpreted as complaining, anguished, or distraught, but it was intended to mean “tired.”<sup>2</sup>

At one time, emoji and emoticons were of little concern to lawyers, as they were rarely used in serious business communications. But that is changing. As discovery in corporate and commercial

litigation expands beyond standard business communications, such as email, into social media and other communication applications including IM, Facebook, Twitter, Snapchat, Slack, and Instagram, messages increasingly include a variety of emoji that need to be preserved, collected, reviewed, and produced.

ing systems, and the Unicode Standard is a character coding system designed to support the worldwide interchange, processing, and displaying of the written texts.

Second, some emoji render differently across platforms (Apple, Google, Microsoft, Samsung, Facebook, etc.).

Thus, the display seen by the producing party when the image is produced may not be the same image that the requesting party sees. For example, the “grimacing face with clenched teeth” emoji may appear angry on some platforms, while others may show the image as worried, embarrassed, or sad. The Apple version of the “screaming

face” emoji 🤯 appears different from the Samsung version 🤯.<sup>3</sup>

Third, even though emoji are included in the Unicode Standard, without experience and context, deciphering the meaning of an emoji can be difficult. Indeed, many different emoji appear to communicate the same concept. As this piece is published, there are 18 columns of “smileys” on my iPhone and 6 columns



Emoji in discovery can be challenging for many reasons. First, there are many different emoji, and the variety expands almost daily. According to the Unicode Standard, as of the end of 2018, there were over 3,000 emoji listed in the standard. Unicode is a computing industry standard for the consistent encoding, representation, and handling of text expressed in most of the world’s writ-

of hand gestures. Some of the smiley emoji are distinguished only by different sized eyes or the presence of eyebrows; others have hearts for eyes or around them. There appear to be three “hold up” emoji — one left-hand, one right-hand, and one with the fingers slightly played.

With this background as context, it should come as no surprise that there can be a number of quicky and unintended legal and technical consequences associated with using emoji. In fact, judges have been faced with some interesting choices when it comes to dealing with emoji and what they mean. For example, in *U.S. v. Westley*, No. 3:17-CR-171, 2018 WL 3448161 (D. Conn. July 17, 2018), the court addressed a motion to suppress evidence obtained from criminal defendants’ Facebook accounts, and the issue was whether there had been probable cause to search the Facebook accounts. An ATF Agent submitted an affidavit in support of the proposition that the target accounts would contain direct evidence of drug trafficking, firearms offenses, and racketeering, in which he testified to the meanings of certain emoji based on his experience investigating street gangs, firearms offenses, and narcotics trafficking. Among other things, the agent testified that he believed that a “cloud” emoji in a posting referred to drugs, and that a “gas” emoji in a defendant’s text message was a symbol for “gang.” The court found that the agent could rely on his training to interpret facts — in this case, emoji — to establish probable cause.

In a civil case, a judge was asked to interpret the significance of a “Hitler

## Guidance for Handling Emoji

- Images matter but context is king – and don’t forget to account for sarcasm. A winky face 😏 or an upside down smiley face 😞 at the end of a text sentence could change the meaning of the text significantly;
- Emoji are not easily searchable using standard text/data mining tools;
- Many emoji are not static depictions; some platforms allow for animated emoji;
- Understand how emoji will present on different platforms when they are produced;
- Pay attention to details – emoji can look very similar but have drastically different meanings. The subtle representational differences between the smileys and hand gestures described in the article may or may not have universally-understood meanings;
- Do some homework into the various possibilities before deciding which emoji to search for when collecting data, communicating that emoji accurately to your vendor, and confirming that the custodians from whom you are collecting used the same rendition of the relevant emoji; and,
- If emoji are going to be the subject of discovery, take good care when designing the discovery process to ensure that the integrity of the emoji or emoticon depictions are maintained.

emoji” that appeared in an email between defendants in a civil rights case. See *NEXUS Servs., Inc. v. Moran*, No. 5:16-cv-00035, 2018 WL 1461750 (W.D. Va. Mar. 23, 2018). The plaintiffs argued the emoji supported their claims, but the court disagreed: “While any image evoking Hitler obviously can be offensive, the emoji was contained in an internal email between two work colleagues in which, taken in context, one was jokingly calling the other a ‘meanie’ and a taskmaster.”

*Id.* at \*4.

Another challenge that may arise in litigation involves oral testimony concerning communications that include an emoji. For example, in the *Silk Road* trial, the judge permitted the admission of emoji into evidence; however, when the prosecution began reading quotes from Silk Road founder Ross Ulbricht’s text messages, the prosecutor omitted the smiley face at the end of one of the sentences. After the defense attorney objected, the prosecution was required to read the emoji,<sup>4</sup> but as noted above, this can and does get tricky depending on which emoji is depicted and what meaning is ascribed to that emoji.

It is also important to remember that judges most likely encounter some emoji in their private lives, and, contrary to the situation with highly technical or scientific matters, they may have their own assumptions and interpretations of emoji that affect how they interpret emoji that are presented to them in court. 🙄

### Notes:

1. Indeed there is confusion even about the plural of emoji – is it emoji or emojis? The answer depends on who you ask.
2. “Tired Face Emoji.” Emoji. Accessed May 22, 2019. <https://emojipedia.org/tired-face/>.
3. To see the various ways emoji present on different platforms and the various meanings for each emoji, go to <https://emojipedia.org/>.
4. Weiser, Benjamin. “At Silk Road Trial, Lawyers Fight to Include Evidence They Call Vital: Emoji.” *The New York Times*. January 28, 2015. Accessed May 22, 2019. <https://www.nytimes.com/2015/01/29/nyregion/trial-silk-road-online-black-market-debating-emojis.html>.

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

# The Law and Social Media's Mean Genies

By Rodney A. Smolla, Esquire

**F**or decades I have participated as a litigator, and opined as a writer, on tort and criminal liability arising from expressive activity. The cases I briefed and argued early in my career involved expression “on the street,” or in magazines, newspapers, or television broadcasts. It is very different now. Legal conflicts arising from expressive activity today almost always have an Internet component, very often on social media platforms, such as Facebook or Twitter. Even conflicts that literally do occur on the street often bear a shadow life on social media.

I recently finished writing a book on the racial violence in Charlottesville’s 2017 summer of hate, resulting in the tragic death of Heather Heyer. Those events re-

main vivid in the American consciousness. Vice President Joe Biden focused on Charlottesville in launching his campaign for the Democratic Nomination for President, attacking President Trump’s response to the Charlottesville violence, and President Trump immediately rejoined, defending his own actions. The violence on the street in Charlottesville, however, had behind it a vast network of supremacist activity online, in various social media platforms feeding the fires of racial supremacism, and orchestrating the “Unite the Right” rally that ended in tragic violence. Litigation against the organizers of that rally is ongoing in Virginia, largely focusing on what occurred online.

In the context of tort litigation, such as suits for defamation or invasion of pri-

vacy, social media platforms have entirely altered the landscape. Take, for example, the ancient notion of “reputation,” which the common law has protected for hundreds of years through the law of defamation. For decades I have been the author of a treatise called *Law of Defamation*. I update it every six months. In recent years, an overwhelming number of the cases I include in the update involve social media, and the same is true for cases in which I have been involved as a litigator.

There are scores of complicated legal issues that arise from this, but I focus in this article on two simple propositions, essentially flip sides of the same coin. The first proposition is that modern social media platforms have exponentially increased the damage caused by defamation. The second proposition is that, from a plaintiff’s perspective, it is far easier to document that damage.

Today the reputation of individuals, corporations, and organizations largely “resides” on the Internet. The notion of what a “reputation” is has always been a bit mystical. We talk of “a good name” as a personal asset or company brand that may be damaged by defamation. With the Internet and social media, however, it is possible to view and document the hits to corporate or personal reputation caused by alleged defamation. Consider this passage from a Delaware Court of Chancery decision by Vice Chancellor Parsons involving allegations of defamation in the corporate context, which illustrates both of my propositions:





In the first fifteen minutes after The Verge published the August 28 Article, various journalists and editors associated with The Verge, Polygon, and Vox promoted the article as the “definitive account” based on “exhaustive proof,” despite the fact that they had not fact-checked the article with OL2, using social media platforms such as Facebook, LinkedIn, Twitter, Tumblr, and Google+ to reach hundreds of thousands, if not millions, of readers. Readers quickly posted 300 comments (288 in the first two days) responding to the August 28 Article, and the article spread rapidly through social media networks. Soon the August 28 Article became a top Google search result for “OnLive,” behind only OnLive’s own corporate and service web pages and the OnLive Wikipedia page.<sup>1</sup>

Or consider this passage from a private individual case in Wisconsin involving the damage alleged to have been generated by a fictitious Facebook page:

I was very concerned for my reputation. I did a Google search and [it] came up as a first hit[,] just my name and so I know everyone could see it.... [W]hen I saw this situation unfold and realized that there was a profile of the nature that was out there[,] I had sheer panic because I knew without hesitation that a lot of people were going to see it, especially after I ... found out it hit a top Google search. ... I was mortified and petrified that something bad was, you know, potentially was going to happen, because of my reputation because of that sitting there.”<sup>2</sup>

When a defamatory message is posted on the Internet, one can view, track, and permanently document the echo boom of comments, posts, tweets, and repetitions of the defamatory story as the falsehood spreads like a virus across digital space. In minutes or hours, a defamatory story may get thousands of hits and generate a tsunami of comments and repetitions. A victim of defamation, personal or corporate, may watch in real time the

destruction and havoc being rendered to the victim’s reputation. The law is always playing catch up. Once the mean genie is out of the bottle, the genie is not easily contained. ☞

#### Notes:

1. See *Stephen G. Perlman, Rearden LLC v. Vox Media, Inc.*, 2015 WL 5724838, \*5 (Del. Ch. 2015).
2. *Laughland v. Beckett*, 2015 WI App 70, ¶¶ 21-23, 365 Wis. 2d 148, 870 N.W.2d 466, 473 (Ct. App. 2015).

**Rodney Smolla** is the Dean of Widener University Delaware Law School. His is a nationally known scholar on matters relating to constitutional law, and appears frequently as an advocate in state and federal courts throughout the country.

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## ETHICALLY SPEAKING

By Charles Slanina, Esquire

# Progress Report on Attorney Wellness

I welcome the opportunity to contribute a column dealing with attorney wellness. The entire Bar should celebrate the fact that attorney wellness and all of the threats to attorney wellness are being openly discussed.

To truly appreciate how far the Bar has come on this topic, I strongly recommend that, after reading this special “wellness” edition of the *Bar Journal*, you re-visit the Spring 1991 issue of *Delaware Lawyer* published by the Delaware Bar Foundation. That edition, entitled “Helping the Addicted Professional,” was issued when mental illness and addiction as well as general stress were not openly discussed and was one of the first responses to an incident which was the impetus for the Delaware Lawyers Assistance Program as we know it today.

On April 12, 1995, the Bar learned that one of its own had brutally murdered his wife and two young children while intoxicated before killing himself on the eve of his own birthday. Following that horrific event, there were many questions as to what the Bar could have or should have done to prevent such a tragedy.

The cover photo of the “Helping the Addicted Professional” edition featured the late Justice Andrew G.T. Moore, II, and contained his article “Ending the Code of Silence” dealing with both this tragedy and the responses of the Court and Bar. In the article, Justice Moore, one of the earliest and most ardent supporters of impaired attorneys, noted that many members of the Bar were aware of the troubling behavior of the attorney in ques-

“How could a member of our Bar be in such desperate straits, drifting from one crisis to the next, when so many people knew so much about his problems?”

tion, but none believed that they could, or should, help. “How could a member of our Bar be in such desperate straits, drifting from one crisis to the next, when so many people knew so much about his problems?” Among other tough questions that Justice Moore raised, “Where was that helping hand, the collegiality and concern for others that are hallmarks of the Delaware Bar?”

Justice Moore noted that these questions implicate all of us and reflected the “code of silence” that prevailed at the time. “There is the natural inclination to mind one’s own business; to keep out of the affairs of others. Yet, despite all of the ‘red flags’ and warning signals, those closest to the problem thought that saying nothing was the right thing to do.”

Justice Moore acknowledged that only two years before this tragedy, the Court had rejected a rule of confidentiality intended to include the Delaware State Bar Association Professional Guidance Committee. The article conceded that the code of silence was fostered at the highest levels. Public discussion of mental illness and substance abuse was disfavored. Both dialogue and action to address the issue were viewed as an admission that a problem existed which was perceived as a blight on the reputation of the Bar.

In the aftermath, the Bar Association retained an experienced, full-time drug abuse counselor to work with the Professional Guidance Committee. The Supreme Court adopted Rule 8.3(d) which protected contacts with the Professional Guidance Committee on the same level as attorney-client communications. The Delaware Supreme Court suggested, and the Delaware Bar Foundation agreed, to fund counseling and treatment for troubled lawyers and their families.

As a result of the initiatives of Justice Moore and others, including the strong support of other members of the Court then and since, Delaware now enjoys one of the best lawyers assistance programs in the nation. We are fortunate to have a caring and dedicated Executive Director, Carol Waldhauser, and the strong support of the other attorney members of the Delaware Lawyers Assistance Program, including R.J. Scaggs, available to help members of the Bar facing addiction and mental illness and wellness issues.

The “Helping the Addicted Professional” edition of *Delaware Lawyer* also features a fine “foreword” from the edition’s Editor, Carroll Poole, on the especially difficult issues that professionals face with regard to addiction, as well as articles, including “Substance Abuse

in America — How Goes the War?” by David Facciolo, discussing the status of the battle against drug and alcohol addiction in the general population at the time. Spoiler alert: We were not winning.

An article, “Drug Addiction and Lawyer Sanctions,” discussed the role of addiction in the disciplinary process. Addiction and mental illness may serve as a defense or mitigating factor in determining an appropriate sanction. However, addictions may also be an aggravating factor if it involves criminal conduct, and mental illness may raise fitness issues. While not exactly a beach read, check it out if you are in the mood for a pedantic treatment of these issues.

An article by the first full-time counselor of what would become Delaware’s Lawyers Assistance Program, Frank X. Lawlor, entitled, “Impaired Attorneys: A Specialized Program” is a must-read to appreciate the resources that the Court and the Bar made available to rebound from tragedy.

“Where I Went to Arrive: Where I Am,” by Michael F. Tucker, offered a candid and highly personal discussion of his own struggles with addiction and his experiences with Alcoholics Anonymous. Mike, too, is gone, but his many years of service to the Bar live on.

Finally, foreshadowing the current issue on “wellness,” the 1991 edition also included an article by Christine M. Waisanen entitled, “Fitness for the Library-Bound” which offered creative suggestions for utilizing law books and briefcases as free weights. Even after re-reading the article, I am still not sure if she was being serious.

In addition to all of the information and helpful hints contained in this wellness edition, I urge our readers to do two things: (1) read the Spring 1991 edition of *Delaware Lawyer*, which is available on the Delaware Bar Foundation website ([www.delawarebarfoundation.org](http://www.delawarebarfoundation.org)), and (2) celebrate how far we have come while recognizing the challenge remains to avoid complacency and to remember that these issues, unaddressed, threaten both careers and lives.

Happy Summer!

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*“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).*

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# A Compliance Paradigm

By Luke W. Mette, Esquire

**A**s part of our commitment to engage with the Delaware Bar, the Office of Disciplinary Counsel ("ODC") has agreed to submit quarterly articles to the Delaware State Bar Association's ("DSBA") Journal publication. This is our inaugural article in that new series.

• • •

## Introduction

I was appointed Chief Disciplinary Counsel by the Delaware Supreme Court in January 2019. Since then, I have spent time listening to lawyers, judges, and members of the public who have shared their perspectives regarding the role of ODC and the current state of the practice of law in Delaware. I will continue to listen.

I have also been sharing some of my views regarding how, collectively, we might enhance compliance with the Delaware Lawyers' Rules of Professional Conduct (the "Rules"). Part of my messaging on that topic is what I would like to share with you in this article.

## A Compliance Paradigm

The Preamble to the Rules articulates a compliance paradigm that is consistent with how many companies, and some government bodies, approach compliance in their respective organizations.

To the extent you have not read the Preamble recently, you may want to take a few minutes to do so. Like a foreword to a good book, the Preamble provides useful context for, and a general summary of, the Rules.

My specific focus today is paragraph [16] of the Preamble, which provides:

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reenforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

Other organizations, as part of their compliance cultures, capture the concept articulated in the Preamble above as the "three lines of defense":

- primary accountability rests with the individuals themselves;
- peers and colleagues provide secondary support; and
- third, if necessary, enforcement occurs through discipline.

What specific, practical steps could the Delaware Bench and Bar take to enhance compliance with the Rules, consistent with this paradigm?

## First Line of Defense: You

Under this approach, the primary accountability for complying with the Rules rests with you.

Note the Preamble's reference to both "understanding" and "voluntary compliance." The "understanding" piece can be

facilitated by lawyers periodically reviewing the Rules and related Comments, as well as by attending relevant CLE programs. There are a number of CLE programs each year that offer "Enhanced Ethics" credit. ODC participates in many of these programs and sponsors nine, free-of-charge, CLEs each year (three in each county). These ODC-sponsored programs are specifically focused on issues facing solo practitioners and lawyers practicing in small law firms (covering topics such as managing a solo practice or small firm, technology and compliance with Rule 1.15).

The Preamble language also suggests that, as part of a lawyer's primary accountability, he or she should also genuinely want to comply with the Rules. Ours is largely a self-regulating profession. We chose the practice of law, including its regime of self-regulation. And although the Rules periodically should be evaluated for appropriate revision, lawyers are expected to voluntarily comply with existing Rules.

## Second Line of Defense: Your Colleagues, Mentors and the Bar

The "second line of defense" assumes that peers and colleagues within the Bar can and should assist each other in complying with the Rules, whether such support comes from within or outside your firm.

For those of you who work in larger law firms, that support may be the firm's general counsel or ethics counsel. However, for many of you (for example, those who are solo practitioners or who work in a small law firm) an in-house ethics

advisor simply may not be an option. To be sure, there are existing resources who provide second-line support: very capable lawyers provide one-to-one, confidential ethics advice; the DSBA has a Professional Guidance Committee and is in the process of seeking volunteers for its mentoring program; and we enjoy in Delaware a number of Inns of Court that provide uniquely informal support opportunities.

Yet, my sense is that, despite the best efforts of these existing resources, many Delaware lawyers would welcome additional “second-line” ethics support. Here are two specific ideas that other jurisdictions either have implemented or are considering — and that Delaware may want to consider as well.

### Ethics “hot-line” or “drop-box.”

Several jurisdictions staff ethics “hot-lines” or “drop-boxes” with either volunteer or paid staff lawyers. This support is more immediate than waiting for a formal, written bar association advisory opinion. The models vary, but one option includes the utilization of knowledgeable, seasoned lawyers providing tailored, privi-

leged legal advice regarding how a lawyer might best handle or resolve his or her actual ethical uncertainties or questions.

**Trust accounting software.** The Florida Bar Association is piloting trust accounting software to assist its members in achieving compliance with trust accounting rules. Like a tax return software program, the idea is to automate compliance, assuming the lawyer enters the requested data accurately. Something like Florida’s initiative could be a useful tool for Delaware lawyers who are responsible for complying with, and certifying compliance with, Rule 1.15.

### Third Line of Defense: ODC and the Disciplinary Process

From time to time, of course, formal disciplinary proceedings will be necessary. My sense is the public, the courts, and the Bar itself expect nothing less. But, the compliance paradigm also assumes that formal disciplinary proceedings should be the last resort, not the first (except in the case of an emergency). The Preamble


uses the phrase, “third, if necessary, enforcement.”

Here, I am committed to being as open and transparent as possible regarding what ODC does and does not do. In addition, the Supreme Court is reconstituting a committee to evaluate whether the Rules should be updated. If you believe changes to the Rules are appropriate, this would be a good time to articulate and share your thoughts.

### Conclusion

An effective compliance approach to the Rules requires genuine and informed engagement by individual lawyers themselves, their peers and those involved in formal disciplinary proceedings. ODC plans to be involved as much as possible at all three levels. ⚖️

**Luke Mette** has been a member of the Delaware Bar since 1988 and has held numerous positions in government and private firms. He was named Chief Disciplinary Counsel for the Office of Disciplinary Counsel by the Delaware Supreme Court in January 2019.



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## DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

# The Wellness Blueprint

“**W**ellness is an active process through which people become aware of, and make choices toward, a more successful existence.”<sup>1</sup>

The legal profession has known for years that many of its law students, practitioners, and even judges are languishing in the scope of wellness. Unfortunately, far too little has been done to address it. Recent studies, as well as recent news articles, make the problems impossible to continue to ignore.

In 2016 the ABA Commission on Lawyers Assistance Programs and Hazelden Betty Ford Foundation published its study of over 13,000 currently-practicing lawyers. Data from the study suggests that between 21 and 26 percent of practicing attorneys qualify as problem drinkers, and that approximately 28 percent, 19 percent, and 23 percent of attorneys are struggling with some level of depression, anxiety, and stress, respectively.<sup>2</sup> Statistics from the study indicate that the parade of difficulties includes depression, anxiety, suicide, alcohol abuse, social alienation, stress, work addiction, sleep deprivation, job dissatisfaction, a diversity crisis, complaints of work-life conflict, incivility, a narrowing of values so that profit predominates, and negative public perception.<sup>3</sup>

In an effort to spearhead change and promote an action-oriented agenda of progress towards a healthier legal profession, a growing coalition of stakeholders has joined forces to form the National Task Force on Lawyer Well-Being.

## The Lawyer Well-Being Movement

A Movement is defined in the *Merriam-Webster Dictionary* as: “the act or process of moving people or things from one place or position to another...”. Because too many law students and lawyers are not thriving, multiple initiatives have been launched to take action. When the National Task Force on Lawyer Well-Being was formed in 2017, it issued a comprehensive report called *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*.<sup>4</sup>

## What Is Lawyer Well-Being?

Lawyer well-being means different things to different people. To some it is about seeking help when in crisis, and to others it is about finding time for yoga and meditation. It is an acknowledgment and acceptance of the stress, distress, and difficulties that come along with practicing law and defense mechanisms to deal with the distress — finding ways to improve both personal and professional quality of life.

## Why is Lawyer Well-Being Important?

Most surveys tracking attorney quality of life and satisfaction continue to indicate a substantial percentage of the profession is suffering negative health effects due to the distress associated with the practice of law.

Moreover, and according to the Rules of Professional Conduct, an attorney must be fit. The astute attorney, however, understands that fitness means more than just fitness of legal expertise; it means

also those qualities of physical, mental, and psychological health that enables a lawyer to carry out the demands and the responsibilities to their clients and to their profession. The fit attorney practices law while practicing personal wellness. Wellness leads to a balanced lifestyle. Data supports that without a balanced lifestyle, lawyers are at high risk to burnout.

Here, we will examine the dimensions, as well as the path, of wellness and identify ways to bring about positive change to achieve good health and well-being within the legal profession.

## What Is the Path to Lawyer Well-Being?

As stated above, a movement to improve well-being in the legal profession has started and hopefully there is no turning back. The cultural change is happening. In *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* initiated by the ABA Commission on Lawyers Assistance Programs (undersigned DE-LAP Director was a peer adviser); the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL), defines Lawyer Well-Being: “... as a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health; occupational pursuits; creative or intellectual endeavors; sense of spirituality or greater purpose in life; physical health and social connections with others.”

The Wellness Task Force confirms too, and as noted above, that lawyer well-



being is part of a lawyer's ethical duty of competence — making healthy, positive work-life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions. It is a process.

Reintegrating lawyer well-being is a “continuous process” and is a way of life. The dimensions of wellness are interconnected and need to be supported by law schools, the judiciary, bar associations, lawyers' assistance programs, malpractice carriers, and lawyers. Without wellness, the legal profession incurs lost productivity; poor client service; more mistakes and turnover. Through wellness lawyers find resilience, energy management, focus, control, and balance.

### DE-LAP: A Safe Place to Turn to and to Learn

The Delaware Lawyers Assistance Program (DE-LAP) was created to confidentially expand help to judges and lawyers with substance abuse/dependence and/or mental and physical health problems, wellness, and resilience.

The mission of DE-LAP is to provide confidential assistance to Judges and Lawyers. Our goal is to help individuals identify problems affecting their work productivity and/or their quality of life while assisting them in developing effective solutions for those problems thereby culminating in a workplace atmosphere that encourages health and wellness, professional growth, and maintains the integrity of the legal profession.

Confidentiality is the cornerstone of DE-LAP. All interactions with DE-LAP are held in strict confidence according to Delaware Supreme Court Professional Conduct Rule 8.3(c). Any legal professional that seeks assistance as a self-referral can be assured that their information will be held in the strictest confidence. Those who are concerned about a co-worker, peer, or other legal professional are guaranteed the same confidentiality.

Remember, you can make changes to create and balance your sense of wellness. For additional information, follow us on Facebook and Twitter. Listen to

# DE-LAP Wellness Tips



**PHYSICAL DIMENSION:** This dimension is related to sound nutritional practices, maintaining proper weight, participating in regular exercise, getting enough sleep, engaging in physical activity, avoiding risky behavior, and restricting intake of harmful substances.



**CAREER DIMENSION / INTELLECTUAL:** This dimension is related to finding balance among various life roles as people engage in fulfilling work and related activities, and identifying leisure activities that will provide a sense of life satisfaction. Intellectual means using your mind to its capacity; this includes intuitive skills, critical and clear thinking, creativity, problem solving, and lifelong learning.



**EMOTIONAL DIMENSION:** This dimension is related to understanding personal feelings, maintaining a relatively even emotional state, accepting one's own limitations, expressing emotions effectively, adjusting to change, and maintaining good, healthy relationships with other people.



**SOCIAL DIMENSION:** This dimension is related to sharing friendships, family relationships, and group memberships. It entails using empathy and active listening skills, caring genuinely about other people, being open to care from other people, and committing to the common good of the community, the legal profession, the nation, and the world.



**SPIRITUAL DIMENSION:** This dimension is related to maintaining a sense that life is meaningful, employing a continuing quest for value and purpose, searching for clarity, committing to peace and contentment in life, and developing the fortitude to continue in the face of obstacles.<sup>5</sup>

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#### Notes:

1. “About Wellness.” National Wellness Institute. Accessed March 23, 2019. <https://www.nationalwellness.org/page/AboutWellness>.
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**Carol P. Waldhauser** is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at [cwaldhauser@de-lap.org](mailto:cwaldhauser@de-lap.org).



# Depression and Lawyers

## Invisible Pain That Can Be Treated

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By Rich Lombino, Esquire, LCSW

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The information in this article is to help lawyers get insight into depression so they can get the help they need or intervene prior to symptoms becoming severe. They can also encourage other lawyers experiencing depression to do the same. The key to remember is you are not alone. You can feel better.

### Introduction

We all face tough times. The loss of a job. The end of a romantic relationship. The death of someone close to us. When we finish the grieving process,<sup>1</sup> we are able to rebuild our lives and return to the level of functioning we were at before these events. At times, however, events like these can lead to depression.<sup>2</sup> Depression can also be caused by trauma,<sup>3</sup> such as abuse. And for some, depression is a biological illness,<sup>4</sup> genetically passed down through generations. At times there is a combination of one or more of these factors.

Sadly in this country there is still a stigma associated with mental illness.<sup>5</sup> Even though these are medical conditions, they are not considered the same as physical health issues. Many times some say depression can be “a sign of weakness” and a person should just “get over it” or “work harder.” However, depression has nothing to do with being weak or lacking effort.

### Symptoms of Depression

Depression has a significant effect on functioning and well-being. Symptoms<sup>6</sup> can include experiencing significantly diminished mood, loss of interest in most activities, insomnia, fatigue, feelings of worthlessness, and/or difficulty with

concentration, among others, over at least two weeks. These result in an impairment in one or more areas of functioning, such as in work and one’s personal life. In the most extreme cases of depression, a person can consider, attempt, or commit suicide.<sup>7</sup>

### Hypothetical Scenario

You are a lawyer working in a high pressure and intense job requiring you to be on call all the time. If the higher-ups say they need you to come in on Saturday and work until 10:00 p.m., then that is what you have to do. But, what if you can barely get out of bed? You did not sleep most of the night and the sleep you had was interrupted because you woke several times. Your worrying starts to move from moderate into severe territory. “How can I possibly do the quality work that’s expected of me if I’m struggling with even basic functioning?” Even if you make it into work, you find it so difficult to concentrate that what normally takes you 15 minutes to do now takes you an hour. You are forced to stay at the office longer to get your work done and this perpetuates the cycle of decreasing your mood and increasing your anxiety. You are beating yourself up emotionally because you do not understand what is happening and are blaming yourself for everything. “Why can’t I just get back to normal?”

If this situation continues and worsens lawyers could eventually have their license at risk. As you know, the Delaware Lawyers’ Rules of Professional Conduct is governed by the Office of Disciplinary Counsel, which evaluates a lawyer’s responsibilities and expectations of competence in the practice of law. There is also the duty to report professional misconduct that must be considered. I say all this not to try “tough love” or to “scare” you. It is about being real and providing the reality of these grave situations.

This example focuses on professional functioning. Depression can also significantly impact personal functioning. You are not able to handle your home responsibilities, like cleaning the yard, taking the kids to soccer practice, being there for your spouse or partner to provide emotional support after a tough day, and many others. Re-



sentiment can build up in your spouse or partner resulting in conflict, which can intensify your already serious negative feelings.<sup>8</sup>

### Treatment for Depression

There is no quick and easy cure for ending depression. Thankfully a combination of treatments<sup>9</sup> has been found to reduce, and in many cases eliminate, symptoms so a person can return to their normal level of functioning.<sup>10</sup> One treatment is seeing a psychiatrist, a medical doctor whose specialty is psychological matters and who can prescribe medication. Meeting with a therapist can also be beneficial. Even if people have a strong support system with a spouse or partner, other loved ones, and friends, they may feel they do not want to burden them or they may feel uncomfortable talking with them about these issues. A therapist can provide a safe space to talk and this can be a helpful release of negative emotion and a place to gain insight into the issues that have contributed to depression. Together you and the therapist can develop a plan to move forward in a productive and positive way to heal.

Other resources include support groups, faith-based organizations, wellness programs at work, books, articles, and videos, among others. You

*“Depression has nothing to do with being weak or lacking effort.”*

can also reach out to Carol Waldhauser, Executive Director of the Delaware Lawyers Assistance Program at (302) 777-0124 or [www.de-lap.org](http://www.de-lap.org). She can connect you with the resources you need to feel better.

Combining supports can provide the most effective and ideal support to recover from depression. For example, seeing a psychiatrist to take medication while seeing a therapist; or, seeing a therapist and speaking with friends; or, seeing a psychiatrist plus attending a support group. Remember, you are not alone. ☯

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**RICH LOMBINO** is a therapist and a lawyer. He provides counseling to individuals, couples and groups regarding depression, anxiety, stress, alcohol/drug use, relationship concerns and others. Prior to becoming a therapist, he practiced real estate law. You can contact Rich at (302) 273-0700 and [info@richlombino.com](mailto:info@richlombino.com). Learn more about his practice at [www.richlombino.com](http://www.richlombino.com).





# Spiritual Balance

## A Lawyer's Tip Sheet

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By Alice R. O'Brien, MS, NCC, LPCMH

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**A**n anxious and debt-ridden recent law school graduate interviewing for her first job. A successful associate competing for partnership. A solo practitioner meeting his clients' needs along with a myriad of administrative requirements. A middle-aged government attorney experiencing marital difficulties. A seasoned senior partner approaching the great unknown of retirement. All are stressful scenarios from the lives of lawyers I have worked with as a psychotherapist. All have benefited from introducing the practice of spirituality into their lives.

Spirituality, according to author, lawyer, and Yale social science researcher James Kimmel, Jr., "refers to that unseen which is common to and unites the whole of humanity despite our separate physical bodies and circumstances." From his perspective, "spirituality is broader than and differs from religion, which seeks to understand and direct the experience of matters of spirit through a particular lens of organized human institutions and systems of creeds, rituals, beliefs and worship practices."

For Loyola University Psychology Professor Ralph Piedmont, spirituality or spiritual transcendence as he calls it, can be broken down into three aspects. "Prayer fulfillment/meditation is a feeling of contentment that results from personal encounters with the god of one's understanding and/or an increased sense of well-being. Univer-

sality is a belief that all of life is intimately tied together. Connectedness is a belief that one is part of a larger human reality that cuts across groups or generations," Piedmont stated. Each of the aforementioned lawyers approached spirituality differently. Each engaged in one or more of Dr. Piedmont's spiritual aspects.

Several pursued meditation at different levels. Meditation is freeing a stressed mind of thought, something the busy, analytical mind of a lawyer finds challenging. It could be taking 10 minutes to listen to calming music or a guided imagery reflection easily accessed via cell phone. Simple diaphragmatic breathing, another meditative technique, can bring immediate stress relief as well. When we are stressed, the most primitive part of the brain is running the show, producing the "fight, flight, or freeze" hormone, cortisol. If we breathe in to the count of four, hold the breath to the count of two, then exhale to the count of eight, we engage the frontal cortex or smart brain in counting. After a few repetitions, the smart brain overtakes the reactive primitive brain and restores a sense of calm and reason to our psyche.

Another part of a meditation practice is mindfulness, intentionally detaching ourselves and our moods from our thoughts so the thoughts can be better mastered. "The whole notion of the power of positive thinking only works if we are controlling our minds, not the other way around," notes lawyer and work environment consultant James Gray Robinson. He further advises that:

Lawyers train their minds to work a certain way, to anticipate problems. We have to detach from that unique ability long enough to stop anxiety from setting in. We can control our thinking, but we have to be aware that we are thinking. We can control our thoughts if we are aware of them. If we are afraid, we can be aware of the feeling of fear. If we are stressed, we can be aware of the feeling of stress. We can then turn our thoughts to a positive theme and let go of the negative feelings. It is easy to do with practice.

Spirituality can be broken down into three aspects:

1. Prayer fulfillment/  
Meditation
2. Universality
3. Connectedness



Mindfulness is also useful in halting negative self-talk which can trigger low self-esteem and a sense of impending doom. Being able to observe our thoughts by mentally stepping back from them allows us to more objectively evaluate their validity. Yoga, a practice both meditative and physical, is another stress-relieving activity that several of the lawyers pursued.

Universality was the spiritual aspect chosen by those who had an appreciation for themselves as part of the larger creative force of nature. Hiking in the woods, skiing down a mountain, kayaking on the Brandywine, or body surfing at the beach were activities that brought these lawyers in touch with their more relaxed and emotionally-attuned selves. Some engaged in the creative force of arts, both musical and visual. One took guitar lessons on an instrument long ago abandoned and another took a class in sculpture.

Others found spiritual satisfaction in engaging with a group to achieve something impossible to achieve by themselves. Their participation with such organizations as Alcoholics

*“Meditation is freeing a stressed mind of thought, something the busy, analytical mind of a lawyer finds challenging.”*

Anonymous and Habitat for Humanity was rewarded with increased feelings of purpose, well-being, and connectedness.

Spirituality through the lens of organized religion helped those who sought a greater sense of belonging and community. Some who had drifted away from the faith traditions of their youth returned. Others switched to denominations that more closely reflected their current beliefs and value systems.

All have gained a better sense of personal, emotional, and professional balance as a result of their openness and commitment to spiritual pursuits. If your life feels out of kilter, a manageable regimen of spiritual exercise could be a satisfying solution. 🕉

**ALICE O'BRIEN** is a licensed professional counselor of mental health. Her areas of interest are: life transitions, addictions, loss and grief and spirituality. She has a private practice in Greenville, Delaware and serves on the staff of Ashley Addiction Treatment (formerly Father Martin's Ashley) as a women's program lecturer and pastoral counselor.



# The Unwellness of Chasing the Inner Ring

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By R. Judson Scaggs, Jr., Esquire

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**W**hat group of lawyers do you want to join? I do not mean any official or defined group. I do not mean a group like a committee of the Bar Association. I do not mean the executive or management committee at your firm. I mean the collection of lawyers who are considered “in the know” or “well connected” or “influential.” In high school, they would have been the “cool kids.” You want to be like them and, most importantly, you want to be accepted by them.

In 1944, C.S. Lewis gave a famous lecture at King’s College in London called “The Inner Ring,” which describes Inner Rings and warns against pursuing of them. When I first read his lecture, I felt as if scales had fallen from my eyes. I had spent inordinate amounts of time, energy, and emotional capital seeking not to become a better lawyer, but instead to gain acceptance to the Inner Ring of lawyers in my firm and in my practice area within the Delaware legal community.

Perhaps you still do not understand what I mean by an Inner Ring. In Mr. Lewis’ words:

You are never formally and explicitly admitted by anyone. You discover gradually, in almost indefinable ways, that it exists and that you are outside it; and then later, perhaps, that you are inside it.

It is not easy, even at a given moment, to say who is inside and who is outside. Some people are obviously in and some are obviously out, but there are always several on the border line.

People think they are in it after they have in fact been pushed out of it, or before they have been allowed in: this provides great amusement for those who are really inside.

To discuss it with the other outsiders would make you feel outside yourself. And to mention it in talking to the man who is inside, and who may help you if this present conversation goes well, would be madness.

I can assure you that in whatever hospital, inn of court, diocese, school, business, or college you arrive after going down, you will find the Rings.

If you really believe that your firm or company or court or department does not have Inner Rings, I feel confident that you are dead wrong. The characteristic that most clearly identifies Inner Rings is the same one that makes them so dangerous. You want desperately to be part of it and you fear never making it inside.

I believe that in all men’s lives at certain periods, and in many men’s lives at all periods between infancy and extreme old age, one of the most dominant elements is the desire to be inside the local Ring and the terror of being left outside.

The really bad news about Inner Rings is that they are more harmful than merely wasting your time and efforts seeking admission. They can allure you toward seriously bad behavior. At a minimum, Inner Rings can shift your most basic focus from practicing your profession to the best of your ability to making it inside the Ring and staying there. Here comes the gut punch: Inner Rings exist only to elevate some persons over others. They offer only a false and illusory satisfaction based on exclusion, not inclusion:

Clive Staples Lewis (1898-1943) was the professor of Medieval and Renaissance English at Cambridge University, a celebrated author and renowned Christian thinker. He is best known for his *Chronicles of Narnia* books.





And, you will always find them hard to enter, for a reason you very well know. You yourself once you are in, want to make it hard for the next entrant, just as those who are already in made it hard for you.

[A] genuine Inner Ring exists for exclusion. There'd be no fun if there were no outsiders. The invisible line would have no meaning unless most people were on the wrong side of it. Exclusion is no accident: it is the essence.

I do not think I am breaking new ground in psychology, sociology, or spirituality to assert that it is a very bad idea to base your self-worth on the status of those who are willing to associate with you, or on a feeling of superiority grounded on the exclusion of others. Chasing the Inner Ring — even if we make it inside — can only injure our emotional, spiritual and mental wellness. So, what is the alternative?

Mr. Lewis said it better than I ever could:

The quest of the Inner Ring will break your hearts unless you break it. But if

*“The characteristic that most clearly identifies Inner Rings is the same one that makes them so dangerous. You want desperately to be part of it and you fear never making it inside.”*

you break it, a surprising result will follow. If in your working hours you make the work your end, you will presently find yourself all unawares inside the only circle in your profession that really matters. You will be one of the sound craftsmen, and other sound craftsmen will know it. This group of craftsmen will by no means coincide with the Inner Ring or the Important People or the People in the Know. It will not shape that professional policy or work up that professional influence which fights for the profession as a whole against the public, nor will it lead to those periodic scandals and crises which the Inner Ring produces. But it will do those things which that profession exists to do and will in the long run be responsible for all the respect which that profession in fact enjoys and which the speeches and advertisements cannot maintain. And if in your spare time you consort simply with the people you like, you will again find that you have come unawares to a real inside, that you are indeed snug and safe at the centre of something which, seen from without, would look exactly like an Inner Ring. But the difference is that its secrecy is accidental, and its exclusiveness a by-product, and no one was led thither by the lure of the esoteric, for it is only four or five people who like one another meeting to do things that they like. This is friendship. Aristotle placed it among the virtues. It causes perhaps half of all the happiness in the world, and no Inner Ringer can ever have it. ☪

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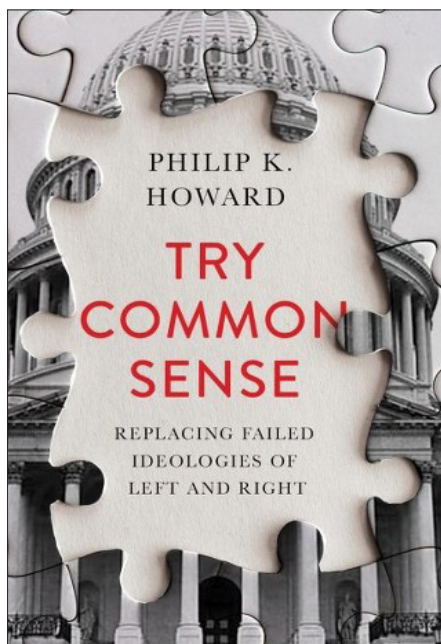
## BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

### Try This Book:

### *Try Common Sense, Replacing The Failed Ideologies of Right And Left*

By Philip K. Howard (W.W. Norton & Co., 2019)



not work out; after all, they were merely following the rules. Great for bureaucrats (they cannot be fired for following the rules), but bad for citizens if the rules make no sense in their application or have unintended consequences.

In *Try Common Sense, Replacing The Failed Ideologies Of Right And Left*, Howard once again provides numerous anecdotes of regulation gone wrong, but goes further to argue that change is coming and that we can either work to implement meaningful change or face the risk that change may be imposed with an even worse system. Howard advocates that what is needed is a simplified legal and regulatory system where bureaucrats and officials have both discretion and accountability — a system where bureaucrats and officials are judged and held accountable on outcomes and results. Howard crafts a compelling argument. Consider:

- In 2016, two volunteer firefighters responded to an emergency call at a McDonalds, where an eighteen-month-old infant was turning blue from a seizure. They promptly transported her to the local hospital, administering oxygen along the way, and reached the emergency room within 13 minutes of the original call. The child's life was saved, but the volunteer firefighters were suspended from further duty. They violated applicable regulations by transporting the child in a fire truck, which was only certified as a "non-transport unit" because it lacked the proper restraints for transporting victims.
- Apple orchards in New York are subject to nearly 5,000 rules from 17 different regulatory agencies, including a rule that a cart containing apples must be covered with a cloth when transported from the orchard itself to a barn, so as to protect the apples from bird droppings while in transit (of course, the apples were not protected while on the trees themselves for the preceding months). In addition, under applicable regulations, someone is to walk the perimeter of an orchard each morning to check for deer and mouse droppings, although exactly what this is expected to accomplish is not explained.
- The City of Los Angeles spent seven years and \$3.5 million attempting to fire seven teachers. Ultimately, four were fired.
- In Brooklyn, a union-paid lawyer defended a teacher in a termination proceeding, where the record demonstrated that the teacher had failed to correct student work, prepare lesson plans, or fill out report cards. The lawyer argued the teacher should not be fired because there was no proof the teacher had ever received an

**P**hilip Howard has written a number of thoughtful, interesting, and well-regarded books over the years, including *The Death of Common Sense*, *The Lost Art of Drawing The Line*, and *The Rule of Nobody*. In all of his work, Howard decries our country's over-reliance on complex rules and regulations designed to eliminate any discretion on the part of government officials but which often lead to absurd results. Of course, detailed rules and regulations also mean that officials and bureaucrats cannot be held accountable if things do



instruction manual requiring her to do those things.

Of course, it is not as though government officials have not tried to improve things. Howard describes how, in 2015, he was summoned to the White House to discuss implementation of the ironically-named FAST Act, which was designed to streamline and speed up the federal approvals process. The Act created a sixteen-agency council to resolve inter-agency disputes and there were 20 pages of regulations governing the new council. In legalese that would make any legislative draftsman proud, the Act provided in part that: "If a dispute remains unresolved...the Director of the Office of Management and Budget...shall...direct the agencies party to the dispute to resolve the dispute." Howard asked several questions at the meeting. "How long will it take to schedule a meeting with sixteen busy officials?" The staffers did not know. "How much authority will each attendee have to compromise his agency's position?" The staffers did not know. Finally, Howard asked, "Just in case the attendees don't agree, who has authority to make a decision?" Here, though, Howard did get an answer from the senior official present: "No one has that authority. That would be too dangerous."

Ultimately, Howard concludes that government cannot fix itself. Worse still, neither political party is up to the task. Howard argues that a new political party (which he dubs the "Practical Party") is needed to spearhead the needed reform movement. Both current major parties are too rigidly ideological, Howard claims, but most Americans want practical, not ideological, solutions.

Conservatives are correct, Howard acknowledges, to oppose judicial activism, but the judicial restraint pitched by many conservatives goes too far:

Yes, courts should avoid acting like legislatures, just as Congress should avoid overbearing regulations. But, freedom depends upon courts drawing lines on who can sue for what, [and] protecting against overreach both by the state and by private litigants.

Liberals come in for criticism as well:

Fairness is important, of course, but fairness to whom? Honoring the 'right' of an emotionally disturbed student to be mainstreamed in the classroom may cause disruptions of the learning of all other students... the constitutional concepts of individual rights and due process were meant to be shields against state coercion, not swords to get advantages over other free citizens.

Howard calls for major reforms in the way we as a society approach government. Overly-detailed statutes and regulations need to be replaced. Special commissions should be formed to review existing statutes (which have grown dense over time) and to propose simpler, cleaner and easier-to-understand statutes. The focus should be on goals. Government officials should be held accountable. People — all of us — need to take responsibility for these changes and we need to start now.

Howard quotes Alexander Hamilton from *The Federalist*, No. 65: "The true test of a good government is its aptitude and tendency to produce a good administration." Hamilton (and presumably all of the Founding Fathers) would no doubt not be happy to witness government in action (and inaction) today.

Worse still, Howard believes that absent reform the portents for democracy are not favorable:

Countries that recently reveled in new freedoms, such as Hungary, Poland, and Turkey, are embracing semi-totalitarian leaders. Buffeted by

forces of global commerce, people all over the world are attracted to strong leaders who can make trains run on time. ... What is driving people into the arms of totalitarian leaders? One thing more than any other — the ineptitude of modern democracies.

Howard goes on to cite the ancient Greek historian Polybius, who viewed the disintegration of democracy into dictatorship as inevitable, because of the tendency of democratic leaders to overspend finite resources to the point of fiscal collapse. He also quotes Alexis de Tocqueville, who predicted that democracy would suffocate under "a network of small complicated rules, minute and uniform through which the most original minds and the most energetic characters cannot penetrate."

Whether one agrees with Howard or not on just how dire things are, his focus on the practical and his argument for reform is compelling. A system where volunteer firefighters are suspended when they save a child's life, or where a school district must spend \$3.5 million in order to fire four teachers, or a new "fast" council where no one has final authority to decide anything, is not a system to be proud of. And, if the system is producing poor or unacceptable results, then it is incumbent on all of us to try and do something about it. Perhaps Howard's latest book will inspire more people to try. 📖

**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](mailto:Richard.Forsten@saul.com).

## Support for Postpartum Depression

If you or someone you know is experiencing Postpartum Depression, there is help and support for lawyers.

For more information, email [reception@de-lap.org](mailto:reception@de-lap.org).



# LEAVING A LASTING LEGAL LEGACY

**A**s the co-chairs of the Combined Campaign for Justice (CCJ) Equal Justice Society, we ask you to join us in helping to ensure CCJ's continuing legacy of providing a level playing field for the most vulnerable people in our state.

As you know, the Combined Campaign for Justice raises money every year to support Delaware's three nonprofit civil legal aid agencies: Community Legal Aid Society, Inc. (CLASI), Delaware Volunteer Legal Services, Inc. (DVLS), and Legal Services Corporation of Delaware, Inc. (LSCD). Each year these agencies, working in a coordinated and efficient way, help over 12,000 people with civil legal problems including public benefits, housing, domestic violence, and employment. And that number only reflects about 20% of the need for civil legal services.

CLASI was established in 1946, DVLS was established in 1981, and LSCD was established in 1996. As long as there are poor and vulnerable people in Delaware, these programs will continue to attempt to meet their civil legal needs. CCJ has been a very successful fundraising vehicle for the three agencies for the past two decades, and many members of the legal and business community have been generous and consistent supporters for each of those 20 years.

The CCJ Equal Justice Society is an endowment fund that is being managed and invested by the Delaware Community Foundation to create an ongoing source of income, in perpetuity, for these three agencies. By contributing to this important endowment initiative and celebrating CCJ's 20 years of support for Delaware's legal aid agencies, we all have the opportunity to help ensure CCJ's continuing legacy and significant impact.

Through planned and legacy gifts, members of the CCJ Equal Justice Society send a strong message to the community about the importance of ensuring equal access to justice in our society. The endowment fund is an invested pool of money that creates an ongoing and reliable source of income that will be shared among the three agencies using the same sharing formula that the annual campaign uses. The agencies will be able to count on annual distributions to support the important work they do to keep people housed, fed, and free of domestic violence.

To join the CCJ Equal Justice Society, please complete and return the form. For more information, go to [www.delawareccj.org/planned-giving](http://www.delawareccj.org/planned-giving)

Thank you for your consideration,  
Elizabeth M. McGeever, Esquire  
William H. Sudell, Jr., Esquire

*Co-chairs of the Combined Campaign for Justice Equal Justice Society*

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# THE DELAWARE STATE BAR ASSOCIATION LAW DAY LUNCHEON 2019

**WEDNESDAY, MAY 1, 2019 • 12:00 NOON**  
**DOUBLETREE BY HILTON DOWNTOWN WILMINGTON LEGAL DISTRICT**

The DSBA held its annual Law Day Luncheon on May 1, this year at the Doubletree Hotel. Members of the Delaware Bench and Bar gathered to hear the keynote address by Charles M. Oberly III, Esquire, and celebrate the 2019 Law Day Award recipients.



DSBA President David J. Ferry, Jr., Esquire, welcomed guests to the 2019 Law Day Luncheon.



Charles M. Oberly III, Esquire, gave the Keynote Address.



Myrna L. Rubenstein Professional Support Recognition Award recipient Betty O'Shields of Heckler & Frabizzio, P.A. (R) with presenter Anthony M. Frabizzio, Esquire of Heckler & Frabizzio, P.A. (L).



Community Service Award recipient Edward M. McNally, Esquire, of Morris James LLP (R) with presenter Richard Galperin, Esquire, of Morris James LLP (L).



Liberty Bell Award recipient Margot R. Millar, Executive Director, Commission on Continuing Legal Education (L) with presenter Susan Simmons, Delaware State Bar Association, Director of Continuing Legal Education (R).

## NEW ADMITTEE SOCIAL

On April 18, the DSBA held its first New Admittee Social, where new members of the Bar could come and meet the DSBA staff and Section Chairs, learn about the DSBA, and mingle with each other, while enjoying the event's signature mocktail, the New Admitini.





## Victoria Rose Sweeney

McCarter & English, LLP

### **PRACTICE AREA**

Product Liability  
Mass Torts  
Consumer Class Actions

**DSBA MEMBER SINCE**  
**2018**

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 became a member of the Delaware State Bar Association in 2018 when she was admitted to the Delaware Bar. In her short time as a member, Victoria has had quite an impact on the organization, speaking at numerous Delaware State Bar Association functions promoting the message of mental health awareness and suicide prevention through her involvement with the American Foundation for Suicide Prevention.

### **Why did you decide to practice law?**

I was originally interested in law because I wanted to be a child advocate or a Family Law Attorney. My parents divorced when I was younger and there was always so much going on. I remember sitting in the courthouse outside of the courtroom waiting for the case to be called and there was a little kid crying because neither parent wanted him. I was super young, but I thought how my parents love me so much they are fighting over who gets to spend more time with me. When I got to law school I quickly realized that there were so many other areas of law that I would really enjoy, so I ultimately haven’t pursued that path yet, but that’s why I enjoy community service and giving back.

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

Just the idea of being a part of something bigger than myself, even though

on a day to day basis it may not feel that way. At the end of the day when we look back on things, our goal is to help people in one way, shape, or form. When I did criminal defense work, obviously, I tried to ensure the defendant had a fair and just trial and make sure the system worked. But, now that I am in private civil defense, even if we are working for companies, those companies are in place to help people and by helping them, you are helping them be better for the community. My family members are all in the medical field and help people in a great way, and while I could never do what they do, I remind myself I may not be taking care of people in that capacity, but I’m still helping someone.

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

I think I have multiple. I’ve always said that my hero is my little sister. She’s now 25 but at the age of 12, she was diagnosed with a heart condition. She had to have a pacemaker and a defibrillator put in and no one knew what was wrong with her heart. My mom pushed and pushed and found out she has a fast heartbeat. The condition caused her heart to beat so fast that it would have killed her by the time she was 15. She had to go on a diabetic diet and the whole family had to go on it, too. Life changed drastically. She was an amazing athlete and had to stop running track which was hard because she was really fast and always placed in the top five or ten runners in the state. Her attitude through all of this was incredible. You meet her and she is just this spark of joy. She has undergone upwards of seven to ten surgeries and had open heart surgery in 2015. Her resiliency is incredible. She’s so stoic and while sometimes she’s just my annoying younger sister, I really value and admire her tenacity and just the way she sees life is awesome. So, I try to be as kind,



*“AFTER MY EXPERIENCE WITH THE DELAWARE BAR EXAM, I WANTED TO BE INVOLVED AS MUCH AS I COULD, AND THE DELAWARE STATE BAR ASSOCIATION SEEMED LIKE THE PERFECT PLACE TO START, ESPECIALLY WITH ALL THE RESOURCES AND CONNECTIONS.”*

optimistic, and thankful as she is. I’d be remiss if I did not say my parents were also my heroes for a multitude of reasons. My Mom is a single mom. She’s a nurse practitioner and has raised me to be a strong, independent woman and to not let society dictate to me what I could or could not be. My Dad is a self-made man who came from very humble beginnings and now he has his own successful dental practice. He worked very hard but always made time to be 100 percent there for us. And, my Step-Mom is a saint — she’s tough on me but taught me the value of communicating and sticking to your word. My Dad and Step-Mom always say “Be who you are, and be that well.”

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

After my experience with the Delaware Bar Exam, I wanted to be involved as much as I could, and the Delaware State Bar Association seemed like the perfect place to start, especially with all the resources and connections.


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

I’d like to have the superpower of flying. According to the laws of superpowers, for most superheroes to be able to teleport, they have to either previously been to the particular place in which they’re going or know the area incredibly well. And, since I haven’t been every-

where in the world yet (though it’s on my list) I’d have to say the ability to fly.

• • •

Victoria, the Delaware State Bar Association would like to thank you for your commitment to our organization and encouraging us through your activism to have the talk that could literally save lives.

For more information on how you can help fight suicide visit the American Foundation for Suicide Prevention at [www.afsp.org](http://www.afsp.org). 

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



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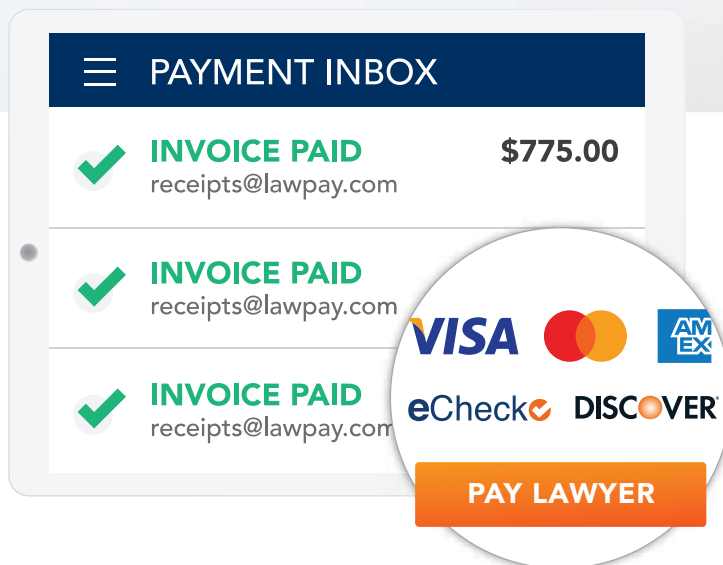
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# Nominations Sought for the Delaware State Bar Association's 2019 Christopher W. White Distinguished Access to Justice Awards

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.**



## POSITIONS AVAILABLE

**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.

**INSURANCE DEFENSE FIRM** located in Center City Philadelphia is seeking an associate to work directly with our Senior Partner in the general liability department. One to two years of experience required. Applicants must have Pennsylvania and New Jersey license. Delaware license preferred but not a requirement. Firm offers competitive salary and benefit package. Send resume to the office manager via email at EGagliano@naulty.com.

**THE MARINOSCI LAW GROUP** seeks an associate attorney for its office in Wilmington. The firm primarily represents banks and mortgage servicers in U.S. bankruptcy court matters, foreclosure cases, and other types of litigation. Delaware Bar required. The candidate should apply by submitting a cover letter and resume by email to gloomis@mlg-defaultlaw.com or by mail to Marinosci Law Group, P.C., 824 N. Market Street, Suite 901, Wilmington, DE 19801.

**YOUNG CONAWAY** is seeking junior to mid-level attorneys to join its expanding bankruptcy and business planning and tax practices. Additional details are available at [www.youngconaway.com/careers](http://www.youngconaway.com/careers).

**ASSOCIATE OPENING:** Established suburban Wilmington firm seeking attorney to work in a busy domestic practice. Competitive compensation and benefits package included. DE bar required. Please send cover letter and resume to Rahaim Saints & Walstrom LLP c/o Megan Walstrom at [mwalstrom@rahaimsaunts.com](mailto:mwalstrom@rahaimsaunts.com).

**PARKWAY LAW** seeks a Delaware licensed attorney with 3 or more years of experience to join its growing firm. The attorney would work primarily at the firm's Kent and/or Sussex offices. This is a great opportunity for an attorney to add a practice area to the firm and co-manage an office (please review our website for current practice areas at [www.parkway-law.com](http://www.parkway-law.com)). The attorney could also practice in the current practice areas offered by the firm which include, but are not limited to, real estate, estate planning and business (but not required). Looking for a candidate with strong ties to the community. The candidate must be able to originate work and, although not necessary, portable business would be a plus. This is a great opportunity to kick start your career! Pay will be commensurate with experience and performance bonuses are available. Please send resume with cover letter and salary requirements to DelawareLaw2019@gmail.com or call Dominic at (302) 449-0400.

**MID-SIZE WILMINGTON LITIGATION LAW FIRM** seeking newly admitted to experienced mid-level litigation attorneys admitted to the Delaware Bar. Flexible regarding practice areas. Highly competitive salary and benefits. Please send confidential resume, law school transcript, writing sample and references to: Casarino Christman Shalk Ransom & Doss, P.A., P.O. Box 1276, Wilmington, DE 19899, Attn: Kenneth M. Doss/KMD.

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**INTELLECTUAL PROPERTY LITIGATION ASSOCIATE:** The Morris James LLP Intellectual Property Group seeks an associate attorney to join its Intellectual Property Litigation Practice. The ideal candidate should have a technical or science based undergraduate degree, 0 to 3 years of experience in Intellectual Property Litigation and must be licensed in the State of Delaware or registered to take the bar examination in July 2019. Salary is commensurate with experience. Email resume and writing sample to: Brett Fallon, [bfallon@morrisjames.com](mailto:bfallon@morrisjames.com).

**BUSINESS TRANSACTIONS ASSOCIATE - WILMINGTON:** Morris James is expanding its business transactions practice and seeks an attorney with 0 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](mailto:bfallon@morrisjames.com).


**BERGER HARRIS LLP is seeking a Delaware-licensed attorney with 2-5 years' experience to join its growing business litigation group. All candidates must have superior academic credentials, a strong work ethic plus a commitment to professional development, strong oral and written communications skills, and first-hand experience practicing in the Delaware Court of Chancery. Candidates should email a confidential resume and writing sample to [abrennan@bergerharris.com](mailto:abrennan@bergerharris.com).**

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**ATTORNEY (DOVER):** Legal Services Corporation of Delaware, Inc., seeks an Attorney for its Dover office. Litigation experience and Delaware Bar admission preferred. Please fax resume to (302) 575-0478 or Email to [karen@lscd.com](mailto:karen@lscd.com). EOE

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For more information and to apply, visit our website at <https://courts.delaware.gov/career>.

An EEO/AA

## GRADUATION FARE-WELL

**J**une is a time for graduation celebrations – to congratulate students of all ages on their accomplishments and bid them adieu as they set off on new adventures. As June is also a time for grilling, this menu showcases the barbecue.

Everything can be prepared in advance so that the grilling is all that remains upon return from commencement ceremonies. Each recipe below is intended to serve six to eight – as a buffet or sit down dinner. Happy graduation...and grilling! 🍴

### WAX BEAN AND FINGERLING POTATO SALAD

#### Ingredients:

- 2 pounds wax beans, rinsed with ends removed
- 2 pounds fingerling potatoes
- Extra virgin olive oil
- Juice of one lemon
- Sea salt
- Fresh ground pepper
- Fresh mint

Steam the beans for about three minutes, just enough for them to retain their crispness. Then, run them under cold water to stop the cooking process. Set aside. In a large pot, bring the potatoes to a boil and cook until soft enough to put a fork through, about 25 minutes. Remove and let cool until you can slice them on a bias.

Arrange the wax beans down the center of a large, flat serving dish. Arrange the fingerlings along the perimeter of the wax beans. Drizzle with extra virgin olive oil and lemon juice and season with sea salt and pepper.

Top with chopped mint and other herbs from your garden, such as lemon thyme.

### GRILLED SHRIMP WITH SESAME SEED SAUCE

#### For the Sesame Seed Sauce:

- 1/4 cup toasted sesame seeds
- 1/2 cup rice wine vinegar
- 2 tablespoons soy sauce
- 2 tablespoons cilantro, chopped
- 1 tablespoon sesame oil
- 1 cup extra virgin olive oil
- Sea salt
- Fresh ground pepper
- Chili flakes

To prepare the toasted sesame seeds, place them in a nonstick skillet over low heat. Cook for about three minutes, stirring to prevent burning. Combine all ingredients and half of the sesame seeds in large bowl and whisk to emulsify. Season with sea salt, pepper, and chili flakes. Set aside.

#### For the Shrimp:

- 2 cups extra virgin olive oil
- 1/4 cup soy sauce
- 1/4 cup crystallized ginger, chopped
- 5 cloves garlic, chopped
- 2 pounds large shrimp, shelled and de-veined
- Sea salt
- Fresh ground pepper
- Sesame Seed Sauce
- 1/4 cup toasted sesame seeds

Combine the oil, soy sauce, ginger, and garlic, in a large baking dish. Add the shrimp and toss to coat. Cover and refrigerate for one hour. Preheat the grill to high heat. Remove the shrimp, discarding the marinade. Season with sea salt and pepper. Grill until the shrimp are just cooked through, which will take 2 to 3 minutes per side. Arrange on a serving plate and top with the Sesame Seed Sauce and the other half of the toasted sesame seeds.

### GRILLED SKIRT STEAK WITH CHIMICHURRI

#### For the Chimichurri:

- 2 jalapeños, chopped
- 3 garlic cloves, thinly sliced
- 1/4 cup red wine vinegar
- 1 cup cilantro, chopped
- 1/2 cup flat-leaf parsley, chopped
- 1/4 cup oregano, chopped
- 1 cup extra-virgin olive oil
- 3 tablespoons sesame oil
- Sea salt
- Fresh ground pepper

Combine all ingredients but the oils, salt, and pepper in a large glass bowl. With a fork, whisk in the olive oil and sesame oil. Season with salt and pepper. Set aside.

#### For the Skirt Steak:

- 2 pounds skirt steak, cut into 12 inch strips
- Sea salt
- Fresh ground pepper

Preheat the grill to high heat. Season the steaks with sea salt and pepper to taste. Grill, turning once, until lightly charred on both sides while medium rare inside. This will take about 5 minutes. Transfer to a carving board and let rest for 5 minutes. Slice the steak against the grain on a diagonal and arrange on a serving plate. Spoon the chimichurri atop the steak.

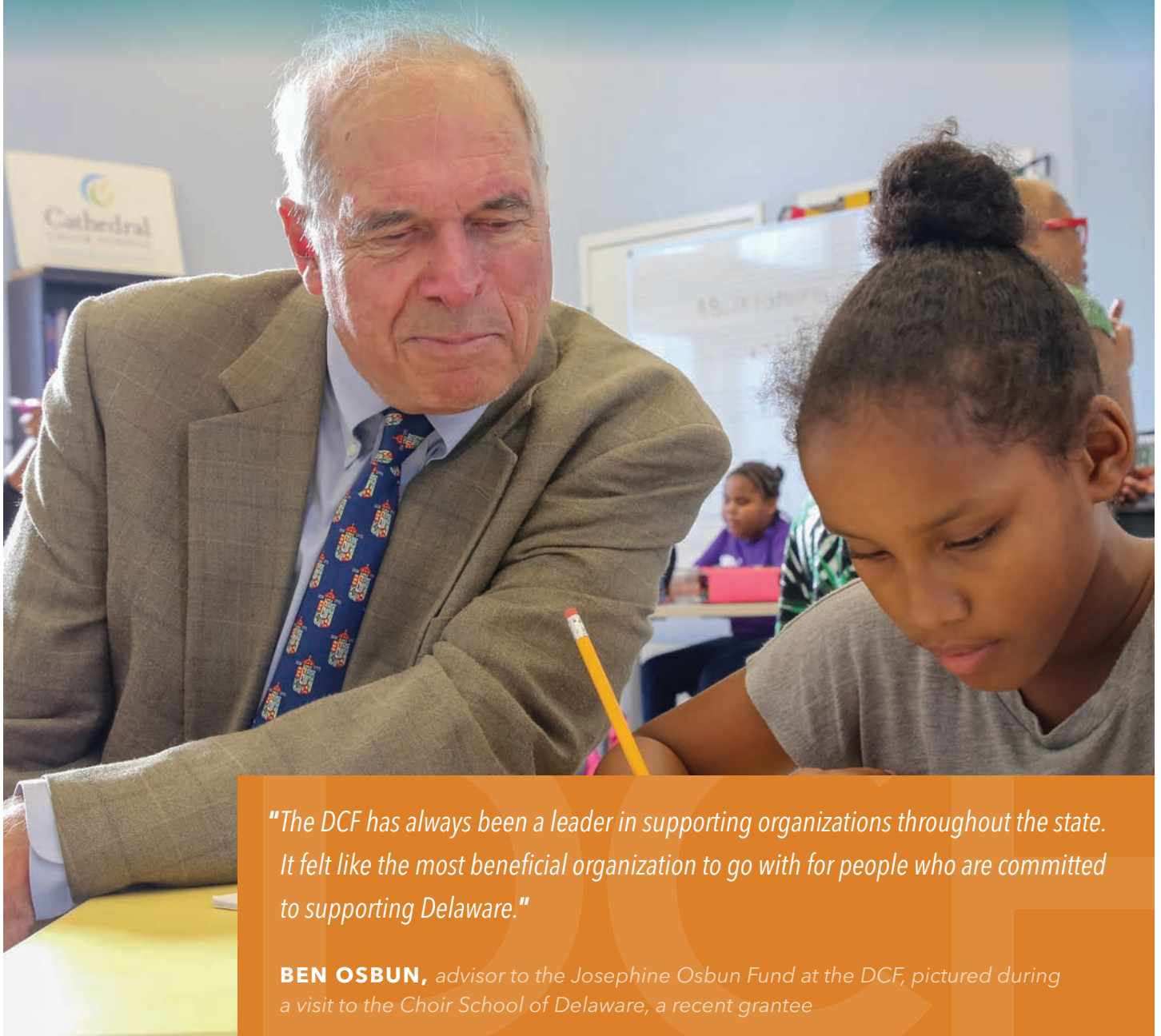


**Susan E. Poppiti** is Director of Advancement, Director of the Legal Shadowing Program, and a mathematics teacher at Padua Academy. She is also the “head chef” of the school’s culinary club “The Hungry Pandas.” Susan can be reached at [spoppiti@hotmail.com](mailto:spoppiti@hotmail.com).





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**BEN OSBUN**, advisor to the Josephine Osbun Fund at the DCF, pictured during a visit to the Choir School of Delaware, a recent grantee

**TO LEARN MORE, PLEASE CONTACT:** Joan Hoge-North • [jhoge-north@delcf.org](mailto:jhoge-north@delcf.org) or **302.504.5224**



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