



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

THE LEGISLATIVE LAWYER

KEY FEATURES:

- A History of the Division of Research
- Perspectives on Legislative Drafting
- Legislative Resources for Attorneys
- What Division Attorneys Want You to Know



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

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THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

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Cover Photo: Legislative Hall in Dover, Delaware.

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The DSBA has pivoted over the past year and provided a number of CLE programs on COVID-19 issues, all of which are available on video. If there are CLE topics or programs that you believe would be of interest, please let us know. The DSBA is here to support its members during, yes, these unprecedented times.

As the calendar turns to March, interests often turn to the first day of spring and the other significant events such as the start of MLB's Spring Training and March Madness. But when I think about this year's March, I have to think about last year's March. It is hard to believe that we have been living through the COVID-19 pandemic for a year now. Like many, when COVID first hit, I expected things to return to "normal" within a few weeks. We now struggle every day with what is the "new normal."

I am sure that everyone has seen recent news accounts about the new COVID vaccines. As I write this, there have been more than a couple of bumps in the road in the distribution of these vaccines. I would urge those in our legal community to strongly consider getting the COVID vaccine when you become eligible.

The Delaware Coronavirus website, www.coronavirus.delaware.gov, does list the different phases and the projected schedule for vaccinations. Delaware is currently in phase 1b. Phase 1 of the schedule contains a long list of persons with various medical conditions who meet the requirements for Phase 1 classification. Phase 1 also contains a number of "[o]ther essential workers" and this definition includes "Legal" workers. I am assuming this definition applies to most, if not all, of the members of our Delaware Bar. The State's website does indicate that not all essential workers will be immediately eligible for the vaccine.

I also want to encourage anyone in our Bar who is struggling under the current COVID conditions to reach out for assistance. The Delaware Lawyers Assistance Program ("DE-LAP"), headed by Executive Director Carol Waldhauser is available to assist the Delaware Bar members with problems affecting work productivity or quality of life. DE-LAP has also held a number of helpful CLEs including "Beyond the Cool Image: Lawyering in the 21st Century."

In that same vein, the DSBA, while continuing to operate virtually, is available for you, our members. The DSBA has pivoted over the past year and provided a number of CLE programs on COVID-19 issues,¹ all of which are available on video. If there

are CLE topics or programs that you believe would be of interest, please let us know. The DSBA is here to support its members during, yes, these unprecedented times.

I also wanted to report on the formation of a new DSBA Standing Committee. For many years, there has been some form of a DSBA Diversity Committee. However, for most of those years, that Committee was not active at all. In the beginning of my term, I appointed President-Elect Kathy Miller to reinvigorate this Committee.

At the January 2021 DSBA Executive Committee meeting, Kathy Miller presented the outline and bylaws for the new Diversity, Equity, and Inclusion Committee. I would like to thank Kathy and all the other members who invested time to form this new Committee.

The Committee's Mission Statement provides in part:

The Committee's Mission is to effect change by promoting diversity, equity, and inclusion in the legal community and system in Delaware, including, but not limited to, in the Delaware State Bar Association (the "DSBA"), law firms, governmental providers of legal services, the judiciary, and the criminal justice system, through education, community engagement, promotion of interest in the legal profession in Delaware both within and outside of Delaware to attract more diverse candidates, breaking down barriers that inhibit advancement of diverse attorneys, and measuring and tracking the progress of such diversity efforts.

The Committee is still in the formative stages so if anyone is interested in helping with this important work, please contact Kathy Miller or DSBA Executive Director Mark Vavala.

And I would be remiss if I did not close with a brief note to March 17, my favorite day of the month. St. Patrick's Day will likely have scaled-back activities again this year, much like last year, but I do wish a Happy St. Patrick's Day to all! And I leave with a few famous Irish sayings:

May the road rise up to meet you;

May your home always be too small to hold all of your friends; and,

May you get all of your wishes but one, so that you will always have something to strive for!² 

Notes:

1. See Collectively Coping with the Coronavirus Pandemic Crisis 2020; COVID-19-Spawned "Busted Deals:" Contractual Rights, Obligations and Defense to Performance; Individual Liberty

and the Response to COVID-19: Domestic and International Perspectives; Long-Term Care in COVID-19; Navigating Legal, Medical and Ethical Issues for Providers and Older Adults; Office and Trial Practice 2020: The Effect of the Coronavirus Pandemic; Religious Freedom Implications of the COVID-19 Pandemic; The Delaware State Court and Widener University Delaware Law School Two-Part COVID-19 Summit 2020; The Disproportionate Rate of COVID-19 on Minorities and Their Ability to Work; The Effects on the Hospitality Industry During the COVID-19 Pandemic; The Impact of the COVID-19 Crisis on Vulnerable Populations; Understanding the Governor's Order Permitting Remote Notarizations and Witnessing; Virtual Hearings Before the Board and Discovery, DMEs and Practical Reminders During the COVID-19 Crisis; When the Ink Must be Wet: Strategies in Adopting to COVID-19 for Wills, Trusts, and Contracts.

2. The statements expressed in this article are solely those of the author and are not to be attributed in any way to his employer.

Step up to
the mic!



Organizing a program or a CLE Seminar is a great way to get exposure and engage with the DSBA! Email your ideas to Susan Simmons at ssimmons@dsba.org.

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Live from Dover, It's Session Time!

In certain aspects, serving as an attorney for the Delaware General Assembly bore a resemblance to hosting Saturday Night Live (or at least what I imagine that experience to be). It was related to, but vastly different from, my “day job.”¹ I had the opportunity to work alongside a cast of dedicated, passionate people. My extemporaneous skills were certainly tested. Most importantly, I got to play a small part in an ongoing, venerable institution.² Thus, the lasting feeling from my six years at the House of Representatives is one of privilege and honor.³ I would be remiss to not take the opportunity to publicly express my gratitude to former Speaker Gilligan, Speaker Schwartzkopf, Rep. Longhurst, Rep. Bush, and the other Representatives for affording me the opportunity to serve in that role, which provided so much more than I could have anticipated. Please allow me to share a few tidbits, some of which came as a surprise, at least to me.

The most precious resource we have is time.⁴ In the House, the bills actually introduced and numbered typically reach into the 400s toward the second year of the Legislative session. That

In addition to the thorough civics lesson, gaining an in-person appreciation for the issues and efforts to improve life in our State made me a more complete Delawarean.

would not include the numerous issues that legislators attempt to address but do not ripen into a bill.⁵ There is no shortage of important matters. Yet, a relatively small portion of those bills become law. A key limiting factor is time, especially for a part-time legislature. With a body everchanging,⁶ each day is important, as priorities shift and pressing issues arise.⁷ My front-row seat offered a near daily reminder that the codified law is neither static nor preordained, and individual voices can make a profound difference. And, unlike my civil litigation cases that directly affect largely just the parties, bills usually cast a wide net, making the position the most important I have occupied if measured by scope of the outcome’s impact.

Juxtaposed with that broad effect was how many Representatives responded to individual constituent’s needs. I frequently had a printed email handed to me, accompanied by the question, “Is there something in the Code to address this?” Similarly, I was struck by the effect a single witness could have on a debate, including the particular attention paid if a witness appended “Delaware attorney” to his or her name.

I had no idea the concept of open government was so literal. For at least a few years, my office opened into the main hallway on the second floor, by the central staircase. This was pre-pandemic, so Delaware citizens were free to gather and discuss matters in the hall. The number of people who asked for directions to the restrooms occasionally tempted me to leave a Post-It outside with an arrow, but I was quickly disabused of that thought when taking

in the effort of the people who maintained the physical plant, right down to the name plates on the doors.

To this day, if I come across someone who looks vaguely familiar but I cannot quite place, my default assumption is that I encountered the person in some capacity at Leg Hall.

It is a bigger, more diverse State — and a longer Code — than I understood prior to working at the Legislature. People from all walks of life come to Dover when an idea or a bill affects them. In addition to the thorough civics lesson, gaining an in-person appreciation for the issues and efforts to improve life in our State made me a more complete Delawarean.

Lastly, the Legislature takes at least a moment or two to celebrate the good stuff.⁸ I was reminded of this practice when the U.S. Senate voted unanimously to award Capitol Police Officer Eugene Goodman a Congressional Gold Medal. Even in the heated debate of an impeachment, perhaps especially in that heated debate, Congress felt it important to recognize a hero. So too does the Delaware General Assembly take time almost every day in session to commend our State's heroes via tributes and resolutions setting aside specific days or months for recognizing certain causes and historical events.

Post-COVID, if you ever have the opportunity to watch democracy in action, I encourage you to visit the Delaware General Assembly and see history in the making. ☺

Notes:

1. One of my father's favorite phrases in my youth was "Don't quit your day job." By way of example, if I combined various cereals into what I felt was a winning combination, his review would be, "Don't quit your day job."
2. Like *Saturday Night Live's* Five-Timers Club, there should be a more exclusive category of attorneys who served as Legislative attorneys for more than a decade. My hat is off to you.
3. In further proof that timing is everything in life, "honored" and "privileged" would not have been the first descriptors out of my mouth if asked during the dog days of June.
4. As Steve Jobs said, "My favorite things in life don't cost any money. It's really clear that the most precious resource we all have is time."
5. In starting out with "I'm just a bill," *Schoolhouse Rock* really downplays the work that goes into getting a bill together, including drafting and building sponsorship.
6. On the occasions that I go back to "Leg Hall," I am reminded that you cannot step into the same river twice.
7. I cannot imagine working in the Legislature during the pandemic.
8. As Robin Williams' character in *Good Will Hunting* observes, "You'll have bad times, but it'll always wake you up to the good stuff you weren't paying attention to."

**Post-COVID,
if you ever
have the
opportunity
to watch
democracy
in action, I
encourage
you to
visit the
Delaware
General
Assembly
and see
history in
the making.**

Bar Journal Editor **Seth L. Thompson** joined Parkowski, Guerke & Swayze in July 2019, and he works predominantly in the firm's Wilmington office. His practice focuses on civil litigation, family law, and municipal law. For six years, he also served as a Legislative attorney for the Delaware House of Representatives. He has served on the Board of Professional Responsibility, the Board of Bar Examiners, and the Executive Committee for the Terry-Carey American Inn of Court, as well as serving as the Sussex County Bar Association President. He may be reached at sthompson@pgslegal.com.

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DSBA SECTION FORUMS

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



SIDE BAR

MEMBER BENEFIT OF THE MONTH

DSBA Webinar on Legal Malpractice



Lawsuits against lawyers arising from errors and/or omissions in the performance of legal services continue to rise. Attend a free Webinar — *Legal Malpractice Perspectives On Small And Mid-Sized Firms* — on Thursday, March 11, 2021 from 10:00 a.m. to 11:00 a.m. to learn more about this topic with featured speakers Mike Mooney, Senior Vice President of USI Affinity and Mark Lefever, CIC, Vice President, Sales & Client Management of USI Affinity. It is an essential part of a law firm's business practice to evaluate its legal risk and malpractice insurance needs. This program will educate attorneys about their legal malpractice exposures and what to think about when securing coverage. In addition, this program will address some post-COVID exposures and an ever increasing risk: Cyber Liability.

TOP 5

FIVE WAYS TO BOOST PRODUCTIVITY

Statistically, January and February are the least productive months of the year. The holidays are behind us and cold weather and short days have set in. But as we round the corner into Spring (March 20!), there are a few ways to get you through the last bit of the winter slump and help you be more productive.



1 Create a Schedule

Without a defined workday planned in advance, the day may get away from you. Create a schedule so that you stay focused and projects that should last minutes do not turn into hours. Establish a defined time to begin and end work.

2 Be Creative

Take breaks during the day and fill that time with something creative: singing, drawing, playing an instrument, or writing. Writing in particular can help you process emotions and organize your thoughts.

3 Get Some Sun

With shorter days and dreary weather, getting sun can be a challenge, so you will need to make a conscious effort to get some precious rays. Restructure your day to allow for some outdoor time in the afternoon when the sun is strongest. Sunlight provides much-needed vitamin D.

4 Meditate

Combining cold weather with COVID restrictions can make you feel trapped at home. Meditating can help you alleviate feelings of stress, improve your overall wellbeing, and help you sleep better.

5 Reward Yourself

You might find that you are more motivated to finish up your work when you know there is a little reward waiting for you. For example, your favorite treat, a video chat with a friend, or watching your favorite show might be just the incentive you need.

Sources:

Hickey, Michael. "Five Remote Work Rituals for Winter," February 16, 2021. <https://associationsnow.com/2021/02/five-remote-work-rituals-for-winter/>.

Morin, Amy. "10 Ways to Stay Motivated When Working From Home Due to Coronavirus." Verywell Mind, February 13, 2021. <https://www.verywellmind.com/work-from-home-motivation-4802480>.

JOIN THE CONVERSATION



Ready for the @DelStateBar 26th Annual Rubenstein-Walsh Seminar on Ethics and Professionalism on 2/12? Senior counsel Bill Chapman, former #Delaware family court judge, will discuss mediating disputes via videoconference. Details here: media1.dsba.org/public/CLE/Reg...



Friday, Feb. 12 Young Conaway Partner, Tim Lengkeek, Esquire will be participating in a panel discussing Ethical Issues in Zoom Depositions.

Other Panelists will be:
The Honorable Kathleen St. Jude McCormick, Court of Chancery of the State of Delaware
Reneta Green-Street, Esquire, Morris James LLP
Danielle Yearick, Esquire, Tybout, Redfearn & Pell

For more information, please follow the link below:
<https://bit.ly/2Z4LDQD>



Congratulations to associate Kristen Swift for being named to the Editorial Board of the @DelStateBar Journal.

#DelawareStateBar #LegalWriting
#Lawyer #Editorial



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DSBA HAPPENINGS

Bar Journal Editorial Board Update

Please join the Editorial Board, Editorial Advisory Committee, and staff at the DSBA in thanking Benjamin A. Schwartz for his five years on the Editorial Board and welcoming Kristen S. Swift to the position with the DSBA Bar Journal!

Ben joined the Board in the summer of 2015, taking over the spot previously held by the late Mike Sensor. Over Ben's tenure, he treated readers of the journal to twenty columns sharing his unique, yet relatable perspective on a spectrum of topics, from celebrating Ball Point Pen Day (June 2016) to focusing on reasons to be grateful amidst a pandemic (November 2020).



Kristen comes to the board with a background in representing business owners, non-profits, and homeowner's associations, as well as serving in the role of local counsel to ensure out-of-state counsel understands the "Delaware Way" in the litigation process. Now at Weber Gallagher in New Castle, Kristen previously worked as an in-house litigator for a Fortune 100 insurance company. She is the Chair of the Delaware State Bar Association Torts & Insurance Practice Section and Vice-Chair of the Litigation Section, and a member of the Delaware Defense Counsel, Delaware Claims Association, and The Richard S. Rodney Inn of Court. Thank you, Ben, and welcome aboard, Kristen!



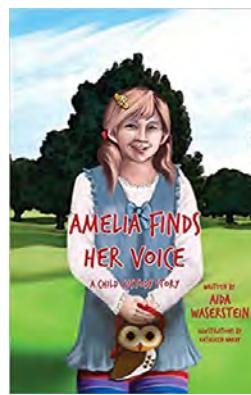
MEMBER NEWS



Congratulations to DSBA member Shannon Dougherty Humiston, Esquire, of McCarter & English, LLP, and her husband Travis who welcomed their baby daughter, Abigail Sloane, on August 20, 2020. She weighed 8 lbs, 7.5 oz, and was 20 inches long.

Former Family Court Judge The Honorable Aida Waserstein has written a new children's book titled, *Amelia Finds Her Voice: A Child Custody Story*. It describes vividly the feelings of a young girl as her parents separate and divorce. It is shaped by Judge Waserstein's observations during her service as a Family Court Judge for over two decades.

The book provides insights for both children and adults in the midst of what is a too common experience. By the end, the girl is able to talk to her parents and the family is happier and stronger. The book is available for purchase on Amazon.



OF NOTE

Condolences to the family of **J. Rodman Steele, Esquire**, who died on January 13, 2021.

Condolences to **The Honorable Merrill C. Trader** on the death of his wife, Mary Eleanor Trader, who died on January 22, 2021.

Condolences to the family of **John Howard Benge, Jr., Esquire**, who died on February 9, 2021.

Condolences to **Richard K. Herrmann, Esquire**, on the death of his wife, Eileen Viscount Herrmann, who died on February 12, 2021.

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

BE FEATURED IN THE DSBA'S VIRTUAL ART AND MUSIC SHOW!

To celebrate our state's creative counsel, the DSBA will feature members who moonlight as artists and musicians in a virtual art and music show to be published in the July/August issue of the *Bar Journal*! Share your talents with the rest of the Bar!

How to Participate:

- For the artists, send us a photo of your paintings, photography, ceramics, textiles, jewelry, sculptures, prints, digital art, and more. All mediums accepted.
- For the musicians, send us a photo posing with your instrument.
- Include a brief description of your work (no more than 75 words).

Images should be submitted to Rebecca Baird at rbaird@dsba.org in JPEG, GIF, or PNG format.

Submission Deadline: June 1, 2021.

Professional Guidance Committee

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

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CALENDAR OF EVENTS

March 2021

Tuesday, March 9, 2021 • 8:30 a.m. – 12:30 p.m.

Labor & Employment CLE

3.8 hours CLE credit

Live Webinar via Zoom

Wednesday, March 10, 2021 • 9:00 a.m. – 4:15 p.m.

Fundamentals of Lawyer-Client Relations

6.0 hours CLE credit

Live Webinar via Zoom

Tuesday, March 16, 2021 • 12:00 p.m. – 1:00 p.m.

DE-LAP's Behind the Cool Image Series: Lawyering in the 21st Century

Workshop Five: Past Your Sell by Date

1.0 hour CLE credit in Enhanced Ethics

Live Webinar via Zoom

April 2021

Wednesday, April 7, 2021 • 10:00 a.m. – 11:30 a.m.

An Interview with Dr. Martin Luther King, Jr.

(Reverend John Moore & Dean Rod Smolla)

1.5 hours CLE credit

Live Webinar via Zoom

Wednesday, April 14, 2021 • 9:30 a.m. – 12:45 p.m.

ADR Section CLE (postponed from 11/2020)

3.0 hours CLE credit

Live Webinar via Zoom

Thursday, April 22, 2021 • 9:00 a.m. – 1:15 p.m.

Government & Consumer Law 2021

4.0 hours CLE credit

Live Webinar via Zoom

Wednesday, April 28, 2021 • 12:00 p.m. – 1:00 p.m.

Hookah v. Clean Air Act

1.0 hours CLE credit

Live Webinar via Zoom

May 2021

Tuesday, May 4, 2021 • 8:30 a.m. – 4:30 p.m.

Workers Compensation Seminar

6.5 hours CLE credit including 1.0 hour in Enhanced Ethics

Live Webinar via Zoom

Thursday, May 6, 2021 • 10:00 a.m. – 12:00 p.m.

Business Divorce CLE

2.0 hours CLE credit

Live Webinar via Zoom

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.



SECTION & COMMITTEE MEETINGS

March 2021

Tuesday, March 2, 2021 • 3:30 p.m.

Estates and Trusts Section Meeting

TBD

Wednesday, March 3, 2021 • 12:30 p.m.

Women & the Law Section Meeting

Zoom Meeting, see Section listserv message for link and password

Tuesday, March 9, 2021 • 12:00 p.m.

Litigation Section Meeting

TBD

Wednesday, March 10, 2021 • 4:00 p.m.

Real and Personal Property Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Wednesday, March 17, 2021 • 9:00 a.m.

ADR Section Meeting

TBD

Thursday, March 18, 2021 • 11:45 a.m.

Executive Committee Meeting

Zoom Meeting, link will be sent via email

Thursday, March 18, 2021 • 12:15 p.m.

Torts and Insurance Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Thursday, March 18, 2021 • 4:00 p.m.

Elder Law Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Wednesday, March 24, 2021 • 12:00 p.m.

Government and Consumer Law Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Thursday, March 25, 2021 • 4:00 p.m.

Family Law Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

Friday, March 26, 2021 • 12:00 p.m.

Workers' Compensation Section Meeting

TBD

April 2021

Tuesday, April 6, 2021 • 3:30 p.m.

Estates and Trusts Section Meeting

TBD

Wednesday, April 7, 2021 • 12:30 p.m.

Women & the Law Section Meeting

Zoom Meeting, see Section listserv message for link and password

Tuesday, April 13, 2021 • 12:00 p.m.

Litigation Section Meeting

TBD

Wednesday, April 14, 2021 • 9:00 a.m.

ADR Section Meeting

TBD

Wednesday, April 14, 2021 • 4:00 p.m.

Real and Personal Property Section Meeting

Teleconference Meeting, see Section listserv message for call-in information

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

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ABA Ethics Opinion Update

The Formal Opinions issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association are an invaluable resource to understand the Professional Conduct Rules and their application. The Opinions are based on the ABA Model Rules. And to the extent that the Delaware Professional Conduct Rules track the ABA Model Rules, it can be very helpful, although not binding, local guidance. Of course, with regard to the federal courts in Delaware, the ABA Model Rules rather than the Delaware Rules apply. This results in direct application of the advice provided.

Traditionally, the Committee addresses questions posed by attorneys regarding the interpretation or application of the Rules. Lately, the Committee appears to be self-generating the explications as arguments in support of the adoption of the Model Rules. Most notably, the Committee recently issued an opinion defending the amendment to Model Rule 8.4(g) which added the anti-discrimination provision.

Another resource to understand the Model Rules is the ABA Annotations to the Model Rules. That treatise is currently in its eighth edition and provides not only a narrative explanation of the Rules but also extensive citations from the jurisdictions which have applied the Rules.

The Committee has already issued two Formal Opinions in 2021. The first Opinion is timely. The second addresses a long-standing issue.

Formal Opinion 496 (January 13, 2021)

Responding to Online Criticism

Formal Opinion 496 issued on January 13, 2021, is titled, "Responding to Online Criticism." It starts with a reminder that Rule 1.6 prohibits an attorney from disclosing confidential information relating to any client's representation. Within Rule 1.6, there is a provision that attorneys may disclose confidential information to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client. The Committee offers the opinion that an attorney's desire to respond to online criticism, whether that criticism comes from the client or not, does not trigger the attorney's right to make such disclosures.

The Committee goes on to suggest that the best practice for lawyers is to not respond to a negative post or review, that doing so may draw more attention to it and invite further response from an already unhappy critic. The Opinion specifically concludes that a negative online review alone because of its informal nature is not a "controversy between the lawyer and the client" within the meaning of Rule 1.6(b)(5), and therefore, does not allow disclosure of confidential information relating to a client's matter.

Instead of responding with a disclosure of confidential information, the Committee further recommends that lawyers, if they do respond, do so by a post such as "Please contact me by telephone so that we can discuss your concerns." The Committee also suggests that a lawyer deal with unhappy former clients by offering a refund or fee reduction. If the poster is not a client or former client, the Committee suggests the lawyer issue a statement that the poster is not a client or former client while cautioning that even in doing so, the lawyer may confirm some of the confidential information posted by the non-client.

Footnotes to the Opinion include cases in which attorneys have been disciplined for posting client confidences online. Each is a cautionary tale worth reading.

Formal Opinion 497 (February 10, 2021)

Conflicts Involving Materially Adverse Interests

Formal Opinion 497, issued on February 10, 2021, is entitled "Conflicts Involving Materially Adverse Interests." Both Rules 1.9(a) and 1.18(c) address conflicts involving the representation of a current client with interests that are "materially adverse" to the interests of a former client (in the case of Rule 1.9) or a prospective client (as that term is used in Rule 1.18) in the same or a substantially related matter. While there has been much litigation and even more discussion about what constitutes the same or a substantially related matter, there was previously not much guidance as to when client and former client matters were materially adverse.

Rule 1.9 states that a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which

Traditionally, the Committee addresses questions posed by attorneys regarding the interpretation or application of the Rules. Lately, the Committee appears to be self-generating the explications as arguments in support of the adoption of the Model Rules.

that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. The term "materially adverse" is originally found in Canon 6 of the ABA's 1908 Canons of Ethics. It was not used in the ABA Model Code of Professional Responsibility but re-emerged when the Model Rule 1.9 was adopted in 1983.

As noted by the Committee, courts, regulatory authorities, and ethics scholars have interpreted the meaning of "material adversity" to include matters where the lawyer is directly adverse in the same or a substantially related matter. While material adversity is present when a client and former client are directly adverse, material adversity can also be present where direct adversity is not.

An example cited by the Committee is a situation in which the representation of a current client is simply harmful to a former client's economic or financial interest, without some specific, tangible direct harm. Representation of one client is not "adverse" to the interests of another client for the purpose of this Rule merely because the two clients compete economically. The Opinion notes that Rule 1.9 requires a conflict as to the legal right and duties of the clients, not merely competing or conflicting economic interests.

The Committee offers specific examples of situations where "material adversity" may be found. The first such example is when an attorney sues or negotiates against a former client. This is also sometimes referred to as being on both sides of the "v," where the lawyer has represented opposing parties.

Another, more insidious example is when a lawyer, while representing a current client, would be required to attack the lawyer's own prior work for a former client. The example

cited by the Committee is that a lawyer cannot challenge a patent that the lawyer previously obtained for a former client. Another example offered is that a lawyer may not challenge a real estate restrictive covenant for a new client that the lawyer previously drafted for the prior seller of the land. Even when lawyers are not attacking their own prior work, material adversity may arise if the lawyer's goal is to undermine that work or the work achieved for a former client.

Finally, if the lawyer would have to examine at deposition or trial a former client, the lawyer is prohibited from using information from the former client on behalf of the current client in doing so.

The Opinion goes on to discuss the permissible waiver of materially adverse conflicts, noting that a former client's consent must be confirmed in writing.

The ABA Formal Opinions are available online at the ABA website. You do not have to be an ABA member to access the Opinions. If you are lucky enough to find one addressing your question, you have likely found an authoritative and comprehensive guide to understanding and applying the Rule in question.

"Ethically Speaking" is intended to stimulate awareness of ethical issues. It is not intended as legal advice nor does it necessarily represent the opinion of the Delaware State Bar Association.

"Ethically Speaking" is available online. Columns from the past five years are available on www.dsba.org. 

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

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Energy Management Is Key to Productivity, Health, and Happiness

BY GUEST COLUMNIST COLLEEN HARSHBARGER, MS

MENTAL WELL-BEING ZONE

It is said that legal professionals need to find positive ways to use, as well as to sharpen, their coping skills in order to deal with and find resilience in an ever changing, stressful environment. This month, I am thrilled to introduce our guest columnist to aid and assist you in finding such skills. Our guest columnist is Colleen Harshbarger, MS, NBC-HWC, E-RYT500, YACEP, CWP.

Colleen Harshbarger has a life-long passion for healthy living and a strong belief in the resilient capacity of all people. Her clients include organizations and dedicated professionals who face the everyday challenges of balancing work and family commitments with self-care.

Colleen earned her master's degree in Exercise Science/Biomechanics at the University of Delaware and has over 25 years of experience as a wellness professional and yoga instructor. She was West Virginia's first National Board-Certified Health & Wellness Coach. Colleen initiated and directed wellness programs for Reebok International Ltd. and West Virginia University, and helped the City of Morgantown through a year-long Blue Zones Project assessment. She currently serves as a faculty member with WellPeople's Wellness Inventory training program for international health and wellness coaches.

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

The dedication and care that high-performing professionals give their work is admirable. Commitment to a career that confers a deep sense of purpose can be both a blessing and, if not balanced, a curse. The Gallup Wellbeing Index measures purpose as one of five key indicators of wellbeing. However, when work is performed in a way that doesn't include periods of renewal it can, and often does, lead to burnout.

The added complexities of COVID era life — increased workloads, concerns about the future, more time online, less time interacting with colleagues, and fewer boundaries between work and home life — have added new layers of stress. Despite this, new opportunities are also inherent to this new era and new way of working.

Spending more time working from home allows creation of structure that's better suited to enhanced wellbeing. Creating ways of working that feel fluid and energizing also increases creativity, productivity, and satisfaction with life. This approach may seem counterintuitive — but it works!

The mindset of most hardworking professionals is when work piles up, work harder and push more. However, pushing through work all day without taking breaks leads to decreased energy and less productivity, not more. It also leads to poorer health and irritability, and adversely impacts relationships.

Understanding how to manage energy and live in a way that optimizes the natural circadian and ultradian rhythms that affect all humans can greatly improve productivity, health, and happiness. We each have an internal energy system based on a self-sustaining timing system: the circadian clock. We are also affected by more subtle timing systems called ultradian rhythms. Circadian and ultradian rhythms impact energy, hor-

mone levels, body temperatures, movement, mood, and metabolism.

When we work against these rhythms, instead of with them, we do not function as well. As a health and wellness coach, I have helped many clients learn to recognize their energy patterns to live and work in ways that feel good and are sustainable.

To improve energy and productivity, we want to think about establishing a flow-like state that is aligned with the ultradian rhythm unique to you. Ultradian rhythms are shorter patterns defined as a period of activity (*i.e.*, work) followed by a period of restoration. One work/rest cycle of the rhythm lasts 80–120 minutes, a cycle that repeats day and night.

Knowing this is how humans are naturally designed, work periods can be optimized for higher creativity and function, when we intersperse them with renewal in the form of energy input. The length of time we can stay highly focused before our energy drops is unique to each of us, but for most it's somewhere between 50 and 90 minutes.

Establishing a work pattern that includes focused periods alternating with energy-enhancing renewal periods is key for maintaining flow throughout the day. When we use this information to inform how we work, and take breaks throughout the day, we feel better energetically and are more creative and productive.

Key aspects of this approach include that renewal periods need not be long, and that the primary ways in which we take in energy are through our breath, senses, and food. Being intentional and strategic about creating a balance of energy input and energy output contributes to our ability to give more fully to the work about which we're so passionate and prevents us from burning out. It allows us to bring more, not less, to the people we serve and the work about which we care deeply.

If you are curious to learn more, join Colleen Harshbarger for a free webinar, "Managing Energy," on March 5, or schedule a complimentary coaching session with her.

If you or someone you know would like more information on the subject of wellness or other issues that may be affecting your wellbeing call DE-LAP (302) 777-0124 or email cwaldhauser@de-lap.org for supplemental information and/or referral.

We do together what need not be done alone. ☺

Colleen Harshbarger, MS, is a National Board Certified Health & Wellness Coach, and owner of Wellbeing Solutions. She can be reached at colleen@wellbeingwv.com.

SIDE BAR

TIPS FROM DE-LAP TO TAKE BETTER CARE OF YOURSELF

- Get lost in a good book or even a short story.
- Learn to meditate (short mindfulness or longer meditation sessions).
- Dance it out while listening to music.
- Paint (or even doodle).
- Knit.
- Bake (go ahead and stress-bake, but watch those calories).
- Walk (or exercise).
- Let the light in your room.
- Go on a cleaning binge (the light may make it easier).
- Stretch.
- Write down a happy thought – be grateful and appreciative.
- Unfollow people who bring you down.
- Take stock of some connections you already have and communicate or make that call.
- Breathe, breathe, breathe!

If you need someone to talk to, make that confidential call to the Delaware Lawyers Assistance Program (DE-LAP).

If you want to experience the joy of helping your peers, DE-LAP wants you!

Call (302) 777-0124 or e-mail cwaldhauser@de-lap.org to complete our Volunteer Application and Agreement or to learn more.





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THE DIVISION OF RESEARCH: Substantial Work from a Small State Agency

BY HOLLY O. VAUGHN WAGNER, ESQUIRE

Abustling collection of offices under the Senate chamber in Delaware's historic state capitol building is home to five Delaware legislative attorneys, a small niche of our Bar that is not well-known, but probably should be. Most of the attorneys who now work for the Delaware General Assembly in the Division of Research did not even know the small state agency existed until we saw the job posting, so we understand if this article is the first you have heard of it. The Division's approaching 55-year anniversary is a good time to share our history, the work we do, and our love for our role in Delaware law.

The modern Division of Research, a statutory agency codified in the Delaware Code, is "a nonpartisan and confidential reference bureau for the General Assembly."¹ Forty-eight other states and Washington, D.C. have similar divisions; very few are as small as ours. The attorneys in the Division conduct legislative and legal research, draft legislation, and staff committees. Two of the legislative attorneys are also the Division's director and deputy director. The Division and its sister department, the Office of the Controller General, are under Legislative Council, a council

comprised of leadership from both political parties and both legislative chambers. The simplest distinction between our offices is that the Division provides policy research and services, while the Controller General's office provides fiscal research and services.

The nonpartisan nature of the Division sets our attorneys apart from the attorneys who work for the General Assembly's caucuses. Division and caucus attorneys do have different roles in the legislature, but caucus attorneys share many of the same duties as Division attorneys; they draft legislation, provide legal research, and staff committees. Whereas Division attorneys work for all members of the General Assembly, caucus attorneys work for the members and interests of the individual political parties. Most caucus attorneys work for the General Assembly part-time, on session days, while also maintaining full-time law practices. Legislative attorneys in the Division are full-time state employees.

In 2021, the Division will celebrate its 55th anniversary. Its predecessor, the Legislative Reference Bureau of Delaware, was created 20 years earlier, in 1945. The Bureau was structured wholly differently than the Division; instead of a legislative council, it was led by a board comprised of the Delaware governor, president *pro tempore* of the Senate, and speaker of the House of Representatives. An executive director managed its operations and was appointed by the governor and served at the governor's pleasure. The Bureau's stated primary function was similar to the Division's, to draft legislation for legislators and state agencies and conduct research on policy matters.

But, the two agencies share little resemblance. An article published in 1956 noted that the Bureau was not exclusively a legislative office. The Bureau's executive director was appointed by the governor and served at the governor's pleasure, giving the executive branch control of a legislative agency. In an apparent contravention of separation of powers, "the legal work of the bureau...[was] done not under the direction of the legislature but under a rather odd splintering of authority the bulk of which rests with the governor's office."² The Bureau's attorneys were assigned by the legislative houses rather than a nonpartisan selection process, resulting in the Bureau's own legal team having no allegiance to the Bureau and leaving the work the Bureau produced to the caprices of political influence.

The Legislative Research Bureau was not even truly a research agency. It had no funds appropriated to support legislative research and "the directors [had] not shown any inclination to foster a system of investigation."³ Even worse, legislators did not use the Bureau because they did not trust it to maintain confidentiality. The Division replaced the Bureau in 1966, but the atmosphere of distrust lingered for decades, even after establishing the Division as a solely legislative agency with nonpartisan staff and strict confidentiality policies. Our legislative attorneys work hard to build a robust Division that can be trusted and respected.

The Division's structure, philosophy, and services are in stark contrast to its forerunner. The executive branch no longer has a role in the Division. The Division's director is appointed by Legislative Council and the Division attorneys are hired specifically for the Division, not assigned through the caucuses. All staff, including attorney

attorneys, are committed to maintaining the nonpartisanship and confidentiality of every legislator who requests our services.

The work we now do far exceeds the vision and scope of the original Bureau. Our Bill Room staff assist legislators and the public with copies of bills and general legislative information. We are responsible for the overall supervision of the Legislative Hall building and grounds. Our legal and research team drafts bills, maintains the *Delaware Legislative Drafting Manual*, teaches legislative drafting in-house and to other state agencies, staffs the Joint Legislative Oversight and Sunset Committee, and provides legislative, policy, and legal research. Our in-house Print Shop produces at least 350 copies of over 600 bills and amendments for the House and Senate each session. The Print Shop also produces several publications, many of which the Division develops, including the *Register of Regulations*, *Landlord Tenant Code*, chamber rules, Delaware Constitution, *Delaware Legislative Drafting Manual*, task force reports, Controller General's Office briefings, Legislative Hall tourism guides, and stationary and business cards for all 62 legislators and 90-some legislative staff. Our Legislative Library has the most comprehensive collection of Delaware legislative history outside of the Delaware Public Archives. We have a complete collection of the Laws of Delaware, dating from the 1700 meeting of the Pennsylvania General Assembly in New Castle and all legislation from 1973, when bill synopses became commonplace.

Within the Division are the Registrar and Assistant Registrar of Regulations, two more Delaware attorneys who serve the General Assembly by publishing the monthly Register of Regulations, the publication of emergency, proposed, amended, and final regulations. The Registrar is also responsible for developing, implementing, and maintaining electronic versions of Delaware's Administrative Code, Constitution, Code, and town charters, and the Laws of Delaware. With its legislative attorneys drafting legislation and its registrar publishing the updates to laws after legislation is enacted, the Division may be the least-known agency with the most impact on Delaware attorneys up and down the state.

Although in the Division of Research we are a small band of legislative attorneys — or maybe because of it — we take great pride in the services we provide Delaware's legislators and citizens. Our focus is not on advocating for specific policy, but on providing well-researched and well-written legislation that accurately represent the policy of the General Assembly. We share a love for the craft of legislative drafting and are ever mindful that we are only temporary guardians of the Delaware Code. We hope to leave future Division attorneys a legacy of pride in our work, respect for the law, and service to Delawareans. 

Notes:

1. Delaware General Assembly. "About the Division." <https://legis.delaware.gov/Offices/DivisionOfResearch> (accessed February 10, 2021).
2. Aumann, Frances R., and Walker, Harvey. 1959. *The Government and Administration of Delaware*. American Political Science Review. Vol. 53, issue 2, 557-558. New York: Thomas Y. Crowell Company.
3. *Id.*

Holly Vaughn Wagner is Deputy Director of the Division of Research, where she drafts legislation, researches policy matters, and promotes Oxford comma awareness. She can be reached at holly.vaughn_wagner@delaware.gov.

WHY LEGISLATIVE DRAFTING IS A DIFFERENT STYLE OF LEGAL WRITING

BY CARA G. WILSON, ESQUIRE
AND RICHARD T. DILLARD, ESQUIRE

INTRODUCTION BY HOLLY O. VAUGHN WAGNER, ESQUIRE

As legislative attorneys, we know that what we do is quite different from our peers who practice law in the more traditional sense. We asked two legislative attorneys in the Division of Research — Cara G. Wilson, Esquire, who joined us only a year ago and Richard T. Dillard, Esquire, who has three decades of experience in this role — to share their perspectives on how legislative drafting is different from the legal writing that most attorneys are trained and accustomed to write.

Repetition Matters More than Erudition

Cara: When I was a civil legal services attorney, most of my legal writing experience came from writing letters or briefs arguing my client's position. My focus was not typically on the exact word choice or format beyond complying with any agency or court requirements for the draft. Rather, it was on telling a story and persuading the decision maker to find for my client. Arguments could and would be further developed by the other party's submissions or questions from the decision maker. The letters and briefs contained my best understanding and most favorable interpretations of the law as applied to the facts. These letters and briefs were not the law; the ruling of the decision maker was the law.

But, as a legislative drafter, what we write *is* the law. Creative flourish and persuasion not only do not matter, but may result in confusion. For instance, using synonyms instead of using the same word over and over can be dangerous, statutory canons of interpretation guide a court to interpret the use of two different words to mean two different things. The Delaware Supreme Court has stated that "... when the General Assembly chooses to use different terms in various parts of a statute, we find it equally reasonable to assume the General Assembly intended to distinguish between those terms." *Watson v. State*, 986 A.2d 1165 (2010). Our goal is to draft legislation that everyone will interpret the same way. Hopefully, the end product is...boring.

When Editing Drafts Submitted from Outside Agencies or Attorneys, the Legislative Drafting Attorney Does Not Create Policy

Rich: The legislative drafting attorney (LDA) will not edit a draft with the goal of making substantive policy changes unless the authoring legislator [*i.e.*, the prime sponsor of the bill] has requested the policy change. If the outside draft seems ambiguous, the LDA will query the sponsor as to the policy. The Division of Research is non-partisan and policy neutral. The LDA's job is to carry out the intent of the legislator who is the author of the bill and not to interject personal opinions.

The Delaware Legislative Information System (DELIS)

Rich: Whether drafting a new statute or making an amendment to an existing one, the change must fit into the existing Code, both literally and figuratively. To assist legislative drafters with incorporating changes into the Code, we use a program called the Delaware Legislative Information System (DELIS) to draft bills. Bills cannot be introduced unless they are inputted into DELIS. Within DELIS, drafters can access the latest version of the Code. This avoids drafting an amendment to an outdated version of the Code. We can also use a conflict check feature to see if there is any other Bill currently introduced which would affect the provisions of our draft.¹

Formatting Is Established by the Delaware Legislative Drafting Manual²

Rich: If you want your draft bill to physically resemble what becomes the bill introduced in the General Assembly, pay attention to the formatting rules in the *Delaware Legislative Drafting Manual* Part VI, Chapter 1. The drafting manual is the bill drafter's guide to meeting our statutory obligation:

In the enactment of new laws, the plan, scheme, style, format and arrangement of this Code shall be followed as closely as possible to the end that the Code and all amendments thereto will comprise a harmonious entity containing all the laws of this State, then in effect, of a public and general nature. § 109(g), Title 1 of the Delaware Code.

Following Drafting Rules Is Necessary, But Not Sufficient, For Good Drafting

Cara: About a month before starting to work as a legislative drafting attorney, I received a copy of the *Delaware Legislative Drafting Manual*. The purpose of the drafting manual is to provide rules that promote consistency and clarity in drafting. As a novice, it was tempting to believe that reliance on these rules would be the key to success as a drafter. While knowing and following the rules in the drafting manual is important, the rules are not enough. Neither is focusing solely on the new statute or proposed amendment to an existing statute. Some of my most valuable spent time is determining how the proposed legislative change will fit into existing Code. Will there be any unintended consequences? Are there any other parts of the Code that address the topic? Are there Code-level, title-level, chapter-level, subchapter-level definitions that will change the intent of the draft? Are there unanswered questions that may cause interpretation problems in the future?

Help Us Out

Cara: If an agency or group is advocating for a new statute or a change to an existing statute, one of the most helpful things that the attorney representing the agency or group can do is to offer context to the drafter. Since the attorney is likely familiar with the statutes that impact their group, I always appreciate when the attorney has considered the relationship between the proposed statute or amendment and the existing Code, and then shared that information, along with questions and concerns about potential interactions, with the drafter.

Different Audience

Rich: When drafting laws you are no longer speaking primarily to judges and other lawyers. You are speaking to all of the citizens of Delaware, and usually well beyond. The draft needs to speak for itself as you will not be around to answer questions. This is one of the many reasons a draft bill needs to be proofread — to find out whether what you thought you were saying actually got said. 

Notes:

1. For more information on how to provide a draft bill in a form that will allow a legislative attorney to more quickly input the draft into DELIS, please check the *Delaware Legislative Drafting Manual*, Part I, Chapter 2.
2. The *Delaware Legislative Drafting Manual* is available online for free at <https://legis.delaware.gov/LawsOfDE/BillDraftingManual>.

Cara Wilson is a legislative attorney in the Division of Research. Her daily tasks include drafting legislation and conducting research for legislators. She may be reached at cara.wilson@delaware.gov.

Rich Dillard is a casual/seasonal Division of Research attorney (*i.e.*, proofreader). He previously spent 32 years as a Senate attorney. His email is richard.dillard@delaware.gov.





LEGISLATIVE RESOURCES *for* PRACTICING ATTORNEYS

BY THE HONORABLE KYLE EVANS GAY AND JOEL RUDNICK, LEGISLATIVE LIBRARIAN

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As legal research goes, most attorneys can quickly pull from digital databases the relevant caselaw to support their legal argument. But when it comes to tracking legislation, debating legislative intent, or interpreting the Delaware Code, not every attorney knows where to look first. That is why we have created this resource for attorneys conducting legislative research.

As has been discussed by other contributors, the Division of Research is the General Assembly's nonpartisan and confidential reference bureau, providing a wide range of services, including legislative and legal research, bill drafting, committee staffing, and the development, production, and distribution of public information concerning the General Assembly.

The Legislative Library is a part of the Division of Research that provides reference materials to legislators, staff, and members of the public. The Legislative Library collection is one of several collections of our state's legislative record that we highlight here.

These valuable resources have been made even more accessible through digitization, which means they are available to members of the public even as so many are working remotely. We encourage you to explore the many resources available online and in person at the Legislative Library and Delaware Public Archives. For more information, see the Division's website at <https://legis.delaware.gov/Offices/DivisionOfResearch>, or contact the Division at (302) 744-4114 or LC_Reception@delaware.gov.

Delaware General Assembly Bills and Resolutions

In addition to the text of the legislation, these documents show the sponsor(s) and sometimes the drafter. Synopses at the end of legislation started to become common practice in 1973.

- Delaware General Assembly website¹ – 2001 to the present.
- Legislative Library – 1973 to the present.
- Delaware Public Archives – 1776 to present; unpassed legislation before 1947 is rarely extant.

Audio from the House and Senate floor

The amount of information one can garner from here varies quite a bit. There can be hours of debate or just a simple roll call.

- Available through Legislative Librarian – 1963 to the present.

Laws of Delaware

Laws of the State of Delaware homepage² – all laws from 1935 to the present browsable by citation; older

laws can contain errors due to electronic conversion from PDF to HTML.

- Legislative Library – 1700 to the present.
- Delaware Public Archives’ Laws of Delaware page³ – 1700 to 2002 – scanned books in PDF format.

Delaware Code

Delaware law, as it exists at a particular time and arranged by subject matter. Print volumes and some electronic versions have annotations. These annotations can make reference to case law, explicitly state what caused a textual change, etc.

Current Code

- The General Assembly’s Delaware Code Online⁴ – unannotated Code updated frequently. Unlike databases such as Lexis Advance or Westlaw, all citations to the laws making up the history of a particular Code section are working hyperlinks.
- Legislative Library – annotated print volumes and supplements kept current and updated at the end of each calendar year.

Historical Code

- Legislative Library – all annotated print volumes; many interim and cumulative supplements, including a complete collection of cumulative supplements 1990 to the present.
- Delaware Public Archives – most volumes and cumulative supplements.

Committee Meeting Minutes

The discussion in committee around a particular piece of legislation. In addition to noting what committee members were present, they can also reference witnesses or others in attendance.

- Delaware General Assembly website⁵ – both chambers from 2017 to the present.
- Legislative Library – both chambers from 2013 to the present.
- Delaware Public Archives – House minutes from 1987 to the present. They have no Senate minutes.
- Note: Committee meeting minutes are not always distributed; the further back in time one goes, the less likely there will be minutes available.

House and Senate Journals

A summary of each legislative day in the chamber. The later ones are extremely brief in their descriptions but can still contain valuable information, such as dates, roll calls, committee assignments, and the names of those testifying.

- Legislative Library – 1821 to the present; oldest volumes are sporadic.
- The University of Delaware Library’s Journals of the Delaware General Assembly page⁶ – House Journals from 1835 to 2015 and Senate Journals from 1831 to 2005.
- Note: There are currently no Senate Journals from 2009 to the present.

House and Senate Calendars

The dates in the lifetime of legislation, including introduction, committee reporting, passage, and enactment. The Calendars also have legislation’s amendments and substitutes with their final dispositions.

- Delaware General Assembly website⁷ – for legislation introduced from 2001 to the present.
- Legislative Library – for legislation introduced 1969 to the present. (⚖)

Notes:

1. “Delaware General Assembly.” Home - Delaware General Assembly. <https://legis.delaware.gov/>. (Accessed February 25, 2021).
2. “Delaware General Assembly.” Session Laws - Delaware General Assembly. <https://legis.delaware.gov/SessionLaws>. (Accessed February 25, 2021).
3. “Laws Of Delaware.” Delaware Public Archives - State of Delaware, December 19, 2018. <https://archives.delaware.gov/ebooks-pdf/laws-of-delaware/>.
4. “The Delaware Code Online.” Delaware Code Online. <https://delcode.delaware.gov/>. (Accessed February 25, 2021).
5. “Delaware General Assembly.” Home - Delaware General Assembly. <https://legis.delaware.gov/>. (Accessed February 25, 2021).
6. Journals of the Delaware General Assembly. <https://udspace.udel.edu/handle/19716/21896>. (Accessed February 25, 2021).
7. “Delaware General Assembly.” Home - Delaware General Assembly. <https://legis.delaware.gov/>. (Accessed February 25, 2021).

Senator Kyle Evans Gay represents Delaware’s 5th Senate district and is an attorney with Connolly Gallagher practicing corporate litigation. She can be reached at kgay@connollygallagher.com.

Joel Rudnick is the Legislative Librarian for the Division of Research, where he researches legislative information for legislators, legislative staff, and anyone else who asks him to. He has a great interest in organizing and preserving Delaware’s legislative history, and ensuring it is accessible and retrievable. He can be reached at jar@delaware.gov.



Report: 2021 Virtual Midyear Meeting of the ABA House of Delegates

BY WILLIAM D. JOHNSTON, ESQUIRE

In follow-up to the 2020 first-ever Virtual Annual Meeting of the American Bar Association's House of Delegates this past August, the 2021 Virtual Midyear Meeting took place on February 22. Again, the almost 600 members of the House of Delegates met remotely. This is to offer some highlights of what, by all accounts, was a very successful second virtual meeting during which the business of the House occurred.

The Delaware Delegation

As I have noted in previous reports, the House of Delegates is the principal policy-making body of the ABA. For the most recent meeting, the Delaware Delegation again included: The Honorable William C. Carpenter, Jr., Delegate-at-Large and immediate past member of the ABA Board of Governors; The Honorable Vivian L. Medinilla, Delegate representing the National Association of Women Judges; Ben Strauss, DSBA Bar Delegate; Lauren DeLuca, DSBA Young Lawyer Bar Delegate; and yours truly, State Delegate.

Preparations for the Virtual Meeting

As with the Annual Meeting this past August, as soon as the decision was made to hold the second virtual meeting of the House, preparations for the meeting began in earnest with no time to spare. From my perspective, the ABA volunteer leaders and superb professional staff left no stone unturned. Every effort was made to ensure that the work of the House would be accomplished within the time allocated and that there would be an opportunity for meaningful debate when

appropriate. As always, ABA entities as well as bar associations were encouraged to submit resolutions for consideration by the House.

For the purpose of the 2021 Midyear Meeting only, in light of the number of resolutions to be considered during the one-day session, the House adopted a special rule limiting the number of speakers in connection with resolutions to three per side. Where there was no opposition to a resolution and the resolution had not been put on the consent calendar of the House, the Chair invoked rules of limited debate (five minutes for the movant, two minutes for other speakers).

Also critically important, of course, was again determining how best to ensure timely and accurate electronic voting by delegates in connection with resolutions and other matters to come before the House.

The 2020 Annual Meeting used two electronic platforms for the House meeting: a Zoom webinar for all matters other than voting, and a Sync voting platform — all of which required using two devices simultaneously. This time around, we used a single platform, which simplified life!

House Chair Barb Howard did a great job convening and facilitating the meeting, including responding to the inevitable number of speakers who were still "on mute." And the ABA Policy and Administration staff, together with the House Rules and Calendar Committee, did their usual, superlative job behind-the-scenes.

Remarks from ABA Officers and Others

During the session of the House, we heard from ABA officers and others. Speakers (live and/or taped) included, among others, Chair of the House Barb Howard, ABA President Trish Refo, ABA Treasurer Kevin Shepherd, ABA Secretary Pauline Weaver, ABA President-Elect Reggie Turner, ABA President-Elect Nominee Deborah Enix-Ross, and ABA Executive Director Jack Rives.

We also heard from The Honorable Nathan L. Hecht, Chief Justice of the Texas Supreme Court and President of the Conference of Chief Justices. Chief Justice Hecht reported on "The State of the State Courts." He described state courts, in the midst of the pandemic, as "resolute, innovative, and forward-looking."

Resolutions Adopted by the House

The House adopted a variety of resolutions and, in doing so, articulated ABA policy embodying the substance of each resolution.

Importantly, as a threshold matter, the House by super-majority vote amended

its Rules of Procedure to require that a resolution must advance one or more of the ABA's four goals. Those co-equal goals, adopted by the House in 2008, are: (i) serve our members; (ii) improve our profession; (iii) eliminate bias and enhance diversity, and (iv) advance the rule of law. Also adopted by the House in 2008 is the ABA's mission statement: "To serve equally our members, our profession and the public by defending liberty and delivering justice as the national representative of the legal profession."

Resolutions with bar associations as their lead sponsor(s) addressed the following: amending bar admissions rules to provide that the minimum number of years an applicant must have been primarily engaged in the practice of law to be eligible for admission by motion be equal to the maximum age of a transferred

or from a U.S. territory (as is provided for travel to or from the fifty states and the District of Columbia) (10D); enacting the Daniel Anderl Judicial Security and Privacy Act of 2020, or similar legislation, to prohibit the disclosure of personally identifiable information of active, senior, recalled, or retired federal judges, including magistrate judges, bankruptcy judges, administrative law judges, and immigration judges, and their immediate family who share their residence, including but not necessarily limited to home addresses or other personal contact or identifying information (10E); and establishing officer training, and implementing guidelines, relating to officers giving exit orders during discretionary traffic enforcement stops where the officer has safety concerns or a reasonable suspicion of criminal activity (10F).

From my perspective, the ABA volunteer leaders and superb professional staff left no stone unturned. Every effort was made to ensure that the work of the House would be accomplished within the time allocated and that there would be an opportunity for meaningful debate when appropriate.

Uniform Bar Exam ("UBE") score that the jurisdiction has adopted for purposes of admission by UBE score transfer (10A); considering diversity when making appointments to court commissions, committees, boards, task forces, and similar entities that serve as arms of the court (10B); amending current federal statutory law or otherwise enacting legislation to provide that federal district judges appointed to serve on the United States District Courts of the Virgin Islands, Guam, and the Northern Mariana Islands be permitted to assume senior status or to fully retire upon completion of their terms consistent with other federal judges appointed for limited terms (10C); interpreting the Fourth Amendment of the U.S. Constitution to preclude application of the border-search exception to travel to

In addition, resolutions with ABA sections, divisions, forums, and other entities taking the sponsorship lead addressed the following: the use of arbitration in business-to-business disputes, both domestically and internationally, as an efficient and economical method of dispute resolution (100); the enactment of laws permitting specially trained dogs (known as "facility dogs") to assist victims and vulnerable witnesses in participating at any stage of criminal justice proceedings (101A); negotiation of an international convention for the protection of animals which establishes standards for the proper care and treatment of all animals to protect public health, the environment, and animal well-being (101C); protection for Special Immigrant Juvenile beneficiaries from removal from the United States

while they await a visa (103A); withdrawal of certain U.S. Attorney General opinions and replacement of those opinions with opinions that are consistent with congressional intent, the U.S. Constitution, and U.S. treaty obligations, and which uphold well-settled legal concepts (103B); allowance of bar examinees to bring menstrual products into bar exams (105); use within the legal profession and justice system of pronouns consistent with a person's gender identity (including in filed submissions, during mediations and court proceedings, and within judicial opinions) (106A); and development and implementation of programs to assist law graduates and law students experiencing financial hardship due to their student loan obligations (106C).

Other resolutions with ABA sections and other entities taking the sponsorship lead addressed: enacting legislation that decriminalizes abortion, increases access to clinical abortion care, and protects pregnant people from any criminal prosecution for having an abortion or experiencing a miscarriage, still birth, or other adverse pregnancy outcomes (107A); adopting certain principles in administering elections for President of the United States and addressing disputes as to the proper recipient of electoral votes (107B); making clear that HIV status alone should not disqualify a person from military service (107C); endorsing and adopting the United Nations Declaration on the Rights of Indigenous Peoples, and development of a plan for implementation (107D); approval of the Uniform Easement Relocation Act (108A); approving the Uniform Public Expression Protection Act (108B); prohibiting the possession and display of firearms by persons other than governmentally-authorized military, law enforcement, or security personnel in and around specific areas where legislative debate is conducted or ballots are cast (111); voiding the Rule adopted on July 23, 2020, so as to reinstate the 2015 Affirmatively Furthering Fair Housing Rule in full force and effect (112); and continuing to use total population, including minors and non-citizens, in redrawing electoral district line after the decennial census to achieve equality

CONTINUED >

ABA MIDYEAR MEETING

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of population of districts as required by U.S. constitutional law (113).

Finally, ABA entities took the lead in sponsoring resolutions that addressed: advancing well-being in the legal profession, with the creation and distribution of policies and resources (300A); and enacting legislation and appropriating adequate funding to ensure access to fair, affordable, and high-quality childcare and family care, with the development of policies and best practices for all individuals working in the legal profession.

For a detailed description of each resolution (and of other resolutions considered by the House or withdrawn from consideration at the Annual Meeting), please see www.americanbar.org. And, while on the ABA's landing page, please click on the link to the "Practice Forward" homepage. There, you will find valuable content reflecting practice and wellness tips to the benefit of each of us during the pandemic and beyond.

As I've noted previously, the practical effect of the House of Delegates adopting policy, as reflected in the above resolutions, is that elected officers of the Association, staff, and volunteer leaders are then authorized to advocate those policy positions – whether with legislators, courts, or others. This, importantly, can translate into grassroots advocacy in Washington (such as the annual ABA Day on Capitol Hill, to take place virtually this year on April 20-21) and in state legislatures to urge, for example, increased funding of legal services for the poor.

Membership

The ABA pursued a broad-based effort to study how best to deliver value to ABA members. The thoughtful, resulting recommendation, embraced by the Board of Governors, included simplifying dues-paying categories and reducing dues, and enhancing for each member on-demand CLE content and other benefits.

In particular, the current dues structure has new admittees through fourth year attorneys paying \$75, fifth through

ninth year attorneys paying \$150, tenth through fourteenth year attorneys paying \$250, fifteenth through nineteenth year attorneys paying \$350, and twenty-plus year attorneys paying \$450. At the same time, government, solo, and small firm attorneys, as well as retirees, will pay \$150. Paralegals will pay \$75, affiliated professionals will pay \$150, and international lawyer members will pay \$150. In addition, law firms and other legal employers can achieve even greater savings by enrolling in the ABA's "full firm membership" program. (I am happy to say that YCST is a proud participant in that program.)

As I have urged before, if you currently are an ABA member but are not yet engaged in the work of sections, divisions, or forums (and their respective committees and subcommittees), please consider increased involvement. And, if you currently are not an ABA member, please consider joining (or re-joining) as a complement to your DSBA membership. I and other member of the Delaware Delegation would be delighted to discuss with you all of the opportunities that ABA membership presents, including during the ongoing pandemic. Special thanks to Lauren DeLuca for her service as State Membership Chair for Delaware, appointed by ABA Immediate Past President Judy Perry Martinez.

It continues to be my privilege and pleasure to serve as State Delegate to the ABA House of Delegates. The House will next meet August 9-10, 2021 during the currently-scheduled 2021 ABA Annual Meeting. Time will tell whether that meeting will be in-person, virtual, or "hybrid." Please stay tuned. And, if you have any questions or comments at any time, please let me know at wjohnston@ycst.com or (302) 571-6679. Most of all, please stay safe and well. ☺

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Bill Johnston is a partner with Young Conaway Stargatt & Taylor, LLP. He is a Past President of the Delaware State Bar Association, serves in the ABA House of Delegates as State Delegate from Delaware, is a Former Chair of the ABA Business Law Section, and is Immediate Past President of the American Counsel Association.

Joseph B. Green, Esquire

1947 - 2021

BY JEROME M. CAPONE, ESQUIRE

Joe Green died on January 18, 2021 after suffering mightily from cancer for nearly two years. He was 73 years old.

Joe began practicing law in 1972. He started working as a Public Defender in Wilmington while maintaining a private practice — Green & Green — in which he partnered with his Dad, Harold Green. Any look back on Joe's life as a lawyer must first take into account the good fortune that Joe and Harold, father and son, enjoyed in the many years that they worked together. Their bond of love and affection radiated through the office.

In 1978, the name of their firm changed to Green, Green & Godowsky when Rory Godowsky joined the firm. Then it changed to Green, Green, Godowsky & McFadden in 1986 when Bernie McFadden signed on. Their firm was primarily a general civil practice firm. As Joe's practice flourished, he left his job with the Public Defender's Office to devote more of his time to the firm's clients. Joe focused on real estate, bankruptcy, liquor licenses, and personal injury cases.

I shared office space with Green, Green, Godowsky & McFadden for seventeen years, and this is what I can tell you about Joe. Joe's clients adored him. He was attentive to their needs, gentlemanly in his dealings, and he got his clients what they wanted. Joe treated the office staff like they were part of the Green family, and like family, he stuck with them through thick and thin. Two secretaries who worked in the office went on to become accomplished attorneys in their own right — Natalie Wolf and Tania Culley. I am sure they both would tell you that Joe was an inspiration and a mentor.

As a colleague, Joe was the voice of reason. Working with him was a true pleasure. If he shook your hand on an agreement, you were fully protected. It was impossible to be upset with Joe. He always kept his composure — he never showed anger or raised his voice. Rory Godowsky says that



in the 40 plus years they were business partners, they never had an argument or disagreement. He was just a sweet guy.

Joe became a dear friend to those of us who worked with him. Because he enjoyed playing golf, playing poker, and playing the thoroughbreds at Delaware Park and at Saratoga, he and I spent a lot of time together outside the office. We also did some traveling with our wives. He and his beautiful wife Nancy were engaging travel companions, and we were completely comfortable together.

A few years ago, I encouraged Joe to close his private practice, move to the beach, and apply for a job working with me in the Public Defender's Office in Sussex County. The idea fell into place. We were back working together again for a few happy years. His career had, in a satisfying way, come full circle. Then one day he came into my office complaining about some swelling in his neck. That was the beginning of the end.

Joe is survived by Nancy (who was heroic in caring for Joe through his illness) his sons Jeff and Dan and their families, and Nancy's daughter Melissa, son Sam, and their families. These last two years were really tough for all of them.

With his passing, Joe's family and friends are left to reflect on Joe's life. He left all of us with many fond memories. Those of us who worked with him will always remember Joe as an effective advocate, a gentle person, and a steady friend. He was a good man and he lived a full life. ☙

2020 COMBINED CAMPAIGN FOR JUSTICE



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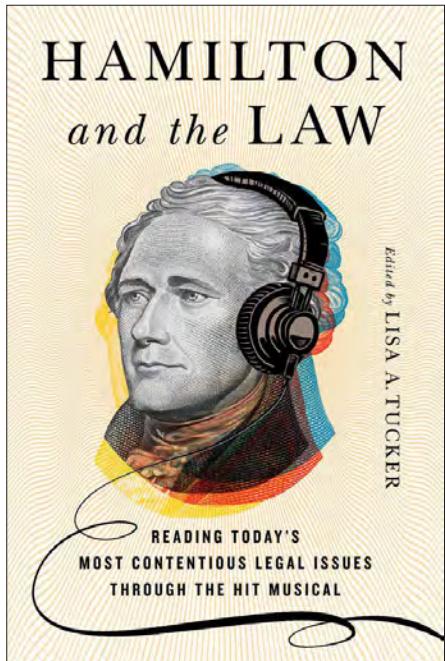
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Teaching and Entertaining



Hamilton and the Law: Reading Today's Most Contentious Legal Issues Through The Hit Musical

Edited by Lisa A. Tucker
Cornell Univ. Press, 2020

It seems hard to believe now, but just six short years ago, the United States Treasury announced plans to replace Alexander Hamilton's portrait on the ten dollar bill with the portrait of an as-yet-then-unselected woman. Hamilton, perhaps the most important founder after George Washington, had so receded from the nation's consciousness that it was felt that, of all the various portraits on our currency, his portrait could be replaced with the least uproar. But something else happened in 2015 that saved Hamilton's portrait from the scrap heap and started him on the road to renewed appreciation — *Hamilton: An American Musical* arrived on the scene and Hamilton's portrait on the ten dollar bill was secure.

In *Hamilton and the Law*, Professor Lisa Tucker has gathered 33 essays using the musical as a starting point to discuss various legal issues. Like any collection of essays, the quality varies a bit; most are entertaining and informative, while a few are frustrating or so one-sided as to be obnoxious. On the whole, though, the essayists have many interesting and worthwhile things to say, some historical, and some modern.

Marbury v. Madison is, of course, one of the most famous Supreme Court cases because it established judicial review. We all learn about that case in our first year of law school. But in his first and only Supreme Court case, *Hylton v. United States*, Alexander Hamilton successfully defended a federal tax against claims the tax was unconstitutional. Had the case gone the other way, *Hylton* would have been the first use of judicial review by the Supreme Court and be the case widely remembered instead of *Marbury*; however, Hamilton's able defense (he authored the nine essays of *The Federalist* discussing the taxing power) led the Court to uphold the tax. Indeed, contemporaneous accounts praised Hamilton's performance. Justice Iredell recorded that Hamilton "spoke with astonishing ability, and in the most pleasing manner, and was listened to with the profoundest attention." A Boston newspaper reported "by his eloquence, candor, and law knowledge, [Hamilton] has drawn applause from many who had been in the habit of reviling him." Even James Madison (who thought the tax unconstitutional) gave him grudging respect. Although Hamilton had many offers to return to the Supreme Court, he never did. Always incredibly busy, the fact that he lived in New York, while the Court was in Philadelphia, no doubt played a major role in his refusals.

Hylton, while not remembered today as a major Supreme Court decision, nevertheless lives on. In the Supreme Court's 2012 *Sebelius* decision upholding Obamacare as a tax, the Court quoted from Justice Chase's opinion in *Hylton*, which, in turn, was based on Hamilton's argument.

The essays in *Hamilton and the Law*, though, are more than just historical. There are essays on copyright and the musical's occasional inclusion of lines and references from other works. For reasons explained in the essays, these inclusions are permitted by copyright law; nevertheless, one learns about both copyright and the musical in

That Alexander Hamilton had become so unappreciated as to be designated for replacement on the ten dollar bill still seems shocking to this day, but thanks to Lin-Manuel Miranda's *Hamilton: An American Musical*, Hamilton's place in American history seems secure.

these essays. Dueling is a starting point for several of the essays, including not just the history and culture of dueling in America, but the dueling constitutional visions of Hamilton and Jefferson, and elections as a form of dueling. There are, as one might expect, essays on the multi-racial casting of the characters in *Hamilton*, on the role of women, and on the role of immigrants. And, of course, there are essays about Hamilton's vision of the Necessary and Proper Clause and the Bank of the United States.

Hamilton: An American Musical is not entirely historically accurate, but it is accurate enough. If you have not heard the

music, you should seek it out. If you have not seen the musical, it is available for streaming on Disney+. Even if you have not done those things (and you should), you can still learn much from *Hamilton and the Law*, but experiencing the musical first will make the book that much more enjoyable. And, if you are looking to learn more about Alexander Hamilton, Ron Chernow's 2004 award-winning biography (upon which the musical is based) is still in print as well.

Alexander Hamilton accomplished much before his fateful duel with Aaron Burr that led to his death at age 47. He was George Washington's right-hand man

during the Revolutionary War who helped lead the final assault at Yorktown, a delegate to the Constitutional Convention, the author of the majority of *The Federalist* papers, the first Secretary of the Treasury whose vision and drive secured America's economic prosperity, the founder of the first anti-slavery society in New York, a successful lawyer, and the list goes on and on. That Alexander Hamilton had become so unappreciated as to be designated for replacement on the ten dollar bill still seems shocking to this day, but thanks to Lin-Manuel Miranda's *Hamilton: An American Musical*, Hamilton's place in American history seems secure. And with *Hamilton and the Law*, we find that the musical itself is but a starting point for many further interesting discussions about the man and the law. ☺

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



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MAD ABOUT MAPLE

Memories of a Sugar Shack

During my 13 years of teaching, I have chaperoned field trips from Radio City to the Rodin Museum. Perhaps the most memorable was an eighth grade French class trip to Québec. I accompanied my friend and former colleague Kathleen and her douzaine French students on a four-day stay in Québec City. Our days and evenings were filled with engaging excursions, from a ferry ride along the St. Lawrence to a behind-the-scenes tour of the Château Frontenac.

Although it was mid-March, warm and waterproof footwear was a must for traversing the Plains of Abraham. Despite the foot of snow, it was springtime, the start of "sugaring off season," when Québec celebrates the collection of sap from maple trees.

Given our timing, dinner and musical festivities at a sugar shack were highlights of our itinerary. As our bus arrived at the large cabin topped with snow, we were greeted by the sweetest of "amuse bouches" — maple taffy. "Tire Sur la Neige," or "tire d'ériable," is a sugary treat made by pouring boiling maple sap over trays of fresh snow and then rolling the sap around a popsicle stick. Needless to say, our students enjoyed dessert both before and after dinner that evening. Between sugar and song, the return drive back to the hotel was the most boisterous bus ride I have ever experienced.

Memories of Québec and maple syrup return each March, whether the ground is covered in snow or crocus blooms. So, to celebrate this sugar season, I share a savory maple syrup recipe featuring lamb, another herald of spring.

The lamb sirloins I recommend are from one of my favorite meat purveyors, D'Artagnan. This grass-fed Australian lamb is mild in flavor and tender in texture. A package consists of four sirloins, each an ideal size for an individual portion. While I encourage you to use your favorite whiskey, I like WhistlePig Rye, aged ten years at the brand's Vermont farmhouse distillery. The cooking concentrates the whiskey's caramel and butterscotch flavors, enhancing those same tasting notes in the syrup. ☘



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

MAPLE WHISKEY LAMB SIRLOIN

Ingredients

- 4 lamb sirloins
- 1/3 cup maple syrup
- 1/4 cup whiskey
- 5 sprigs fresh thyme
- 1 sprig fresh rosemary
- Sea salt
- Fresh ground pepper
- 2 tablespoons olive oil
- 1 tablespoon butter

Instructions

Score the lamb with a fork to better absorb the marinade and place the lamb in a plastic bag or Pyrex dish. Combine the maple syrup and whiskey in a measuring cup and pour into the bag or dish, coating the lamb. Add the fresh herbs.

Marinate in the refrigerator for at least three hours or overnight. An hour before cooking, remove the lamb from the refrigerator. Place on a dish and season both sides with salt and pepper to taste. Reserve the marinade.

When ready to cook, heat the oil and butter in a nonstick pan. Sauté the lamb as you would a filet of beef, making sure to sear on each side before turning. For medium rare, cook to 130 degrees, then let rest for five to ten minutes. The lamb should reach a temperature of 145 degrees in the meantime. While the lamb is resting, add about a quarter of the marinade to the pan and reduce until syrupy.

Slice the lamb against the grain, and drizzle with the whiskey-syrup. Serve with a creamy polenta and an arugula salad. The peppery greens will be a bright complement to the sweetness of the lamb.

Happy sugar season 2021!

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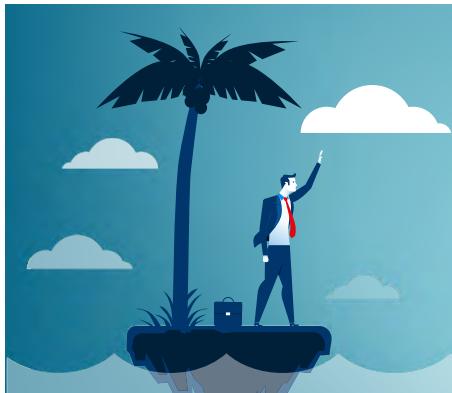
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BY MARK J. CUTRONA, ESQUIRE, HOLLY O. VAUGHN WAGNER, ESQUIRE, DEBORAH I. GOTTSCHALK, ESQUIRE, CARA G. WILSON, ESQUIRE, AND RICHARD T. DILLARD, ESQUIRE

1 We have a statutory obligation to be persnickety about drafting legislation. Section 109(g), Title 1 of the Delaware Code requires newly enacted laws follow “the plan, scheme, style, format and arrangement of [the Code] as closely as possible” so the Code is “a harmonious entity containing all the laws of this State.” Every rule or guideline in our drafting manual is designed to meet that mandate. If we seem unreasonably picky about certain formatting or phrasing, we are probably adhering to a drafting rule.

2 The Delaware Legislative Drafting Manual is available for free online at <https://legis.delaware.gov/LawsOfDE/BillDraftingManual>. We have several other drafting guides and are happy to provide physical copies of both the manual and the guides. You can request physical copies of any of our drafting materials by sending an email to holly.vaughn_wagner@delaware.gov.

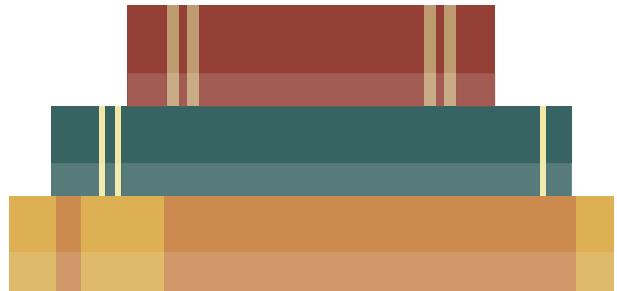
3 We are a nonpartisan, confidential office. Our clients are the legislators, and when we are involved in a drafting project with you, it is on behalf of the legislator who is sponsoring your bill. We work for the entire legislature, so you may work with us on different bills coming from both chambers and both political parties. We owe a duty of confidentiality to the legislator who’s sponsoring the bill we are working on.

4 We do not want to change your policy. When you submit a draft bill, our edits are to ensure the words on the page convey the policy you are hoping to enact while meeting our obligation under Title 1. If our edits change the intent of the legislation, it is an opportunity to clarify what the legislation is intended to do. If we misunderstood the intent, it is likely others would also misunderstand.

5 Ensuring bills meet drafting standards takes time and may result in changes to your draft. We review draft bills for more than style and formatting. We check to see if there are already defined terms in the Delaware Code that apply to the draft. We may need to change terms or definitions to be consistent and avoid conflicts between laws. We may exclude a definition from the draft if the term is already defined in the Code. We also research if laws are already in place on the topic, to ensure the legislation will fit and not conflict with existing law. We may have questions, to ensure that if enacted, the legislation will have the intended effect. And, we may need to consider whether any constitutional or federal preemption problems may interfere with enforcing the proposed state law.

6 We are lawyers, but we prefer clear, simple, and brief writing. When writing persuasively for many kinds of legal works, a lawyer may want to write with pas-

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sionate flourishes and tried-and-true legalese. The goal with drafting a bill, however, is to write a law that everyone can understand and interpret the same way. Legislative drafting should not be formal. Instead, we should strive to make our language accessible to all readers, not just those in the legal professions.

7 **We have favorite drafting rules.** One of our favorites happens to also be a source of misunderstanding between outside and Division drafters. The drafting manual recommends drafting tabulated lists rather than block paragraphs. Tabulated lists are appropriate when several steps are related to the same thought or to nest related ideas under a subsection. Drafting a list makes the law more readable and accessible to the general user. Misunderstandings come into play when we edit a block paragraph into a tabulated list and the original drafter finds that the language does not convey the bill's intended meaning. In fact, tabulations reveal errors, gaps in steps, or lack of clarity that can otherwise be lost in a large "blob" of text. When we convert a block paragraph into a tabulated list, we never intend or attempt to change the policy. We hope that you will see these conversions as opportunities to ensure the policy is truly being conveyed in the bill. (Or, now that you know tabulated lists are favored, you will draft them so we will not have to!)

8 **Although Delaware's legislative process can move quickly from idea to introduced bill, we value proofreading and take the time to do it.** A good carpenter should measure twice and cut once. Likewise, a good legislative drafter should have their draft proofread twice so it can be printed once ... and eliminate the need for amendments to make corrections that could have been caught in proofreading. Proofreading is central to good legislative drafting as it helps ensure compliance with the standards of the drafting manual, which will in turn produce better drafted laws. And, proofreading tests the drafter's understanding of their writing to ensure clarity.

9 **We teach legislative drafting, too.** If your Bar section, law firm or office, or state agency would like, we can provide a legislative drafting class. A class can go all day, or it can be as short as two hours, and we can tailor the discussion to the drafting points that are most relevant to your practice.

10 **We hope your experience with us is a positive one.** "Collaboration" is the name of our game. We focus on the technical side of drafting rather than advancing specific policy, and we view you as the experts on the subject matter. We also love what we do and hope it shows when you work with us. ☺

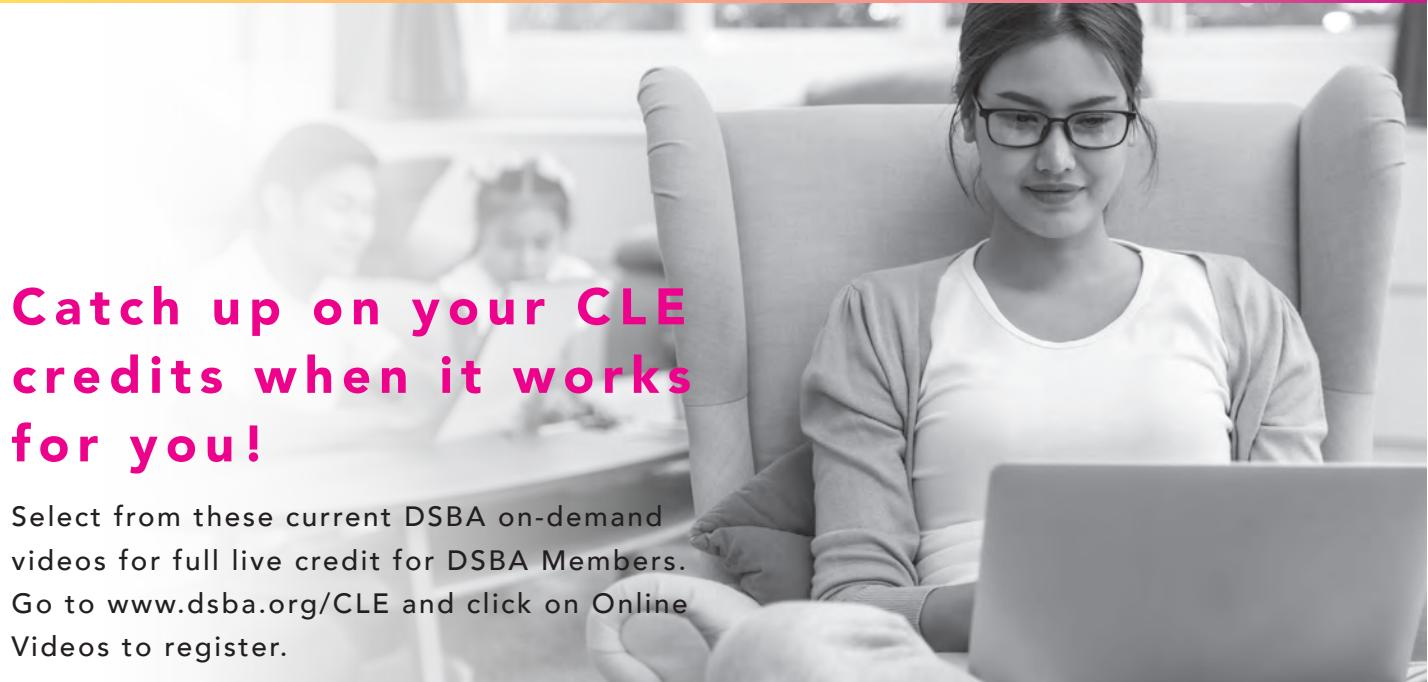
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