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OF THE DELAWARE STATE BAR ASSOCIATION



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The Delaware State Bar Association is looking for a number of talented members to join the 2018-2019 Executive Committee and lead DSBA to continued success.

The following positions on the Executive Committee of the Association must be filled for the year 2018-2019:

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

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

The following position must be filled for terms as noted:

One (1) DSBA Representative to the Delaware Bar Foundation Board for a four-year term

The Nominating Committee wants to consider all interested candidates. If you are interested in serving on the Executive Committee or would like to recommend a candidate, please send your name or the candidate's name along with a CV and at least one letter of nomination to Mark S. Vavala, Executive Director, by e-mail at: mvavala@dsba.org or by mail at: Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE 19801 by **February 16, 2018**.

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DSBA BAR JOURNAL

NOVEMBER 2017 | VOLUME 41 • NUMBER 4

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The *Bar Journal* is published and distributed by the Delaware State Bar Association

405 North King Street, Suite 100

Wilmington, DE 19801

P: 302-658-5279

F: 302-658-5212

www.dsba.org

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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.

The *Bar Journal* is published monthly with a combined July/August issue.

All correspondence regarding circulation, subscriptions, or editorial matters should be mailed to:

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Wilmington, DE 19801
or emailed to: rbaird@dsba.org

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

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THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

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Cover Art by Mark S. Vavala

With apologies to Normal Rockwell, DSBA borrows "Freedom from Want," the artist's iconic Thanksgiving painting. DSBA wishes all its members a wonderful holiday with this picture of staff: (from lower left) Berma Scott, LaTonya Tucker, Rebecca Baird, Aner Marks, Susan Simmons, Mark Vavala, Janice Myrick, Lauren Delle Donne, Sorelis Duran, and Antonio Byrd.



PRESIDENT'S CORNER

By Michael Houghton, Esquire

Assessment and Celebration Maintaining Delaware's Competitive Edge

September was a busy month for assessment, and celebration, of Delaware's leadership in the legal services industry. The United States Chamber of Commerce Institute for Legal Reform issued one of its periodic Lawsuit Climate Surveys, ranking states on the attitudes the business community has towards legal systems of the various states. The U.S. Chamber says the survey is based on responses from in-house counsel, senior litigators and attorneys, and "other senior executives" at companies with at least \$100,000,000 in annual revenues. The most discussed survey takeaway is that Delaware, while ranked first in the survey in 2015, now ranks eleventh. I have never thought Delaware should brag about its ranking in any survey. Once we buy into these subjective rankings, we give leverage to ranking constituencies with agendas different than the system of balanced and consistent law, which Delaware has managed well for decades.

Our reputation is as a world class forum in which to organize, possessing a first-class judiciary, talented Bar, and even-keeled, responsive legislature, which

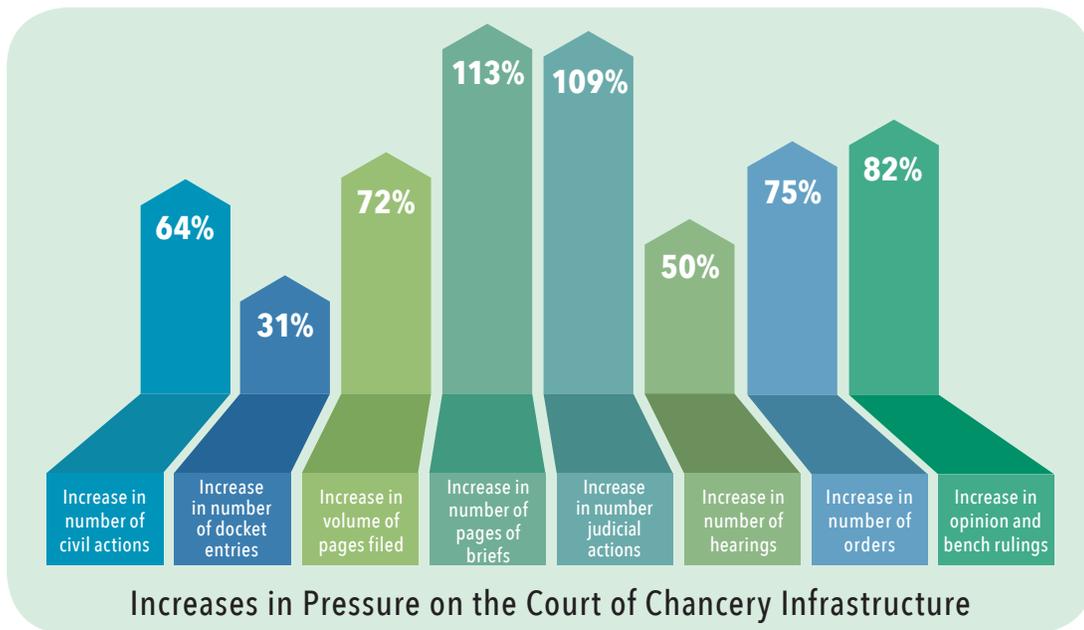
annually updates business laws. This reputation remains intact despite this survey where it appears the methodology and surveyed populations — fewer lawyers, more business people than in the past — differ from prior surveys. In fact, very small declines in Delaware's ranking within various categories, combined with significant improvements by a number of other states in their legal environment, seems to have prompted the change for Delaware. Even if the methodology appears new and murky, it is clear that there is increased competition from states with aggressive pro-business agendas, such as South Dakota, Wyoming, and Maine, among others.

With all due respect to certain sister states, I do not think Delaware is facing the mass redomestication of major Delaware corporations to South Dakota, Wyoming, or Maine. But, Delaware cannot be complacent. A subcommittee of the State Bar and a working group of the State Chamber of Commerce are reviewing the U.S. Chamber survey. They will determine whether there are any specific issues from the survey Delaware needs to address. The Delaware legal and business

communities should not overreact. We should remember that the balanced, fair treatment of entities and their shareholders or owners provided by our laws has been a hallmark of our Delaware franchise. Tipping the scales sharply in favor of one interest group or another would be dangerous for Delaware.

Within weeks of the U.S. Chamber survey being released, the legal and business community in the state celebrated a number of major milestones in Delaware's historical success as a major national and international legal and business center, one which annually generates over \$1,000,000,000 in revenue from formation, organization, and administration of Delaware entities — and which also employs thousands of Delaware citizens. On September 26, 2017, a two-day conference commenced in Wilmington celebrating the 225th anniversary of the formation of the Delaware Court of Chancery, the 50th anniversary of the revision of the Delaware General Corporation Law in 1967, and the 25th anniversary of the enactment of the Delaware Limited Liability Company Act. In remarks delivered at the opening of the conference, Chancellor Andre G. Bouchard highlighted the unique value and appeal that the Delaware Court of Chancery provides to Delaware — a separate court of equity without juries that places extraordinary responsibility for the quality of justice on the shoulders of the members of the court as triers of fact.

“Our reputation is as a world class forum in which to organize, possessing a first class judiciary, talented Bar, and even-keeled, responsive legislature, which annually updates business laws.”



In his remarks, the Chancellor noted that it was a quirk of history which gave Delaware and its early corporate statute preeminence in corporate law in the early 1900s. But, it has been the State's unique equity court with a prominent role in corporate governance that has assured Delaware's preeminence as the

corporate domicile of choice for the United States. This, combined with the rigorous annual statutory review by the Bar's Corporation Law Council, as well as the growth of alternative entities created pursuant to Delaware's Limited Liability Company Act, has been a recipe of entity growth that has increased six-fold

the overall number of Delaware entities formed in over the past 25 years, from about 200,000 in 1992 to over 1.2 million in 2017.

With this great growth and success comes increased pressure on the Court of Chancery infrastructure. It is these pressures that require attention. Twenty-five

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years ago, Court of Chancery's caseload focused on internal governance and fiduciary relationships. The current mix of work for the Court involves complex commercial and contractual cases, which are time intensive and involve extensive electronic discovery, many more discovery disputes, more motion practice and matters which go to trial more often than corporate governance cases have traditionally. As the Chancellor recently noted in the last ten years:

- The number of civil actions, which consume the overwhelming majority of judge time on the Court, has increased by 64 percent.
- The number of docket entries has increased by 31 percent, the volume of pages filed with the Court has increased by 72 percent, and the number of pages of briefs has increased by 113 percent.
- The number of judicial actions taken has increased by 109 percent, the number of hearings held has increased by almost 50 percent and the

number of orders which have been entered by the Court has increased by 75 percent, with opinions and bench rulings increasing by 82 percent.

Practitioners in the State recognize the significant stress being placed on the Court of Chancery. The last time a judge was added to the Court of Chancery was in 1989 — 28 years ago. Although Court of Chancery practitioners enjoy the small size of the Court and the collegiality that it provides, the bandwidth of the Court has shrunk as the workload has grown and the work/life balance for our judges has eroded.

A number of states have established business courts and others have enacted aggressive legislation designed to attract corporations, often without regard for the impact on investors in those entities, as the recent survey may reflect. The Delaware legal and business communities need to step up to assist the Court in order to protect and grow the franchise. This should include increasing the size of the Court of Chancery. It is up to the Dela-

ware judiciary to make a specific proposal, but I suspect a compelling case can be made for the addition of Vice Chancellors to the Court. Expanded resources for Court of Chancery is what we should be studying and what we should be advocating as we think strategically about preserving and enhancing the Delaware legal services franchise. 🗣️

Michael Houghton is the current President of the Delaware State Bar Association and is also Chair of the Delaware Economic and Financial Advisory Council (“DEFAC”), served as President of the Uniform Law Commission, serves as a member of the Boards of the Delaware Bar Foundation, the Delaware State Chamber of Commerce, the Delaware Public Policy Institute and the Pete du Pont Freedom Foundation. Mike is a partner with the law firm of Morris, Nichols, Arsht & Tunnell LLP. He can be reached at mhoughton@mnat.com.

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EDITOR'S PERSPECTIVE

By Benjamin A. Schwartz, Esquire

Should We Be Able to Buy, Sell, and Trade Our Bar Numbers?

My pride and joy these days is a 2005 Toyota 4-Runner. It is red, and has only has 225,000 miles on it. As a law student, I envisioned myself one day riding in the back of a limousine, or driving around in a Bentley. Neither of those visions has come to pass. It is probably for the best, as neither option lends itself readily to summer Sundays on Slaughter Beach. I call my truck “the Beach Runner”.

To run your truck on the beach, you need to buy a State Parks pass in the form of a surf tag. If you take a moment next time you are out on the road, many of the trucks and SUVs you will see have a white plastic license plate mounted on the front bumper. Most have a picture of a jeep with a fishing rod in front of it and birds flying around. That is a surf tag.

It was with great interest that I learned that Delaware State Division of Parks and Recreation has started auctioning off low-digit surf tags to raise funds for park operations. These surf tags have an actual number in place of the jeep, fishing rod, and seagulls.

Delaware surf tag #1 went at auction a year ago for \$26,000. According to a *Delaware Online* article, as of about a year ago, total sales of low-digit surf tags had raised more than \$317,000 for the Division.

Of course, people have been buying and selling regular Delaware license plates for years. A very generous client gave me a four-digit tag several years ago. I have my late grandfather's five-digit tag on my daily

“It was with great interest that I learned that Delaware State Division of Parks and Recreation has started auctioning off low-digit surf tags to raise funds for park operations.”

driver. And, I have a four-digit PC plate on the Beach Runner.

If you are interested in having a low-digit tag on your vehicle, you could buy one on lowdigittags.com. If you have a motorcycle, you might want to invest in motorcycle tag #7. It is listed at \$19,000. I am surprised no one has snapped it up at that price. According to delawaretagtraders.com, single-digit motorcycle tags are expected to fetch over \$20,000. If you do not have a motorcycle, you could get a three- or four-digit tag for your car or truck.

But, what about a low-digit Delaware Bar ID Number? My Delaware Supreme Court Bar ID Number is 4145. My father's is 31. I would love to trade-up for a two-digit number like my father. (Actually, I would like to have a one-digit registration number so I can have bragging rights, but don't tell Dad).

You know who else I bet would like to trade up? David Ripsom. On the Supreme Court website, there's a Public Lawyer Database where you can seek out Delaware attorneys by Bar ID Number. When you put in 000666, you find David B. Ripsom. I do not know about David, but I am superstitious!

A number I would consider lucky is #7. That's registered to Mike Parkowski. I do not know Mike personally, but he was lucky enough to get a one-digit Bar ID Number. That in itself proves he's lucky.

The number 18 in the Jewish religion has special meaning. Somewhere there's a Jewish mother who would do backflips if she found out her child passed the Delaware bar and got assigned the number 18.

I also searched for the number 1. How awesome would it be to have Bar ID Number 1? You could advertise that you are the #1 lawyer in Delaware, and you would not even be violating the Rules of Professional Conduct! When I searched the database for 000001, nothing came up. Of course, I immediately called the Supreme Court Clerk's office. It is not up for grabs because it is registered to The Honorable M. Jane Brady of the Superior Court. As a judge, her Bar ID Number is not published.

I had to know — how did Judge Brady get the number 1? I asked around but nobody seemed to know. I heard whispers from several (anonymous) sources that Mr. Townsend, the Clerk of the Court when they started issuing ID numbers was

“sweet on Jane Brady.” I just had to call Judge Brady and get the scoop.

Judge Brady told me she started practicing law in 1977. In '78 or '79, the Supreme Court started assigning Bar ID Numbers. Around that time, Judge Brady was friendly with Mr. Townsend. One day, he called Judge Brady and told her of the plan to issue identification numbers. He said he was thinking about giving number 1 to Colonel Turner, then the Chief Deputy Prosecutor in Kent County. Judge Brady told Mr. Townsend it would be a very nice thing to do for Mr. Turner. Mr. Townsend told her that on second thought, he was going to assign the number 1 to her. He told her that the “fat cats from Wilmington” all wanted it for themselves, but she had a much more charitable reaction. It is Judge Brady’s recollection that Colonel Turner ended up with Bar ID Number 2.

That brings me to the point of this rambling numerical discourse: whether we should be able to buy, sell, and trade Bar ID Numbers. The Supreme Court could issue standard six- to eight-digit Bar ID Numbers to newly admitted lawyers. The Court could then allow lawyers to trade their higher numbers for lower numbers, and charge a fee for the transfer. The Court could also directly issue low-digit Bar ID Numbers that are not already assigned and auction them off to the highest bidder. This could raise a lot of money for the Court — just like low-digit surf tags are raising funds for the Division of Parks and Recreation.

I am interested to know what you think. Would you want a low-digit Bar ID number? If you have one, would you want to be able to sell it? Is this all a dumb idea? Email me and let me know your opinion! My email is ben.schwartz@schwartzandschwartz.com. 

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

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Berger Harris LLP is pleased to announce
Thomas P. Preston
Has joined the firm as Senior Counsel
Specializing in Arbitration and Mediation

Thomas P. “Tom” Preston has recently joined Berger Harris LLP as Special Counsel and chair of the firm’s Alternative Dispute Resolution practice. Tom is certified as an arbitrator and mediator, and in particular, as a specialist in commercial and employment disputes. A former partner of three Am Law 100 firms, Tom has over forty years of litigation experience, including numerous arbitrations and mediations relating to a variety of complex, high-stakes corporate and commercial disputes.

Tom graduated from University of Virginia School of Law after earning his Bachelor of Arts degree at Yale University. He is also a member of the Delaware Bar Association’s Alternative Dispute Section and served on the board of WSFS Bank for 22 years, chairing various board committees. Tom can be contacted at 302.655.1140 or at tpreston@bergerharris.com.

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DSBA HAPPENINGS

Announcements



Baby Emiliana Hudson, daughter of Executive Committee Vice President, Sussex

County, Mark H. Hudson, Esquire, and DSBA member Meaghan Mahoney Hudson, Esquire, was born on September 11, 2017. 

OF NOTE

Condolences to **Danielle K. Yearick, Esquire**, on the death of her mother, Kathleen Perna Yearick, on September 26, 2017.

Condolences to the family of **William J. Marsden, Jr., Esquire**, who died on October 14, 2017.

Condolences to the family of **Angelo Falasca, Esquire**, who died on October 19, 2017.

Condolences to **Michelle L. Maurer, Esquire**, on the death of her mother, Patricia A. Cory, on October 19, 2017.

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

Open Call for Articles!

Do you have
a great idea?



For information on submitting articles for publication in the *Bar Journal*, please contact Rebecca Baird at rbaird@dsba.org.

SECTION CONNECTION



Section Connection will highlight DSBA's Sections each month. Sections cover a wide array of practice areas and membership in DSBA Sections provides networking opportunities, social events, and CLE opportunities. Learn what your Sections are up to here at the Section Connection!

LGBT SECTION

Chair

Jason D. Angelo
Stevens & Lee, P.C.
jda@stevenslee.com

Regular Meeting

The second Wednesday of each month from 12:00 p.m. to 1:00 p.m. at Stevens & Lee, P.C., 919 North Market Street, Suite 1300, Wilmington, DE

Goals

The DSBA's LGBT Section is dedicated to addressing issues of importance to lesbian, gay, bisexual and transgender (LGBT) people and their allies in the legal profession.

The LGBT Section is also committed to improving the public service rendered by its members in legal matters concerning the LGBT community; promoting the professional development and interests of its members; offering education to all members of the Association and the Section about legal issues affecting the LGBT community; and providing a common meeting ground for all attorneys who are interested in the purpose of the LGBT Section.

What Can Members Expect?

The DSBA's LGBT Section is comprised of a diverse group of legal professionals from various personal backgrounds,

including both LGBT and non-LGBT individuals. Our membership is equally as professionally diverse with members from private practice, the corporate sector, public interest, government and academia, as well as judges, paralegals, and law students. Members share a commitment to respect, equality and inclusion in the legal profession, with a particular focus on LGBT individuals. Membership is open to all persons sharing this same commitment.

Upcoming Events

We are co-sponsoring the United Way of Delaware's 2017 *Anti-Bullying/ Gay-Straight Alliance Summit* and will be participating on a guest panel at Delaware Law School hosted by the its OutLaw organization. We also are planning a Name Change Training CLE to be held this winter.

Recent Events

In July, we held our annual Summer Reception at the offices of Young, Conaway, Stargatt & Taylor, LLP at which we recognized Lisa Goodman, Esquire, in recognition of her unending efforts towards equality for all in the First State. We were also honored by the presence of Senator Tom Carper, Lt. Governor Bethany Hall-Long, and a host of judges and elected officials.

BECOME A DSBA SECTION MEMBER

For information on how to join a Section, contact Janice Myrick, Director of Bar Services & Membership, at jmyrick@dsba.org.

TOP 5 YOU CAN BENEFIT FROM BEING A MEMBER OF THE DELAWARE STATE BAR ASSOCIATION

- 1 DSBA is an advocacy organization. To have the weight of the Association lobbying on your behalf in Dover is a value that more than pays for our membership dues.
- 2 DSBA provides opportunities for lawyers to connect through section meetings and other events. Members often refer cases to each other in such settings. It's just good for business.
- 3 DSBA tirelessly promotes its members through awards and opportunities for recognition. Again, business is spurred by the way you are perceived by others.
- 4 DSBA is actively involved in recommendations on judge-ships; while membership is not required to become a judge, your active participation in the Association can make you look good.
- 5 DSBA is a living organization with great people who just want to be there for you. We like to make you smile.

Featured Online CLE of the Month:

OFFICE & TRIAL PRACTICE 2017



FIND OUT WHY JUDGE ANDREA ROCANELLI CALLED IT "THE BEST SEMINAR EVER!"

Original Date of Seminar: Oct. 13, 2017

Speakers: FBI Agent Angelo Lano (retired), the lead investigator for the Watergate Burglary; Beth Moskow-Schnoll, Judge Mary Johnston, Mary Akhimien, Luke Mette, Elaine Reilly, Katherine Witherspoon.

Fun Facts: * Agent Lano and his team took less than a day to trace the burglars back to the White House --- all without cellphones or the internet! * The "robust discussion" of the panel on Professional Responsibility prompted one attendee to gush over how great the seminar was. * The seminar also tackled wiretapping and whistleblowers, keeping in synch with the Watergate theme.

CLE credits: 1.5 credits.

Log into the www.dsba.org website to see what you missed!

Since February, DSBA members have had a great new and convenient way to watch those CLEs they might have missed. Just log on to www.dsba.org/CLE and peruse the online catalog, purchase your CLE and sit back and watch at your leisure!



H. Garrett Baker
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DSBA MEMBER

"Being a part of the DSBA is a wonderful opportunity to interact with colleagues both professionally and socially. I especially enjoy the opportunity to exchange ideas and learn from each other at section meetings and CLE events."



Kiadli S. Harmon
Mintzer Sarowitz Zeris Ledva & Meyers LLP
VICE CHAIR OF THE MULTICULTURAL JUDGES AND LAWYERS SECTION

"I belong to the DSBA because it provides an opportunity to put my beliefs into action. I believe that intellectual honesty, inclusiveness, and the thoughtful exchange of ideas are of paramount importance to both the Bar and our community at large. Through section membership in the DSBA and membership generally, I am able to aid both my community and the bar in meaningful ways that highlight the unique and critical responsibilities that members of the Bar have to each other and their communities."



Lauren P. DeLuca
Connolly Gallagher LLP
DSBA MEMBER

"As a newcomer to Delaware and to the practice of law, I am able to build my network and grow professionally through the DSBA. It is a friendly space for meeting mentors, landing leadership roles in the Bar, and becoming more connected to the community."

Illustrations by Mark S. Vavala

Would you like to share why you belong to DSBA? Please let us know what DSBA membership means to you! Email Rebecca Baird at rbaird@dsba.org.

Professional Guidance Committee

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

New Castle County

Karen Jacobs, Esquire, Co-Chair*

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Mary C. Boudart, Esquire*

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Clay T. Jester, Esquire

Mary E. Sherlock, Esquire

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Larry W. Fifer, Esquire

Eleanor M. Kiesel, Esquire

Dennis L. Schrader, Esquire

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

*Certified Practice Monitor

CALENDAR OF EVENTS

November 2017

Wednesday, November 8, 2017

Marijuana and The Laws: Weeding Out the Issues

2.0 hours CLE Credit including 0.5 hour Enhanced Ethics credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, November 9, 2017

Past Presidents Luncheon

The Wilmington Club, Wilmington, DE

Thursday, November 9, 2017

4th Annual DELREC Casino Night Fundraiser

Carriage House at Rockwood Park, Wilmington, DE

Tuesday, November 14, 2017

Recent Developments in Data Security and E-Discovery

3.0 hours CLE credit in Enhanced Ethics

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, November 15, 2017

LOMAP: Staffing Your Law Practice

2.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, November 28, 2017

Superior Court Mediation At The Delaware State Bar Association: A 6-Hour Refresher Seminar

6.0 hours CLE Credit

Delaware State Bar Association, Wilmington, DE

Tuesday, December 5, 2017

Awards Luncheon

Hotel du Pont, Wilmington, DE

Thursday, December 7, 2017

The Nuts, Bolts, and Hard Drives of Trial (ABOTA)

6.8 hours CLE credit including 2.0 hours in Enhanced Ethics credit

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, December 12, 2017

LOMAP: The Law Firm's Swiss Army Knife

2.0 hours CLE Credits

Delaware State Bar Association, Wilmington, DE

Webcast to Morris James LLP, Dover, DE,

Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, December 13, 2017

Movie Night at DSBA: Miracle On 34th Street

1.0 hour CLE credit

Delaware State Bar Association, Wilmington, DE

Friday, December 15, 2017

Family Law Update 2017

6.3 hours CLE credit

Christiana Hilton, Newark, DE

Visit www.dsba.org/cle for a complete list of upcoming CLE Seminars.

SECTION & COMMITTEE MEETINGS

November 2017

Tuesday, November 14, 2017 • 12:00 p.m.

Small Firms & Solo Practitioners Section Meeting

Brandywine Hundred Library, Second Floor Conference Room, 1300 Foulk Road, Wilmington, DE

Thursday, November 16, 2017 • 12:00 p.m.

Executive Committee Meeting

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

Thursday, November 16, 2017 • 4:00 p.m.

Elder Law Section Meeting

Kleiner & Kleiner LLC, 501 Silverside Road, Suite 46, Wilmington, DE

Friday, November 17, 2017 • 12:00 p.m.

Workers' Compensation Section Meeting

Marshall Dennehey Warner Coleman & Goggin, 1007 North Orange Street, Suite 600, Wilmington, DE

Tuesday, November 21, 2017 • 12:00 p.m.

Litigation Section Meeting

Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE

Monday, November 27, 2017 • 4:00 p.m.

Taxation Section Meeting

E.I. du Pont de Nemours and Company Chestnut Run Plaza, Building 735, Floor 1, Room 1135, 975 Centre Road, Wilmington, DE

Tuesday, November 28, 2017 • 12:30 p.m.

Labor & Employment Law Section Meeting

Eckert Seamans Cherin & Mellott, LLC, 222 Delaware Avenue, 7th Floor, Wilmington, DE

Thursday, November 30, 2017 • 4:00 p.m.

Family Law Section Meeting

The Yeager Law Firm, 2 Mill Road, Suite 105, Wilmington, DE

December 2017

Monday, December 4, 2017 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

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

Tuesday, December 5, 2017 • 3:30 p.m.

Estates & Trusts Section Meeting

Bessemer Trust Company of Delaware, N.A., 1007 North Orange Street, Suite 1450, Wilmington, DE

Wednesday, December 6, 2017 • 12:30 p.m.

Women and the Law Section Meeting

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

Wednesday, December 13, 2017 • 12:00 p.m.

LGBT Section Meeting

Stevens & Lee, P.C., 919 North Market Street, Suite 1300, Wilmington, DE

Wednesday, December 13, 2017 • 4:00 p.m.

Real & Personal Property Section Meeting

The Kirsh Law Firm, 910 South Chapel Street, Suite 202, Newark, DE

Thursday, December 14, 2017 • 12:00 p.m.

Government Law Section Meeting

Delaware Community Reinvestment Action Council, Inc., 600 South Harrison Street, Wilmington, DE

Tuesday, December 19, 2017 • 12:00 p.m.

Litigation Section Meeting

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

Please contact Janice Myrick at jmyrick@dsba.org or (302) 658-5279 to have your Section or Committee meetings listed each month in the *Bar Journal*.

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TIPS ON TECHNOLOGY

By Richard K. Herrmann, Esquire

Amazon's Echo "Alexa" Has Become Part of Your Law Practice and Your Family

A number of books and movies have depicted a time when computers or robots will take over our lives and rule the world. Certainly, there is no danger of this happening during my lifetime. However, we have now reached the point where our electronic devices have become more sophisticated than we understand them to be. They are now crossing the line between our private lives and our practice and we are not aware of it.

In all fairness, every day we are making the conscious decision to comingle our private lives with work. I can count on one hand the number of lawyers I know who carry two cell phones, one for work and a personal phone. The device belongs either to the law firm or the individual, it does not really matter. If it is the Firm's, personal information is stored on the phone such as names, phone numbers, websites On the other hand, if the phone belongs to the individual and it is being used for work, the information is no less comingled.

Many of us, choose to manage our computers at home the same way. We have our own laptops or all-in-one computers for our family and we connect to the office or manage our work email from the same device

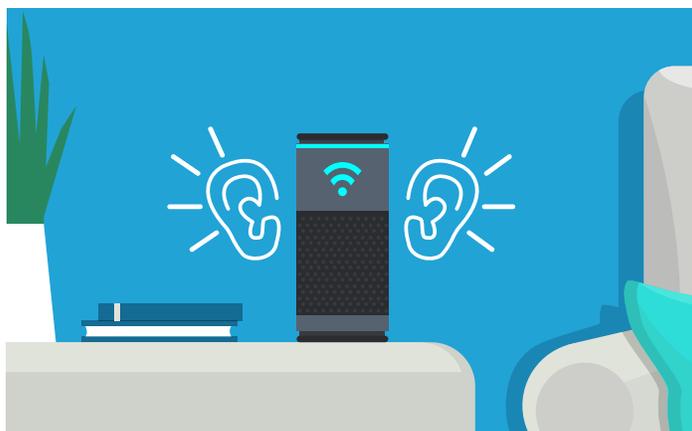
(hopefully with a separate user password). Few of us have consciously blurred the line with our other electronic devices such as Roku, Apple TV, or Chromecast. Why would we? It does not make sense. How about the Amazon Echo or Google Home, are they any different? They should not be, as they simply offer some home control features and interesting efficiencies since they are connected to the internet.

Many do not know that Amazon Echo — "Alexa" — is moving into the social media space in a very interesting way. We can now use it as a telephone and talk to anyone we know who also has an Echo by simply telling Alexa to make the call. More interestingly, a disturbing new feature has been added, called "Drop In," which opens the "virtual door" of your house to any Alexa user to whom you knowingly "or unknowingly" grant

privileges. This means if you give a person Drop In rights, they can simply join you in your family room through Alexa and you do not have to do a thing. Of course, Alexa announces they are dropping in, so if you happen to be in the room at the time, you know it. However, if you are otherwise occupied in another part of the house and return to the family room, you have no clue someone has joined you unless you notice the yellow ring rotating on the top of Alexa.

So, what does this have to do with comingling work and home, you might ask? In order to take advantage of these features, you may not have realized you needed to give Alexa access to your contact list on the mobile device containing the Alexa app. Alexa now has your entire contact list; and, she is cross-referencing it with everyone on it to see who also has an Echo. Now when you look at the contacts in your Alexa app, you can see who on your list has an Echo and you show up on their list as well. Completely unintended consequences.

More troubling is the thought that Alexa is listening for her name to be mentioned so she can react, which means she is always listening. In all the information I have read, Amazon reports the Echo is not



recording anything until the word Alexa is heard or misheard by the device. And, we are told the device cannot be hacked in such a manner to clandestinely force the recording. That kind of tampering requires some physical rewiring. A tech security company, MWR InfoSecurity, has reported on its success in doing just that:

Recent research from MWR has shown that 2016 models of the Echo are vulnerable to a physical attack that allows an attacker to gain access to the device's Linux operating system and install malware without leaving physical evidence of tampering. Such malware can grant attackers persistent remote access to the device, steal customer authentication tokens, and enable them to stream live microphone audio to remote services without altering the functionality of the device.”
<https://www.mwrinfosecurity.com/our-thinking/when-the-music-stops/>

Now, you may be thinking this is interesting, but not important since no one is going to break into your home or office and tamper with your Echo. This may be true. However, in preparing for this article, I took a detour to eBay which currently list for sale 10,936 Amazon Echo devices. Just think of the creative hacker who rewires and installs malware onto an Echo for resale on eBay. Not only will he make a fair return on his initial investment, but he will also have unlimited access to everything you say in the immediate area and to your entire network.

The moral of this month's column is, if you have an Amazon Echo purchased on eBay, just consider it as another member of your family, one with access to your bank accounts and credit cards — and those little family secrets that no one else knows. 🗣️

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

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

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Malware Everywhere – What’s a Reasonable Lawyer to Do?

By Edward J. McAndrew, Esquire

“**M**alware.” Add it to the lexicon of every lawyer. It stands for “malicious software,” which compromises or damages a computer in some way. It comes in many forms, including viruses, worms, Trojan horses, spyware, ransomware, keyloggers, scrapers, rootkits, and wiper ware, to name a few. Malware-based attacks are hitting lawyers hard.

In early 2017, three Chinese nationals were indicted for hacking into two large New York law firms (and targeting at least five others) with the aid of malware that compromised the firms’ email servers. Once inside the firm networks, the hackers allegedly stole material nonpublic information about pending transactions from transactional lawyers’ email accounts, along with the intellectual property of at least two robotics companies.

In late June, an international law firm’s operations were disrupted for nearly a week by the “Not Petya” global malware attack. Some of the firm’s offices were closed during a portion of the incident response, requiring lawyers to seek extensions of court deadlines. This followed the “Wanna Cry” ransomware attack one month earlier, which crippled organizations around the world. A Rhode Island law firm claims it lost more than \$700,000 in billings after its network and data were locked down by ransomware for three months in a separate incident.

The “Not Petya” malware attack illustrates just how vulnerable even the largest firms have become to destructive cyber incidents that can spread across the world in hours. The malware wormed its way through Windows networks by exploiting a vulnerability and using hacking tools stolen from the NSA and then published by Wikileaks. Unlike ransomware — a form of malware that encrypts files and holds them hostage until a ransom is paid — the Not Petya malware simply sought to “wipe” or permanently destroy data. The attack reportedly caused the stricken law firm to shut down its email and phone systems to protect against further damage after the malware infected some of its computers and systems.

According to a recent report from IT security vendor LogicForce, over 200 U.S. law firms (ranging in size from 1 to 450+ lawyers) were targeted by hackers between 2016 and 2017, with approximately 10,000 network intrusion attempts and about 1,000 invalid login attempts every day. According to *The Law Firm Cybersecurity Report Card*, 66 percent of these firms admitted to having been



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breached, and 40 percent of them learned about it from a third-party. Size of the firm and its revenues did not seem to matter. Although 88 percent of these firms have cybersecurity practice groups, 53 percent did not have an incident response plan and 77 percent had no cyber insurance coverage.

Every lawyer must make reasonable efforts to protect against and prepare to respond to malware attacks. Lawyers can use the Commission’s Data Security Leading Practices (among other published resources) to develop data security programs/policies and cyber incident response plans. Below are some tips for responding specifically to malware-based incidents:

- Determine whether your organization has cyber insurance that covers different types of malware-based attacks, such as ransomware.
- Catalog all legal obligations and rights under statute, regulation, contract, and common law in the event of a malware-based attack, including notification obligations to regulators and impacted parties.

- Train incident responders and users on immediate steps to take upon detection of a malware attack, including protocols for shutting down devices and networks to avoid the spread of the malware.
- Establish both internal and external response teams that are experienced in responding to malware attacks and ongoing network compromises.
- Define thresholds for activating a scalable internal and external incident response team appropriate to the needs of the particular incident.
- Outline key containment, remediation and investigative steps based on scenarios built around known attacks and malware. This should include steps to contain, analyze and eradicate the malware; identify and log ingress and egress traffic between the malware and external computers with which it communicates; remediate vulnerabilities targeted by the malware; catalog investigative steps

and collect relevant evidence; and restore data, devices and systems to normal business operations as quickly as possible.

- Create escalation thresholds for internal notification of different levels of management, the board of directors or equivalent, employees, partners, and other impacted parties.
- Create escalation thresholds for external notification of business partners/supply chain, the media, customers, governmental entities (including law enforcement agencies and regulators), and others who may be impacted.
- Devise internal and external communications plans to address foreseeable malware-based incidents.
- Prepare alternate communications, operations and investigative protocols and infrastructure for use during an attack that compromises or disables devices, data, or systems.
- Define under what, if any, circumstances your organization

will negotiate with attackers or pay a ransom. This should include identifying all necessary decisionmakers, setting amount limits, and establishing a means of obtaining and making payment in virtual currency.

- Align related policies and procedures to account for malware-based interruption of operations or services and destruction of data, devices or other equipment.
- Test your incident response plan under simulated attack conditions.

• • •

We are not going to prevent all malware-based attacks — though try, we must. We, therefore, must act swiftly when they occur. Creating your game plan with the above points in mind will help prepare you for the malware attack that is just a click away. ⚖️

Edward J. McAndrew is a partner and co-leader of the Privacy & Data Security Group at Ballard Spahr LLP, and also serves as leader of the Delaware Commission on Law and Technology's Data Security Working Group.

megalophobia

n. fear of large things

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By Charles Slanina, Esquire

Collecting Fees

“Ethically Speaking” just completed a three-column treatment of fee agreements. This month, we talk about collecting fees from clients pursuant to those fee agreements.

As always, a successful attorney-client relationship (defined in part as one in which the attorney gets paid for performing the legal services) begins with the selection of the right client. Does your initial client consultation include not only a discussion about the fee you will charge, but also the client’s ability to pay it?

Attorneys rarely perform credit checks on prospective clients. However, it should be part of your standard intake interview to ask the client how they expect to be able to pay your fee. Here are some topics for that discussion.

Retainers

One of the ways to determine whether the client has the ability to pay is to request a retainer. This not only helps the firm’s cash flow by not having to wait to be paid, it is also a test of the client’s ability to pay. If they cannot pay now, how likely is it that they can pay later? Coupled with a requirement of evergreen or replenishment retainers, this one step goes a long way toward limiting or eliminating fee collection issues.

Security Interests

In addition to requiring retainers, some firms become secured creditors by obtaining mortgage interests in the client’s home or other property. Do not forget

that unpaid attorney fees are generally dischargeable in bankruptcy and unsecured creditors usually do not fare well. When obtaining a security interest to collect fees, make sure that you familiarize yourself with the requirements of Rule 1.8 of the Delaware Lawyers’ Rules of Professional Conduct (“DLRPC”) since such an arrangement constitutes a business transaction with the client.

Co-Signers

Attorneys may also require co-signers on the fee agreement. Friends, family, and even employers may be called upon to pledge payment on behalf of the client. In such instances, as previously covered in the columns dealing with fee agreements, make sure that you adhere to DLRPC Rule 1.8(f) requirement that you obtain the client’s informed consent in writing before accepting payment of a legal fee by a non-client.

Litigation Lenders

There has been a dramatic rise in the number of litigation lenders. To the extent that clients have to borrow funds to pay attorney fees or costs, attorneys have to be mindful of the issues that arise when an attorney refers a client to such a lender. Firms should avoid forming a relationship with the lender and should not give the client any basis to conclude that the attorney is also representing the client in the lending process.

Insurance

During the initial client interview, be sure to discuss with the client whether any

insurance coverage is available, especially in defense matters. Is the client a member of a legal service plan through his employer? Does the prospective client’s homeowners or renters insurance policy cover your fees? Is there defense coverage through a credit card or automobile club? Is the client indemnified as an employee, officer, or agent of an organization? Note that the client may have a duty to notify the carrier of the claim and the carrier may have hiring or billing guidelines governing the selection of counsel.

Credit Cards

Many attorneys and firms are accepting credit card payments as an alternative to being unwilling creditors to their clients. The practice is permitted, but special care needs to be taken if you accept plastic payment of retainers. There are American Bar Association and Delaware State Bar Association approved vendors that enable attorneys to accept credit card payments compliant with the Rule 1.15 escrow account requirements.

Limiting Your Losses

If legal services are performed in excess of the retainer, what can an attorney do to collect on accounts receivable? The first step is to try to avoid having substantial accounts receivable.

The general maxim is that the higher the client’s debt and the longer it is owed, the less likely the attorney is to collect it. Attorneys should keep a close eye on the amount of the invoice and the client’s payments during any pre-trial stages of a

“As always, a successful attorney-client relationship (defined in part as one in which the attorney gets paid for performing the legal services) begins with the selection of the right client.”

matter. Invoices should be sent more frequently during periods of high activity. Unhappy, disappointed clients are not the best payors. Unless you are willing to allow the client to unilaterally change your fee agreement to a contingency, try to avoid having clients go to trial with already overdue accounts receivable. Consider withdrawing from the matter before the amount owed becomes unmanageable for the attorney or client.

Fee Agreements

Your fee agreements can also be collection tools. The engagement letter should state a due date for payment and provide for interest on unpaid balances and perhaps even reductions for prompt payment. Clients should be reminded of your right and intent to withdraw if payment is not timely made.

Collections

If none of the above has been successful in helping you collect your fees, it may be necessary to sue clients for payment of their outstanding balance. The almost inevitable client response (if they respond) will be a counterclaim of malpractice or a disciplinary complaint. For this reason, many large firms have policies that associates or partners cannot sue a client to collect a fee unless the firm's executive committee approves. Prior to approving suit, the firm will look at factors such as the amount of the debt, the client's ability to pay, the outcome of the underlying legal matter including a review of the attorney's file to assess the firm's exposure in any counter-claim.

Your malpractice carrier may also have an issue with suing clients to collect fees. Many malpractice insurance applications or renewal questionnaires ask whether you or the firm have sued a client within the last twelve months to collect a fee, and if so, how many times and the outcome. Carriers know from

experience that filing fee collection actions both invite and facilitate claims. If you file collection cases too often, your premiums may be affected or your coverage may even be denied. As an alternative to filing a suit, consider the inclusion of a mandatory arbitration provision in the fee agreement to handle fee disputes.

Post Termination Remedies

Collections can be made more complicated if the attorney is discharged or withdraws before the completion of the matter. Again, fee agreements can and should cover these events by including the attorney's rights upon discharge. For example, the agreement can provide for conversion of the contingency fee to an hourly or fixed fee if the client discharged the attorney without cause or the client's conduct makes it necessary for the attorney to withdraw. The fee agreement can also require the client to consent to a fee sharing with any successor counsel if the attorney is discharged or withdraws prior to the conclusion of the case.

Finally, in addition to filing suit, attorneys are often tempted to assert a file lien to secure payment of outstanding legal fees. DLRPC Rule 1.6(d) does allow an attorney to "retain papers relating to the client to the extent permitted

by other law." Delaware does recognize attorney file liens. (See former columns: *Attorney Liens in Delaware: An Update to an Update* [March 2012] and *Attorney Liens in Delaware: An Update* [October 2011]). However, there are serious limitations placed on the application of this remedy. Rule 1.6(d) also requires a lawyer to protect a client's interests at the time of termination including surrendering papers and property to which the client is entitled. Refusal to release a file to the client or successor counsel will almost certainly result in a disciplinary complaint. Like filing suit, assertion of a file lien should be a last resort.

Good luck!

"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 three 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.

George C. Govatos, PhD
Professional Engineer

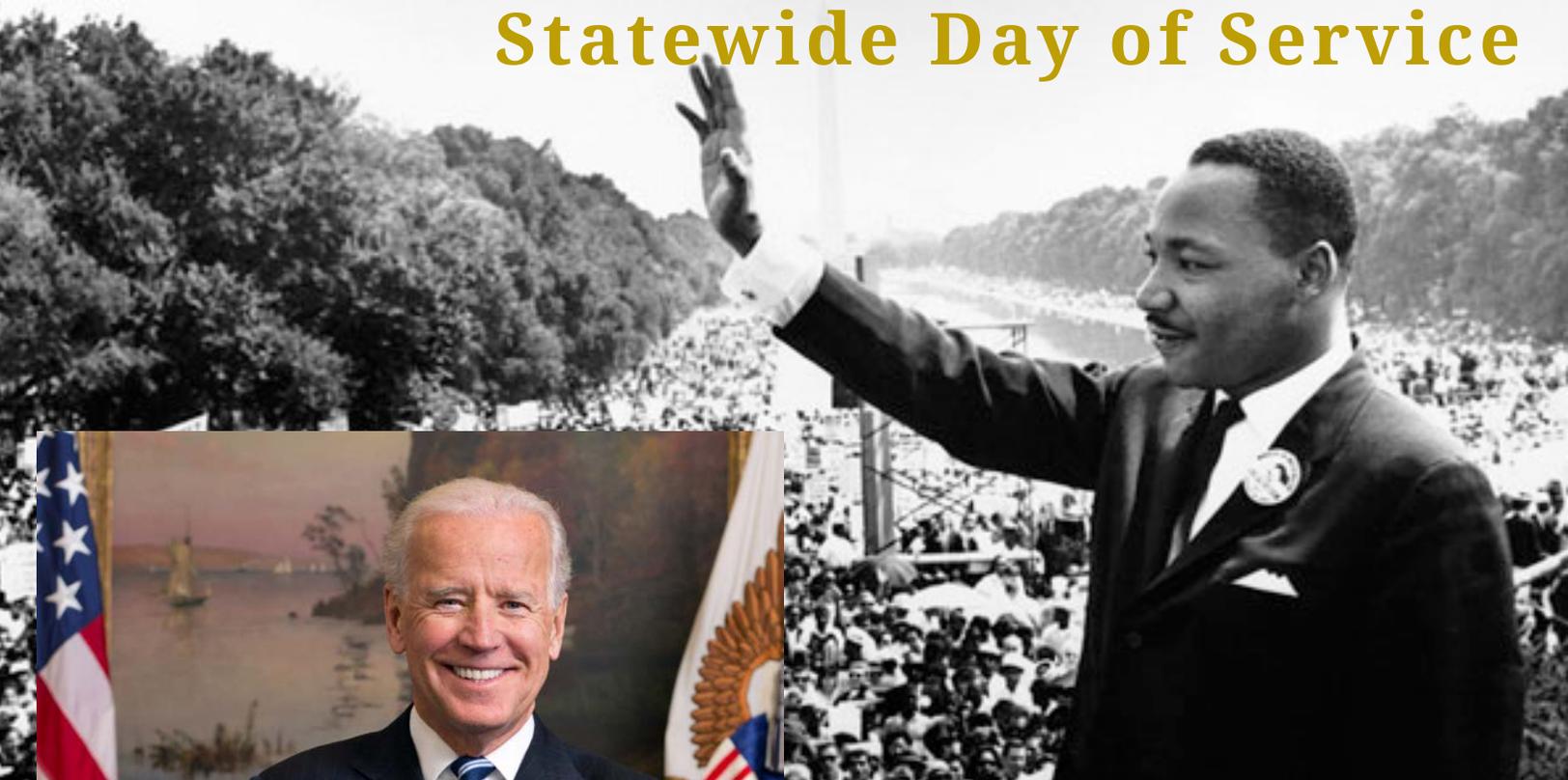
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47th Vice President
of the United States

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DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

The Traditional End of Year Self-Audit: Behind the Cool Image

As a practicing attorney or judge, what better time than now to reflect on the past year — where you have been, where you are presently, and where you plan to be in 2018? For many, this is a tradition, while for some it is not. There are others who ask, “Why take the time for a self-audit? I already have a cool image!”

We know that lawyers are referred to as great problem-solvers. However, it is imperative for the lawyer to realize that even when lawyers are highly successful in treating a client’s dilemma, all too often it

is difficult for many to address their own concerns, goals, plans, wellness, and stamina.

Lawyers and judges often exhibit a cool image to their clients, families, and peers, but often suffer from the shoemaker syndrome — recalling the tale of the shoemaker who had time to fix everyone else’s shoes but his or her own. The day-to-day pressures and deadlines of practicing law, coupled with the ongoing responsibilities of life itself often cause a lack of time for those in the legal profession to take time for themselves.

This lack of time is unfortunate because it is important for all of us to pencil ourselves into our calendars. We need to realize that behind the cool image, lawyering in the 21st century takes foresight, patience, courage, excellent legal skills, personal wellness, and stamina. Take this self-audit in order to design, plan, and implement a professional and personal blueprint for strategic action steps towards success both professionally and personally.

Take a break and ask yourself these master questions:

- Do I have realistic short-term, as well as long-term plans for my law office, my career goals, and my personal life?
- Do I have a written budget and accounting practices in place for 2018, both professionally and personally?
- Do I monitor the types of cases that are most and least profitable in 2017?
- Do I have an updated checklist for Lawyers Planning to Protect Clients’ Interest in the event of my death, disability, impairment, or incapacity? Is my “substitute” attorney updated?
- Do I feel that I work too many hours? If so, can I design a plan to add more balance to my life and learn to implement it?
- Do I have a personal wellness plan to maintain stamina and fitness to practice law successfully? Do I know how to say “no” to personal commitments?

Short-Term and Long-Term Planning

A lawyer, like other business people, should write a strategic business plan that includes short-term and long-term goals. This written plan allows you to focus on what you need to do today, next week, and next month in order to position yourself so that you and your business are traveling in the right direction and do not end up somewhere else or derailed.

All firms — solo, small, or large, new or old — need a written budget, especially in today’s competitive marketplace. This budget should be implemented and reviewed regularly. Ideally, you should work with an accountant familiar with law



Tips from the Happy Attorney

- Seize the day (every moment)
- Take time to eat right.
- Take time to sleep.
- Take time to play.
- Take time to pray.
- Take time to love.
- Take time to give.
- Take time to laugh.
- Take time to plan.
- Take time to implement.



Habits to Consider During Your Self-Audit

- Behave yourself.
- Answer the phone.
- Return your phone calls.
- Keep your hands off your clients' money.
- Tell the truth.
- Admit ignorance.
- Be honorable.
- Show civility.
- Defend the honor of your fellow attorneys.
- Be gracious and thoughtful.
- Value the time of your fellow attorneys.
- Give straight answers.
- Think first.
- Define your goals.
- Tell your clients to behave.
- Solve problems — do not become one.
- Have ideals you believe in.
- Do things that will make you proud of yourself.
- If you need help, get it.

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

firms of your size. Your budget should include all fixed expenses for the coming year on a month-to-month basis. This allows you to keep an eye on spending, billing, etc.

Monitor the types of cases that are most and least profitable. Stop doing work that is not profitable (This does not include your *pro bono* work.) It does include, however, those cases that take a lot of your time and the clients either do not pay, will not pay, or the case is just a bow-wow. Many hard-working,

honest lawyers find that their expectations about getting paid are not shared by their clients. The result is stress, frustration, and problematic cash flow. Therefore, weed them out.

Life events happen. Most individuals (lawyers included) will deal with loss, trauma, and change at some point in their lives. It is part of being human. Although for many lawyers, it is a frequent trait to ignore unpleasant thoughts such as disaster, unexpected illness, misfortune, or death. By ignoring these events, we fail to prepare for the day the unexpected illness, disaster, or even death may prevent us from executing our responsibilities as lawyers: Therefore, fill out an updated a checklist for Lawyers Planning to Protect Clients' Interest in the event of your death, disability, impairment and incapacity. And, have an updated checklist for closing your office (forms available on www.de-lap.org).

Then, once you have the written plan, it is vital that you implement it. Implementation is action and action converts your visions into a strategic plan for 2018 and beyond. Monitoring and management is essential to the success of your plan. Through both business and personal management, you build the foundation and framework that unifies purpose and meaning, while maintaining the stamina you need behind that cool image.

Fortunately, most lawyers, behind the cool image, take great pleasure and pride in 21st century lawyering. Unfortunately, some lawyers may not devote enough time to their personal well-being. Realistically, it takes planning, implementation, and management. DE-LAP's annual self-audit may be the difference between success and failure. For that reason, it is not too late to review some simple personal procedures that can contribute to time, money and the establishment of habits that can enhance you and your professional life.

For more information on the topics discussed above and for free checklists, call The Delaware Lawyers Assistance Program (DE-LAP) at (302) 777-0124 or e-mail Carol Waldhauser at cwaldhauser@de-lap.org. Remember too, if you, or someone you know, is having problems that are affecting your/their ability to practice law or quality of life, call DE-LAP. ☎

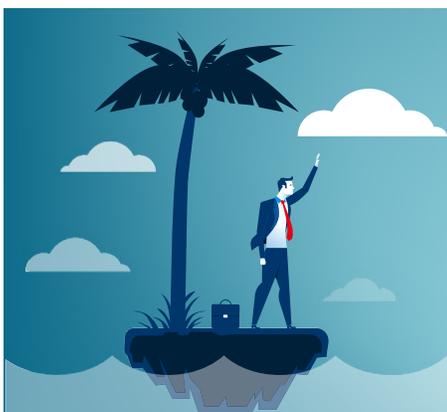
Carol P. Waldhauser is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at cwaldhauser@de-lap.org.

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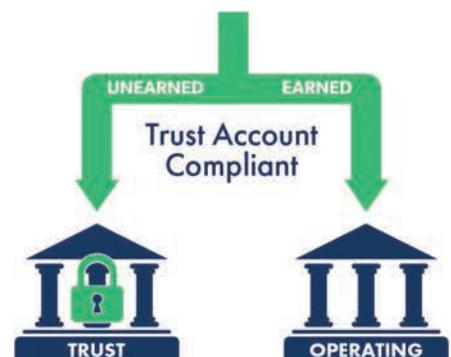
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BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

Happiness is...: *Happiness & the Law*

By John Bronsteen, Christopher Buccafusco, and Jonathan S. Masur
(Univ. of Chicago Press, 2015)

Traditionally, in trying to assess the effectiveness or desirability of a proposed law or regulation, legislators and regulators have used the tried and true cost benefit analysis — that is, do the benefits of a proposed rule (expressed in monetary terms) outweigh the costs? If so, proceed; if not, propose a different rule, or proceed anyway (but only because there are other justifications which outweigh the negative cost).

The cost benefit approach is not without its shortcomings. Not all benefits can be expressed in dollar terms. Estimates of benefits are sometimes hard to monetize. Some costs may be overlooked. Some benefits may be overlooked. The list of criticisms is fairly lengthy, but nevertheless, the cost benefit analysis it is still used by most policy makers. After all, it does impose some rigor and discipline on the process and is certainly better than ignoring costs and benefits entirely.

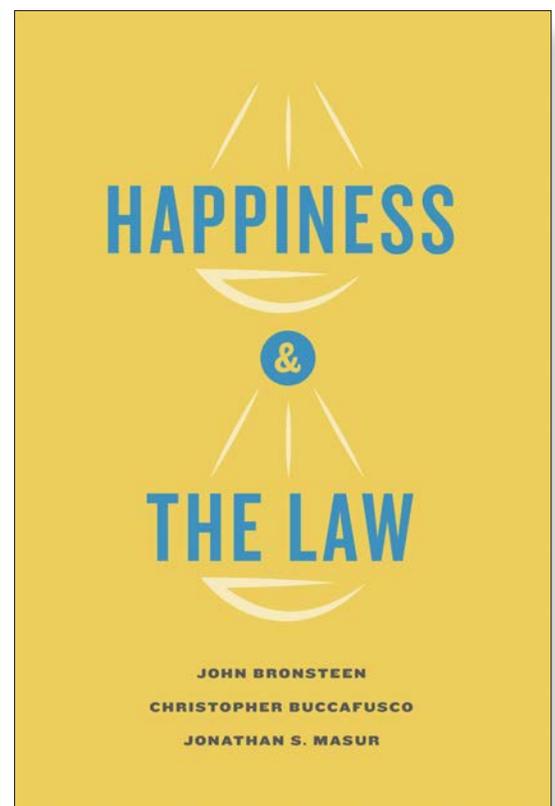
But, what if there was a better way? What if there was a method that overcame many (although not all) of the problems associated with the traditional cost benefit analysis? According to Professors John Bronsteen, Christopher Buccafusco, and Jonathan S. Masur, there is. In their book, *Happiness & the Law*, they propose the use of “well-being analysis” — an analysis that focuses on the aggregate “happiness” of individual citizens (hence the title of their book).

Not only do the professors assert that well-being analysis is better than the traditional cost benefit analysis, but they further argue that by focusing on “happiness,” policy makers could achieve better aggregate results for society in a host of situations. Suppose, for example, that in a car accident Jane loses a leg, while Jack suffers a concussion and continuing chronic headaches. The jury will most likely award Jane significantly more than Jack because, after all, losing a limb permanently is much worse than a series of headaches — or is it?

Hedonic studies (that is, studies that measure happiness) find that most folks are fairly adaptable and adjust fairly readily over time to changed conditions. For example, these studies find that, generally speaking, when someone loses a limb, they initially suffer a decrease in happiness, but over time revert back to their baseline happiness level. However, if someone is left with chronic headaches, that come and go, they will not necessarily adapt as

well, because recurring headaches (as compared to losing a limb) will interfere more with many of life’s activities such as watching TV or reading a book or eating a fine meal or enjoying a glass of wine. By focusing on long-term hedonic effects, and taking adaptation into account, one can better compare injuries and more properly determine compensation awards.

Hedonic studies also present some interesting findings when it comes to criminal



sentences. Suppose Jack goes into the bank with a gun to rob it, while Jill sits in the getaway car with the engine idling. When they are both caught, Jack gets a longer sentence (ten years) than Jill (five years). From a punishment perspective, are the sentences right? We assume that the longer the sentence, the more the punishment. Certainly being in prison five years longer would seem worse. But, hedonic studies suggest that the difference is really not as great as it might seem. Both Jack and Jill suffer upon their initial imprisonment, but the human penchant for adaptability finds that over time inmates adapt to prison life and so the initial drop in “happiness” gradually rises as one adapts (obviously, the final happiness level will be lower if sent to prison than if not sent to prison, but the point is that the initial shock of prison wears off over time and so a longer sentence may not impose as much punishment as one might think — at least as measured by happiness levels). Moreover, notwithstanding the length of a prison sentence, the simple fact of prison time will result in difficulties for the inmate once released (harder to obtain employment, decreased opportunities, difficulty in relationships, etc.). These longer-term effects are generally the same whether one spends two years or twenty behind bars. So, the professors ask, are ever-lengthening prison terms as effective a deterrent as one might suppose?

Nevertheless, when it comes to criminal sentencing, the professors concede that hedonic studies may not be as helpful as in other areas because other factors may come into play. For example, society may want to discourage more serious criminal activity, and lengthier sentences for worse crimes is one way in which society seeks to discourage those crimes. Although those with longer prison sentences may eventually adapt to prison life, so that their happiness is not adversely affected as much as they may think beforehand, such knowledge comes only after being in prison, and so longer sentences for more serious crimes may still have a deterrent effect, at least for those who have not experienced prison life.

Recidivism also plays a role in criminal sentencing. Society may want to protect itself from those who continue to commit crimes or those it regards as dangerous or likely to engage in further criminal activity. The simple need to punish criminals is also often cited as a reason for prison sentences and society perceives longer sentences as providing more punishment for more serious crimes, notwithstanding that some prisoners may adapt to prison life. Use of a happiness approach, or well-being analysis, to criminal sentencing, then, to the extent it suggests that longer sentences do not mete out as much punishment as society might think, may still lead society to discount or ignore well-being analysis in the criminal arena due to other concerns and purposes of criminal sentencing.

The authors also address other criticisms of well-being analysis. For example, some claim that well-being analysis does not work because there is no such thing as “feeling good” or “feeling bad,” and that one certainly can’t measure these feelings. Others argue that what makes some people feel good (for example, smoking cigarettes or taking illegal drugs) is really bad for them and use of well-being analyses in certain circumstances might lead to the wrong policy outcome. Measuring aggregate “happiness” may not always work in evaluating policy choices, but then again, a cost-benefit analysis doesn’t always work either.

Regardless of whether one buys into the utility of hedonic studies and well-being analysis or not, *Happiness & the Law* still presents some interesting ideas and concepts. Whether those ideas and concepts go any further remains to be seen. Presumably, well-being analysis will become more accepted in the future if the problems associated with the analysis can be worked out and if people believe its use will make them happier. 🌍

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

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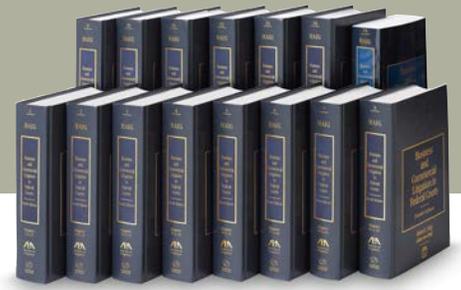


Book Review

Business and Commercial Litigation in Federal Courts, Fourth Edition

By Robert L. Haig, Editor-in-Chief

(2016, 14 vols., Thomson Reuters and ABA Section of Litigation)



Reviewed by William D. Johnston, Esquire

It is my pleasure to offer this review of the most impressive treatise I have ever seen. That treatise is the Fourth Edition of *Business and Commercial Litigation in Federal Courts*, the result of a joint venture between Thomson Reuters and the American Bar Association's Section of Litigation.

The treatise was conceived by Editor-in-Chief Robert L. Haig. Bob is a distinguished litigation partner in the law firm of Kelley Drye & Warren LLP in New York City. For almost two decades, he has

Also included is a softcover appendix that contains a user-friendly Index, as well as tables of jury instructions, forms, laws and rules, and cases. It will be updated annually. There are 25 new chapters, and chapters carried forward from the Third Edition have been updated. The treatise includes a CD-ROM, with jury instructions, forms, and checklists.

Like its predecessor editions, the Fourth Edition addresses a variety of topics of interest to federal court litigators in particular and, in my view, more

instance, "blue ribbon" authors offer helpful practice pointers.

Notably, the treatise includes chapters on topics such as multi-district litigation, litigating international disputes in federal courts, magistrate judges and special masters, Bankruptcy Code impact on civil litigation in the federal courts, Patents, Trademark, Copyright, Employment Discrimination, Tax, and Energy.

With regard to state court practice, the Fourth Edition includes chapters on comparing commercial litigation in federal and state courts, removal to federal court, and coordination of litigation in state and federal courts (authored by The Honorable Jane R. Roth). Additional chapters of the treatise focus on issues of universal interest to litigators, covering virtually every imaginable aspect of a case from beginning to end (including all appeals, and enforcement of judgments). Importantly, the treatise also discusses professional responsibility, civility, and pro bono service.

Chapters that may be of special interest to Delaware corporate litigators focus on class actions, derivative actions, securities law, director and officer liability, mergers and acquisitions, partnerships, joint ventures, and fiduciary duty litigation.

New chapters include those that discuss cross-border litigation, negotiations, mediation, arbitration, social media, marketing to potential business clients, and teaching litigation skills.

I cannot claim to have read all 17,000-plus pages of the Fourth Edition. I wish

“Like its predecessor editions, the Fourth Edition addresses a variety of topics of interest to federal court litigators in particular and, in my view, more generally to all who involve themselves with business and commercial litigation — including preparing for that litigation and mediating or arbitrating the underlying dispute.”

reviewed and commented on the chapters in all four editions of the treatise, as well as the annual Pocket Parts. In thanking the 296 volunteer principal authors of the Fourth Edition, including 27 members of the judiciary, Bob shares in the Foreword to the treatise a conservative estimate of more than \$80 million in otherwise billable time having been contributed to preparation of the four editions of the treatise and its Pocket Parts.

The proof is in the pudding. The treatise comprises 14 hardcover volumes, 153 chapters, and 17,142 pages of text.

generally to *all* who involve themselves with business and commercial litigation — including preparing for that litigation and mediating or arbitrating the underlying dispute.

Thus, the treatise discusses core federal litigation topics such as subject matter jurisdiction, personal jurisdiction and service, venue, forum selection, and transfer. In addition, it discusses internal investigations, investigation of a case, case evaluation, and preparation of pleadings. And, it discusses litigation management by corporations and by law firms. In each

that I could. But, were that so, I would still be reading the treatise and you would not be reading this review.

What I can say is that I very much enjoyed reading Chapter 46, entitled “Jury Conduct, Instructions, and Verdicts,” as an illustrative chapter and scanning many others. The lead author of Chapter 46 is Hilarie Bass, Co-President of Greenberg Traurig and currently President of the American Bar Association.

In the words of Hilarie and her co-authors, Chapter 46 “discusses issues relating to juries and jury trials, with an emphasis on techniques that can improve jurors’ comprehension in business and commercial cases and, thus, increase the accuracy and fairness of their verdicts.” The chapter thoughtfully addresses techniques such as note-taking by jurors, the jurors’ use of “exhibit books” during trial and deliberations, presentation by counsel during trial of “mini-opening” statements and/or interim commentary, and allowing jurors to ask questions of witnesses. The chapter also addresses judicial question-

ing of witnesses, and how to respond to suspected juror misconduct. Each step along the way, the authors’ writing is clear, pros and cons are explored, and strategic considerations are offered.

The chapter goes on to explore various concerns specific to preparing jury instructions in the context of a commercial case, where members of the jury may well have little, if any, familiarity with the legal or business issues presented. Again, practice tips are offered.

Finally, the chapter addresses juror conduct during and after deliberations, and drafting and submitting proposed verdict forms. Appearing at the end of the chapter is a set of “Practice Aids,” a practice checklist for “Thinking pre-trial about jurors’ participation in the trial process,” “Drafting jury instructions,” and “Assisting jurors in reaching a verdict with an appropriate verdict form.”

Chapter 46 is then augmented by other jury-related chapters (such as Chapter 36, “Jury Selection”) and by the appendix’s Table of Jury Instructions.

I was struck by the utility of Chapter 46 and the related materials given the number of business and commercial jury cases heard by the United States District Court for the District of Delaware and, increasingly, by the Complex Commercial Litigation Division of the Delaware Superior Court.

From a Delaware litigator’s perspective, the guidance provided by *Business and Commercial Litigation in Federal Courts* can be invaluable, whether the litigator is finding herself in federal or state court, in administrative proceedings, or in mediation or arbitration. I heartily commend the Fourth Edition to you and your colleagues. ☺

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

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By Daniel M. Kristol, Esquire

By Reading this Article, You Agree to the Contents Herein

As a senior lawyer, I spent much of my career drafting – and interpreting for clients – contracts. Notwithstanding that experience, I find it impossible to get through the complex text of the “click-to-agree” agreements required to access my favorite internet websites, whether retail or social media.

Have you noticed that when you check-out of Amazon on a purchase, you must “review your order,” and then you receive an Amazon notice that states: “By placing your order, you agree to Amazon’s privacy notice and conditions of use?”

How many of us have ever bothered to read those terms, and, if you did and objected to the terms, what could you do about it anyway? You want to complete the purchase through Amazon and you accept their terms, like millions of other Amazon customers, no matter what they are.

Now consider each time we use Facebook, Google, Apple and other websites which are part of everyday life and which require you to accept a “click-to-agree” agreement. Are they safe?

When we click to agree, are we agreeing to:

1. waive class action participation against the provider;
2. mandatory arbitration;
3. give the provider the right to sell, distribute, or use any information or photographs provided;
4. accept imposition of notice requirements for a return and a limited time to make such return in the event of an erroneous transaction;
5. pay the provider, in case we unsuccessfully pursue a claim, all of its attorneys’ fees and costs;

6. pay high interest rates and possibly a transaction fee in the event we owe funds to the provider;

7. limit our right to damages; or

8. a restocking charge in the event of a return of a product?

Unfortunate Allen Wisely filed a case in the U.S. District Court of the Southern District of California arguing that the arbitration clause and the class action provisions in the Amazon internet retail agreement were procedurally and substantively unconscionable. He lost and appealed to the U.S. Court of Appeals for the Ninth Circuit. In *Wisely, et al v. Amazon.com, Inc.*, No. 15-56799 (9th Cir. 2017), the Ninth Circuit held that whether you apply California or Washington law, the “conditions of use” were enforceable both procedurally (action button and check-out button were close to each other) and substantively (not unconscionable).

But Wisely’s was not a New Jersey case. New Jersey adopted a “Truth in Consumer Contract, Warranty and Notice Act” (hereinafter the “Act”) in 1981, before internet sales became a dominant means of retailing. The Act’s intention apparently was to protect consumers from arguably unreasonable contract provisions that stifled consumer rights, such as requiring mandatory arbitration or waiver of class action rights. The Act, however, has resulted in many class action lawsuits challenging the terms of internet agreements. Under the Act, an “aggrieved” consumer can recover attorneys’ fees, court costs and a minimum of \$100, or actual damages, if greater.

Can a claimant be an “aggrieved” consumer if the consumer never read the

terms agreed to when the transaction was undertaken? What if the “aggrieved” consumer suffered no adverse consequences although the agreement violated the Act? Should such consumer have an actionable right?

Also, the New Jersey consumer runs into choice of laws issues. What if Amazon provides that the law of its home state shall govern any dispute when you “click-to-agree?” Will the more Amazon-friendly state law take precedence over the Act? How about the choice of laws provisions in all of the other “click to agree” internet retail or social media agreements? As a retired senior lawyer, I have observed how some well-meaning, but dormant, state statutes enacted successfully long ago to regulate certain business or industry practices can later become an instrument of excessive litigation as technology or business practices change. Is that what is happening in New Jersey?

As the number of class action lawsuits filed in New Jersey against retailers with no physical presence within New Jersey increase, perhaps some enterprising group will adopt a code of conduct for “click-to-accept” internet agreements that may be subscribed to by internet retailers or by internet social media.

I will continue to quickly scroll through the privacy notice and conditions of use imposed upon me by internet retailers and social media. It is hoped this change in New Jersey will spur Delaware lawmakers to consider such consumer laws here and provide protection to Delaware consumers and social media users engaging in instant online retail transactions or social media. 

CELEBRATION OF A LEGACY

THE HONORABLE RANDY J. HOLLAND

By H. Garrett Baker, Esquire

President, Randy J. Holland Delaware Workers' Compensation American Inn of Court



Justice Holland with each of the three Governors who appointed him to the Delaware Supreme Court: (L to R) Governor Michael N. Castle; Senator Thomas R. Carper; The Honorable Randy J. Holland; and Governor Jack A. Markell.



Holland family with Bust of Justice Holland as presented by the Holland Inn of Court. (L to R) The Honorable Randy J. Holland; Dr. Ilona E. Holland; and Ethan B. Holland.

On September 19, 2017 the Randy J. Holland Delaware Workers' Compensation American Inn of Court convened in special session to honor its namesake, Justice Randy J. Holland. The theme for the evening was "Celebration of a Legacy." This theme was especially well suited since Holland himself was the inspiration behind the founding of the Holland Inn.

The event was held at the offices of Young Conaway Stargatt & Taylor, LLP, which is, fittingly, a former courthouse, and featured a four-course dinner of Justice Holland's favorites. Commemorative mugs filled with chocolate truffles put an exclamation point on the evening.

Joining Holland for this occasion were his wife, Ilona, their son, Ethan, and his wife, Jennifer. Ilona Holland warmly shared personal anecdotes of their courtship and her husband's early trademark of using his gifts to allow others to shine.

Of special significance, each of the three Governors who nominated Holland to the Supreme Court bench was in attendance. Governor Michael N. Castle initially nominated him on December 12, 1986. Then-Governor Thomas R. Carper re-nominated him to his second term which began January 27, 1999. And, Governor Jack A. Markell nominated him to an unprecedented third term which began February 23, 2011.

Present were Justice Karen L. Valihura, Justice James T. Vaughn, Jr., Justice Collins J. Seitz, Jr., Justice Gary F. Traynor, the Inn's newest member and successor to Holland's seat, President Judge Jan R. Jurden, Resident Judge Richard R. Cooch, Judge Vivian L. Medinilla, and Judge Noel Eason Primos.

The Inn was also privileged to host the Executive Director of the American Inns of Court, Brigadier



The Holland Inn Executive Committee: (Back row L to R) Matthew R. Fogg, Past President, and Michael G. Owen, Treasurer. (Front row L to R) The Honorable Randy J. Holland; Cassandra F. Roberts, Administrator; H. Garrett Baker, President; Julie S. Pezzner, Vice-President.



Inn of Court national officers: (Back row L to R) Christina Hartle, Chapter Relations Director Mid-Atlantic Region; Cindy Dennis, Awards and Scholarships Coordinator. (Front row L to R) The Honorable Randy J. Holland; BG Malinda Dunn USA (Ret.), Executive Director; Ernest Barrens, Chapter Relations Director Northeast Region; Mary-Kate Coleman, Third Circuit Trustee.

General Malinda Dunn along with Cindy Dennis, Ernest Barrens, and Christina Hartle of the national Inns of Court offices.

General Dunn stated, “It was an honor to be among the Randy J. Holland American Inns of Court community, celebrating Justice Randy Holland who exemplifies civility and professionalism. The tributes to Justice Holland — from senators, governors, justices, and Inn leaders were inspiring.”

Several of Holland’s colleagues, past and present, paid tribute to his judicial temperament, scholarship and legacy.

In the words of former Chief Justice Veasey, “He has made not only a national but also an international impact on the justice system and the legal profession. He has fostered extraordinary improvement in the practice of law and has dedicated his exemplary career to the improvement of the administration of justice throughout the nation and the world.”

Former Chief Justice Steele stated, “I know of no one who has demonstrated throughout his career more loyalty to his family and the institution in which he served than Justice Holland. He is a symbol of the constitutional oath each of us takes upon appointment to the bench.”

Justice Valihura added, “I was very privileged to have a portion of my term on the Supreme Court overlap with Justice Holland’s term. He is uncommonly

kind and a mentor to so many. Uniquely, he was a mentor to the entire Delaware Supreme Court.”

The three Governors who nominated Holland to the bench also highlighted his achievements.

In speaking of his initial appointment of Holland to the Delaware Supreme Court, Governor Castle stated, “Thirty years ago while I was a Governor, a list came up to me of nominees to the Supreme Court and Randy Holland’s name was on it. It was obvious to me that he should be on the Court. He has been a wonderful choice in doing everything one can do to further the law and for that we will always be grateful.”

Senator Carper stated, “Among the qualities I looked for when nominating judges and justices were people who were smart, had good judicial temperament and judgment, were humble, who live by example and who know the law. Nobody exemplifies those qualities more than Justice Holland. It has been an honor to know him not just as a Justice but as a husband and a father as well.”

In celebrating Holland’s illustrious career, Governor Markell stated, “Justice Holland is a giant in the history of Delaware’s judiciary. His intellect is matched by his demeanor. We have been so lucky to have him and look forward to his next chapter.”

Among the many highlights of the evening was the Inn’s presentation to Holland of a bust of him which will be housed at the Delaware Law School. Given Holland’s love of legal education, and legal scholarship, this seems a well suited location for this testimonial to his legacy to be placed. It will serve as a reminder to all present and future law students of the deep footprints and lasting legacy Holland has made on the Delaware legal community.

President Judge Jurden stated, “I want to congratulate the Holland Inn’s Executive Committee members for conceiving, planning and expertly executing one of the most memorable tributes I think I have ever witnessed during 16 years on the bench. It was beautiful. Warm, personal, elegant — the atmosphere, food, and all the special touches, combined with the remarks of so many distinguished speakers, were a fitting tribute to a great man. I am so proud to be a member of the Holland Inn and feel privileged to be among its ranks.”

Holland shared with us his appreciation for naming this Inn for him. However, truly it is we who are in his debt as he has supported and guided our efforts at each step, as a model of civility, excellence and strength of character. It will always be our task to live up to the example he has set. While we can never repay that debt in full, we can certainly attempt to walk worthy of it. ☪

2017 Christopher W. White Distinguished Access to Justice Awards Breakfast

Thursday, October 26, 2017

Chase Center on the Riverfront, Wilmington, DE



Stephanie L. Hansen, Esquire, Bryan Townsend, Esquire, and Anthony Nicholas DeCollo, Esquire, presented the DVLS Tribute to Janine N. Howard-O'Rangers, Esquire, and The Delaware State Bar Association Pro Bono Celebration Week Tribute to DSBA President Michael Houghton, Esquire.



Leadership Award: Accepted by Joanna J. Cline, Esquire, on behalf of Pepper Hamilton LLP.



Achievement Award: Marc J. Wienkowitz, Esquire, of Greto Law.



Commitment Award: Kara M. Swasey, Esquire, of Bayard, P.A.



Service to Children Award: Lisa A. Minutola, Esquire, Office of Defense Services.



Legal Professional Pro Bono Service Award: Heidi Coleman, AACP, DCP of Sullivan Hazeltime Allinson LLC.

The Christopher J. Battaglia Memorial Awards



The Small Firm Participation award was presented to Blank Rome LLP.



The Large Firm Participation award was presented to Potter Anderson & Corroon, LLP.



The Emerald Award for Most Tocqueville Society members was presented to Morris Nichols Arsht & Tunnell LLP.

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The Honorable Danielle S. Blount
Family Court of the State of Delaware

GOVERNMENT SERVICE AWARD
Sharon D. Agnew
New Castle County Prothonotary (retired)

WOMEN'S LEADERSHIP AWARD
Yvonne Takvorian Saviile, Esquire
Weiss & Saviile, P.A.

YOUNG LAWYERS DISTINGUISHED SERVICE AWARD
Kara M. Swasey, Esquire
Bayard, P.A.

Awards Luncheon • Tuesday, December 5, 2017 • 12:00 Noon
Please RSVP by November 28, 2017

Please include names and DE ID numbers of all attendees with response. DSBA Members may register online at www.dsba.org.

Name: _____ DE Bar ID No.: _____

E-mail (required): _____

Firm: _____ Phone: _____

Address: _____

Check/Charge in the amount of \$ _____ enclosed. (\$48 per person) Please make checks payable to DSBA.

MasterCard Visa Amex Discover Exp. date: _____ Card No.: _____

Signature: _____ (Required if card purchase) CVV: _____ Billing Zip Code: _____

For Office Use Only

Please return completed RSVP to DSBA: By fax to (302) 658-5212 or mail to 405 North King Street, Suite 100, Wilmington, DE 19801. Refunds issued if cancellation is received no later than one week prior to an event. All refund requests must be in writing. Unpaid registrants who fail to attend the event are responsible for the full

POSITIONS AVAILABLE

ASSOCIATE ATTORNEY: The Alba Law Group, P.A. seeks Delaware barred attorney for Newport office. An understanding of creditor rights and real property law is a plus. Attention to detail, flexibility and a positive attitude is a must. Early career candidates are encouraged to apply. Please submit resume and salary requirements to human resources at HR@albalawgroup.com.

GROWING SUSSEX COUNTY LAW FIRM: The Law Office of Susan Pittard Weidman, P.A., with offices in Rehoboth Beach, Millville, and Millsboro is seeking an attorney with an interest in Real Estate, Estate Planning, and Probate. Experience is a plus. A successful candidate will be motivated to succeed, interested in leading a team, have an exceptional eye for detail, and time management skills. An excellent opportunity to continue building a successful practice and work at the beach. Email resume to rebecca@spwdelaw.com.

MARKS, O'NEILL, O'BRIEN, DOHERTY & KELLY is seeking a Delaware licensed Associate to work in Wilmington. Candidates should have 0 to 2 years of related experience, strong writing ability, good organizational skills and be a team player. Competitive Salary & Benefits. Send resumes to ksimmons@moodklaw.com.

CLASI IS HIRING an attorney in its Dover office. For more information, see job posting at www.declasi.org.

MULTI-STATE TITLE COMPANY, practicing in Delaware for more than 10 years, is seeking a Delaware Barred Attorney to help us grow and expand our Delaware business. Recent Bar Admits and Candidates are welcome to apply. Please reply directly via email to mdtitleresume@gmail.com.

DELAWARE LAW FIRM seeks a Delaware licensed attorney to join its growing commercial and residential real estate practice. Candidate must be willing to focus in real estate and still practice in other areas. Duties would include holding real estate settlements. We do not require any experience and are willing to train. We offer a pleasant work environment and team atmosphere. Pay will commensurate with experience. Bonuses available to reward work performance. Please send resume with cover letter and salary requirements to realepbizlaw@gmail.com.

PRICKETT, JONES & ELLIOTT, P.A. is seeking a Delaware-licensed attorney with 1-3 years of corporate litigation experience in the Delaware Court of Chancery. Applicants should be entrepreneurial by nature, have a strong background in finance or economics, superior academic credentials, strong writing skills and a desire to succeed. Prior non-legal business experience preferred. Applications should include a cover letter, transcripts, resume and writing sample. Candidates should send applications to Joanne Hamill at jchamill@prickett.com. ☯

Don't miss the DSBA Bi-annual Musical !!

NOV. 17th & 18th at 7 PM in the Tatnall Theatre, Wilmington & NOV. 19th at 2 PM, Central Middle School Auditorium, Dover

The PUBLIC ENEMY Runnin' Wild



This musical treats you to the 1920s approaching Prohibition. It was a time that pitted the combined forces of The Woman's Christian Temperance Union and the Chicago gangsters on the side of pushing for "the Noble Experiment" against the alcohol industry, the medical profession, the Catholic Church, and everybody else with any common sense on the other. With more than 20

songs, notable dancing, and a live band of 10, all from dedicated, if slightly loony, lawyers, judges, and Court personnel, you'll have a great time.

Tickets are available at the door, or online at www.dsba.org or www.profundobono.com or through anyone you might know in the cast or band. They are priced (as they have been for 15 years!) at \$25.00 each — a great value for a great piece of entertainment for the great cause of the Combined Campaign for Justice. Hope to see you there!

City Solicitor Newark, Delaware

The City of Newark, Delaware seeks a dynamic and talented attorney to serve as City Solicitor. This opportunity is professionally challenging and rewarding in a progressive and active town and gown community of over 33,400.

As the appointed solicitor, the position reports directly to Mayor and Council, but has day-to-day service coordination with the City Manager and City Secretary. The position is responsible for managing all legal affairs of the City, including representing the City in litigation, providing regular legal advice to City Council and staff, performing other general legal services as necessary including land development and worker's compensation, and may be responsible for prosecutions in the Alderman's Court. This position provides legal support for City operations including the following departments: police, public works and water resources, parks and recreation, finance, administration, planning and development, Alderman's Court, city secretary, and the electric, water, sanitary sewer, and stormwater utilities.

Delaware Bar membership required; local government background with zoning experience and the ability to interpret and draft municipal code regulations strongly preferred. Must possess excellent communication skills and the ability to work with people possessing diverse interests, backgrounds and technical abilities. Requires attendance at four regular evening meetings per month (City Council, Planning Commission and Board of Adjustment) and special Council meetings as required.

Excellent working conditions. Compensation is negotiable. Current rate is contractual and is billed on an hourly basis. Actual hours fluctuate each month.

Send letter of interest and resume to Renee K. Bensley, City Secretary, City of Newark, 220 South Main Street, Newark, Delaware 19711 or rbensley@newark.de.us by December 1, 2017 at 5:00 p.m.

BULLETIN BOARD ADVERTISING INFORMATION

Bulletin board rates are \$50 for the first 25 words, \$1 each additional word. Additional features may be added to any Bulletin Board ad for \$10 per feature. The deadline to place a Bulletin Board ad is the 15th of the month prior to the month of publication.

All Bulletin Board ads must be received electronically and prepayment is required. Submit the text of the Bulletin Board ad and payment to rbaird@dsba.org. For more information, contact Rebecca Baird at (302) 658-5279.

MOVIE NIGHT AT DSBA

Miracle on 34th Street

WEDNESDAY, DECEMBER 13, 2017 | 3:30 P.M. - 6:15 P.M.

Delaware State Bar Association, 405 N. King St., Suite 100, Wilmington, DE

1.0 HOUR CLE CREDIT FOR DELAWARE AND PENNSYLVANIA ATTORNEYS

In this Christmas classic, an old man going by the name of Kris Kringle fills in for an intoxicated Santa in Macy's annual Thanksgiving Day parade. Kringle proves to be such a hit that he is soon appearing regularly at the chain's main store in midtown Manhattan. When Kringle surprises customers and employees alike by claiming that he really is Santa Claus, it leads to a court case to determine his mental health and, more importantly, his authenticity. The CLE discussion following will discuss: Mental Health Commitment Hearings: Rights and Responsibilities and Recognizing, Preventing, and Responding to Elder Abuse.

VISIT WWW.DSBA.ORG TO REGISTER



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A complete list of DSBA CLE seminars is available on our website at www.dsba.org.

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

Prelude to the Turkey

Many Italian families enjoy a pasta course before the traditional Thanksgiving meal of turkey and sides. When I was growing up, the pasta of choice was typically ricotta gnocchi in a red sauce. While gnocchi is one of my all-time favorites, I would opt for a more seasonal selection — a wild mushroom ravioli — to make the most of fungi at their peak. The quantities in this recipe make eight servings. 



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the dough enough so that you can lift it from the board, then re-flour the cutting board. Knead the dough, which will be slightly sticky, for five minutes. Wrap it in plastic and refrigerate for 30 minutes.

Melt the butter in a large nonstick sauté pan over medium heat. Add the shallots and cook until almost soft, about three minutes. Then add the mushrooms, stirring often, and cook until tender, about five minutes. Drain off any excess butter if necessary as you do not want the filling to be too wet when you fill the ravioli. Season with salt and pepper to taste and set aside.

Cut the pasta dough into four equal pieces. Using a pasta machine, roll out one piece as thin as possible. Place one teaspoon mounds of filling one inch apart along the rolled-out pasta. Moisten the spaces around the filling mounds with a pastry brush dipped in water. Roll out another piece of dough to the same thickness. Carefully place this piece on top of the piece with the mounds. Using your thumb, press the dough together around the mounds to create a seal. Cut out the ravioli with a fluted cutter. Place the ravioli on a kitchen towel on top of a baking sheet, and cover with another towel. Repeat with the other two pieces of pasta dough.

When ready to serve, bring a large pot of water to a rolling boil and add a pinch of salt. Also, add one stick of butter to a nonstick skillet and cook over medium heat until beginning to brown. Cook ravioli for three minutes. Remove with a slotted spoon and add to pan with browned butter. Place four ravioli on each plate and drizzle with the brown butter. Sprinkle with toasted pine nuts and parsley. Serve immediately with Parmesan cheese and fresh ground pepper. 

Susan Says, Mommom Muses

Question: What should I do if I'm a guest in someone's home and am served something I don't like?

- Carping Counselor

Susan: Dear Carping Counselor, if your aversion is intense, try to at least taste a bite or two. Otherwise, eat as much as you can. It would be rude to avoid the item completely. If your hosts offer seconds, you may decline more of the item you dislike; however, request more of another dish so they don't think you dislike their cooking in general.

Mommom: Move the food around on your plate so it looks like you're enjoying some of everything.

MUSHROOM RAVIOLI

For the Pasta

- 4 cups all-purpose flour
- 4 extra large eggs
- 1/2 teaspoon olive oil
- Small pinch sea salt

For the Mushroom Filling

- 6 tablespoons salted butter
- 2 pounds fresh wild mushrooms (chanterelles, oyster, enoki, crimini) washed, drained and chopped
- 2 shallots, minced
- Sea salt
- Fresh ground pepper

For the Sauce

- 1 stick unsalted butter
- 3/4 cup toasted pine nuts
- 1 bunch flat leaf parsley
- Parmesan cheese
- Fresh ground pepper

Mound three and a half cups of the flour on a large wooden cutting board. Make a well in the flour and add the eggs and the olive oil. Beat the eggs and olive oil with a fork, and slowly incorporate the flour from the sides of the well. The dough will come together when about half the flour has been blended. Knead



Susan E. Poppiti is a mathematics teacher and director of the legal shadowing program at Padua Academy High School and managing member and cooking instructor for La Cucina di Poppiti, LLC and can be reached at spoppiti@hotmail.com. Other recipes and cooking tips are available on Susan's food blog at www.cucinadipopppiti.com.

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Morris James^{LLP}
is pleased to announce
Eric J. Monzo
was awarded the
Kathryn R. Heidt Memorial Award

Partner Eric J. Monzo has been honored by the American Bar Association’s Business Bankruptcy Committee with the Kathryn R. Heidt Memorial Award. The Award serves as a lasting tribute to the late Kathryn “Kate” Heidt, who at the time of her death was the chair of the ABA Business Law Section’s Business Bankruptcy Committee. The Award was designed to serve as a lasting tribute to all Kate was and all for which she stood and to recognize the importance of bankruptcy education and scholarship to the ABA Business Bankruptcy Committee and the bankruptcy profession. Mr. Monzo received the Award during the ABA Business Bankruptcy Committee luncheon at the National Conference of Bankruptcy Judges in Las Vegas, Nevada.

Eric J. Monzo focuses his practice on issues relating to business restructuring and insolvency. He regularly represents a wide range of stakeholders with a focus on corporate debtors and their independent and special committee management, in addition to, commercial creditors, official and unofficial committees, indenture trustees, and lender groups. Mr. Monzo can be reached at 302.888.5848 or by email at emonzo@morrisjames.com.

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