We Will Get Through This Storm Together
In this period of monumental change, both professionally and personally, The Delaware Lawyers Assistance Program (DE-LAP) understands that the culture of the legal community makes it difficult to ask for help.

For that reason, the Delaware Lawyers Assistance Program (DE-LAP), together with The Delaware Lawyers Assistance Fund (DELAF), have developed a free, confidential call-in service for Delaware’s legal professionals. This service is a free and confidential way for Delaware judges, lawyers, and legal professionals to discuss their anxieties with DE-LAP’S core team of licensed health-care professionals during the COVID-19 crisis and time of upheaval.

If you or someone you know needs to talk, please take advantage of DE-LAP’s new mental health call-in service to our team of licensed health-care professionals, designed especially for the legal culture.

Call the DE-LAP core licensed team directly, or for more information call DE-LAP’s confidential line at (302) 777-0124 or email cwaldhauser@de-lap.org.

**DE-LAP’S CORE LICENSED TEAM IS:**

Dr. Sarah Falgowski, M.D.,
Delaware Psychiatry and Wellness
1500 Shallcross Avenue, Ste 1A-5
Wilmington, DE 19806
Phone: (302) 588-2680
Fax: (302) 202-3239
Email: delawarepsychiatry@gmail.com

Rich Lombino, Esquire, LCSW
Therapist & Lawyer
Lombino Counseling LLC
1521 Concord Pike, Suite 301
Wilmington, DE 19803
Phone: (302) 273-0700
Fax: (302) 273-0605
Email: info@richlombino.com
Web: www.richlombino.com

Alice R. O’Brien, MS, NCC, LPCMH
Counseling at Sussex Cottage
4800 Lancaster Pike
Wilmington, DE 19807
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Email: aliceob@comcast.net

WE DO TOGETHER WHAT NEED NOT BE DONE ALONE!
DSBA BAR JOURNAL
APRIL 2020 | VOLUME 43 • NUMBER 9

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Cover: © istockphoto.com/Rasica
I start this month’s “President’s Corner” with an apology. Last month, I wrote about the Delaware High School Mock Trial Competition and somehow omitted the Family Court in the list of Courts from which members of the Bench participated. In my defense, I did state in the article that “[e]ach Delaware State trial Court was represented” and I am convinced that I listed the Family Court in an initial draft, particularly since I spoke with Judges Felice Glennon Kerr and Michael Arrington when we were all checking in prior to the first day’s sessions. However, the finished content I sent to Rebecca Baird at the Bar Association did not mention the Court and, for that, I sincerely apologize. My thanks to past DSBA President and now Family Court Judge, Jim McGiffin, who also judged this year’s competition, for good-naturedly giving me a hard time in pointing out my oversight (and for forgiving me).

A lot has happened in our world since my last column. Within a short period of time, the COVID-19 (coronavirus) pandemic has caused a complete upheaval in every aspect of our lives. What started as passing news reports of an isolated virus in China seemingly overnight spread to all parts of the globe. When I started to write this, here in Delaware, we were just beginning to feel its effects, before any confirmed cases were reported. In rapid succession, schools had closed, some voluntarily at first, then later by order of the Governor, along with bars and restaurants, and finally, within the past few days, all non-essential businesses were ordered to shut down until either May 15 or when the public health threat is eliminated. While law firms are among the businesses exempted from the shutdown, the Courts, with exceptions for emergency and essential hearings, are now closed to the public until at least mid-April. In short, we are dealing with an unprecedented and catastrophic situation, with no timetable for resolution.

It would be incredibly naïve and insensitive of me to say that everything will turn out alright. Rest assured, we will get through this ordeal, however long it may take. Many of you can attest that your experiences over the past several weeks include office closings and working remotely; calendars being completely rearranged; and logistics for even the most basic client meetings or transactions (if even taking place) changing on practically a day-to-day basis. That reality will continue into the foreseeable future. However, it is a minor inconvenience in comparison to what many in our community will face. Aside from the obvious costs paid by those who become ill and their families, a significant number of Delawareans’ lives will never be the same. Some have already been temporarily laid off and have filed for unemployment benefits, possibly for the first time in their lives; some, fortunate to still be working, have had their hours cut; and some have already lost or will lose their jobs or businesses permanently, as certain sectors find themselves simply unable to recover from the massive disruption to their livelihood. Others may see their savings dry up due to losses in the financial markets or other investments and some will lose their homes. Our State being the close quarters that it is, each of us, no doubt, will likely know someone close to us who is so affected and among them may well be members of our Bar. It is both inconceivable and inevitable and altogether heartbreaking.

When I opened my firm just over five years ago, my then-associate, Nikki Whetham-Warner, who was instrumental in so many things in getting us off the ground, came up with a motto for our practice that we still feature on our website: “We Are In This Together.” While I have always tried to follow that ideal in representing our clients, I have to admit that I hadn’t really thought about the actual words in quite some time until I was reminded of it this past week. That is exactly what we will need to keep at the forefront of our thoughts and actions if we are to endure this crisis.

As you know, I have spoken throughout my term as President in an effort to increase pro bono participation and services. I like to think that, here in Delaware, we attorneys always step up in times of crisis. We certainly have one now. There will be a great number in our State who will need our help in the months and years ahead. If there has ever been a time with a more pressing need for pro bono services, I am not aware of it during my twenty-five years in practice. I am not going to cite specific areas, simply because the scope will likely be so widespread, but I implore you to do whatever you can to assist those in need who will not be able to afford to hire an attorney.

Our community also needs to see that our justice system will maintain as much of a semblance of normalcy as can be expected. I have complete confidence that will happen.
much of a semblance of normalcy as can be expected. I have complete confidence that will happen. Our Courts have already acted swiftly and appropriately under the Supreme Court Judicial State of Emergency and various Standing Orders and will continue to do so as circumstances dictate. There will be delays and inconvenience; trials, hearings, case scheduling, and other matters will be affected in the short and long term. We, as practitioners, must work together and cooperate, likely more than ever, to assist the Courts in carrying out their mission and provide for the administration of justice in these trying times, in the words of Chancellor Andre Bouchard, “without the need for court involvement whenever possible, consistent with the longstanding tradition of professionalism that has defined our Bar.”

No doubt you are also being inundated with multiple emails every day from countless organizations providing updates and information on COVID-19, *ad nauseam*. I do not want to disparage any of those good faith efforts, but it can be a bit overwhelming. Our Bar Association has intentionally avoided flooding your inbox with daily blasts. However, we are here to assist you. To that end, our staff has established a webpage to provide information on the State and Federal Court policies and procedures throughout the current situation, as well as links to resources that may be useful in dealing with the challenges we are now facing. Please see www.dsba.org/covid-19/ for more information. In addition, in order to keep providing live CLEs to our members during the State of Emergency, the DSBA will be conducting seminars by video conference using the Zoom platform. I encourage you to participate in one or more of these programs, not only to use this new technology and be able to provide feedback on what works well and what might need improvement, but also to interact with your colleagues within the Bar whom you may not have been able to see recently.

Our country and our world are presently in uncharted territory. As many of you know, I try to maintain a sense of humor no matter what the setting (even when I am the only one laughing at my jokes), but it has been difficult for me to muster a cheerful attitude with the current state of the world. However, not for a moment do I think that we will not pull through this crisis. While I am supremely confident we will come out of this stronger in the long run, it will take faith, diligence, and cooperation on the part of all of us. Remember, We Are In This Together. 😊

Notes:
1. I still lost my argument before Judge McGiffin on that “each Court was represented” point.

William Patrick (“Bill”) Brady is the current President of the Delaware State Bar Association. He is a member of the Small Firms and Solo Practitioners Section, Real and Personal Property Section, Litigation Section and ADR Section of the DSBA. He has been a member of the Delaware Bar since 1995 and has served on the Executive Committee of the Delaware State Bar Association since 2009. He is the founder and managing attorney of The Brady Law Firm, P.A. and can be reached at wbrady@bradylawde.com.
In times of great difficulty, history shows that those who stick together are the most successful at facing the adversity. In a pandemic, this might seem to be an impossible task with self-quarantine, shelter-in-place, and lockdown as the cautionary words of the moment. But, we live in a world that can bring us together even without the comfort of a face-to-face meeting or a handshake. Technology has made it possible for all of us to remain connected. “Social distancing” is a misnomer. We should be practicing “physical distancing,” but there is no reason why we cannot remain social with the rest of our profession.

Connecting our members to each other is one of the main goals of the Bar Association. Do not be reluctant to reach out to the DSBA to help you figure out the best way to stay connected.

In the past few weeks, the Bar Association has had to adapt just like its members. We are experimenting with various forms of technology to try to bring our Bar together. We have been working from home and meeting through video conferencing. We have forwarded our fax machine and phones. We have had to make difficult decisions regarding the events and CLEs, which are the financial life-blood of this non-profit company. But, through all of this, I have been amazed at the willingness of the DSBA staff to jump to meet the concerns of our members. Whether the problem is a video that will not load, or a question about credits, or a significant concern about how a small practice could handle something amid the pandemic, the DSBA staff has answered calls and emails as if the building on 405 North King Street is actually open.

The reason for this dedication is that, despite it sounding sappy, “We love our members.” We recognize that you are the reason we exist and we want to serve your needs as best we can. During this bleak time, we have been working behind the scenes to help where we can. We have had attorneys request that we intervene with courts and other agencies to clarify practices; we have compiled resources into one location (www.dsba.org/covid-19/) to eliminate the need for you to search emails to find an answer to what has been changed, closed, or temporarily delayed; we have worked with Sections to find a legal means to temporarily remove restrictions which require in person notarization and other aspects of your practice which might make you uncomfortable or which might affect the health of others; we have partnered with DE-LAP to bring you free stress counseling; we have partnered with others to bring you free CLE topics which are relevant to this current crisis. Please know, we are working hard for you.

And, while we say “We love our members,” the truth is, “We also love our non-members.” Much of what we are doing during this time is for all members of our Bar, not just Association members. I have been approached by a number of attorneys for help and help is provided irrespective of their membership status (although I cannot promise I will not make a pitch for them to join us). The truth is that the Bar Association is the guardian of the profession. We fight for judges and courts who are not permitted to fight themselves — take a look at what President Bill Brady did when he deflected the false narrative against our Court of Chancery which then resulted in personal attacks on him. We provide assistance to DE-LAP and partner with Carol Waldhauser to help attorneys with difficulties avoid ethical pitfalls. We foster mentoring programs and legislative changes.

We recognize that you are the reason we exist and we want to serve your needs as best we can. During this bleak time, we have been working behind the scenes to help where we can.

I had one non-member say to me, “What’s in it for me?” He saw no benefit to join. My response was:

The question we need to ask is, “What’s in it for us?” At the moment, it is quite possible you do not need to use our lobbyist, or our free legal research, or even the amazing camaraderie known as our sections, but your friends do and circumstances often change which might mean you might, as well.

Together, we are strong. In a crisis, we sometimes understand that better. But, the day will come when the quarantines are over, the buildings are open, and we will all be working at desks that do not have a child or a pet vying for our attention. All of us cannot wait for that day. When it comes, let’s continue to stand together like the profession we all represent.

Mark Vavala is the Executive Director of the Delaware State Bar Association. He can be reached at mvavala@dsba.org.
ART CONNOLLY RACE JUDICATA
Benefitting the Delaware Law Related Education Center (DELREC), a nonprofit 501(c)(3) with a mission to enhance the presence of law related education initiatives in Delaware.

15th ANNUAL
5K 2020

Wednesday, May 20, 2020
Logan House, Trolley Square
(1701 Delaware Ave., Wilmington, DE)
5:30 pm – Sign-in & Registration
6:20 pm – Kiddie K starts
6:30 pm – 5k Run/Walk Starts

Prizes to be won by fastest runners
Pre-Registration Fee if Registered by May 11th: $25
Day-of Registration Fee: $30
For more information and to register* online, please visit: www.races2run.com

*registration includes t-shirt & onsite refreshments*

DONATIONS OF ANY AMOUNT TO DELREC ARE GREATLY APPRECIATED.

Acknowledgments will be made as follows:
Gold: Donations of $1,250 and over;
Silver: Donations from $500 to $1,249; and
Bronze: Donations from $250 to $499.

Please make checks payable to and mail to: Delaware State Bar Association, Attn: Race Judicata, 405 North King Street, Wilmington, DE 19801
I have discovered a new Facebook group called “You may have grown up in Dover, DE if…” This is a group of several hundred people who grew up in Dover, Delaware, who feel the need to share their precious memories of that glorious city. There must be some dopamine receptor in the human brain that lights up when you are reminiscing about your formative years, because checking the most recent group posts is becoming quite the addiction. This one law-related example and walk down memory lane is my humble attempt to bring you a little reading pleasure.

Who remembers when the courthouse was by the railroad tracks?

I remember when the courthouse was by the railroad tracks.

My mother had a red Chevy Beauville van that she bought used from one of the local fire departments. It was used to drive firemen to banquets and award ceremonies, so it had very low miles. This particular vehicle had a carbureted six-cylinder engine that over time developed a significant delay in acceleration.

One day, I was driving that van and making a left turn to cross over the oncoming lanes of traffic to proceed from Route 13 northbound onto Division Street. I got the green arrow and stomped on the gas. “Ca-chuga-chuga, ca-chuga-chuga, ca-chuga-chuga,” said the engine, and the van rolled forward ever so slightly. I let up on the gas and stomped it again. “Ca-chuga-chuga, ca-chuga-chuga.” I was getting closer to the intersection when the light went from green to orange. “Ca-chug, ca-chug.” The light turned a solid red. “Vroom!” the engine came alive and the tires squealed as I flew through the intersection and onto westbound Division Street.

Unfortunately, a Dover Police officer saw the whole thing and gave me a ticket for running the red light. I tried arguing my way out of the ticket. I pointed out that if anyone was to blame, it was my own sweet mother whose carburetor was not properly adjusted. “That doesn’t matter!” the officer brusquely retorted as she handed me a ticket. “See you in court, son.”

I took my ticket home and waited for my father. Because I was a minor, I had a mandatory appearance at the courthouse by the railroad tracks. I showed the paper to Dad. He agreed to accompany me to the courthouse and represent me in this travesty of justice.

I figured this would be a shoot-out at the O.K. Corral, with Dad mercilessly cross-examining the cop. How would she ever withstand his withering questioning? She would likely fold like a house of cards. Then I would take the stand and explain the whole thing. Obviously, an acquittal would be forthcoming. And then, probably a public apology from the Chief of the Dover Police Department. This trial would no doubt be reported in the Dover Post. Maybe we would even see it in the Delaware State News.

At the courthouse, Dad went back in chambers for a time while I sat on a hard, wooden bench in the courtroom, waiting impatiently for victory. Eventually, he came back and motioned for me to come out into the hall with him.

“Here’s what’s going to happen,” he whispered. “When they call your name, go to the podium. I’ll be standing next to you. I got it all taken care of. There’s only one thing you’ll need to say. When the judge asks you, ‘How do you plead?’ just say, ‘Guilty.’”
“But, I’m not guilty!” I erupted in protest. “The carburetor was not adjusted right! I was hitting the gas and the van just wouldn’t go!”

“That doesn’t matter!” Dad snapped. “When the judge asks you for your plea, you say ‘Guilty.’ Got it?”

I could tell by the look on his face that he was serious. I nodded in agreement.

“Good,” he said. And we went back into the courtroom together.

The judge was already on the bench. “The next matter the Court will address is that of Benjamin A. Schwartz,” the judge announced dryly.

I went to the podium. I am not really sure what my father said, as I was seething with the injustice of having to plead guilty when I knew in my heart that I was innocent. The judge said something, then looked at me and asked, “How do you plead?”

I looked at my father. He stared back at me with a kind smile. I looked at the bailiff. He stared back at me benevolently, too. I looked up at the judge. He had a look on his face that let me know he was running out of patience.

“Guilty,” I whispered.

“Right answer!” the judge said. “Let the record reflect that the Defendant’s plea of guilty as part of his probation before judgment arrangement has been accepted as knowing, voluntary, and intelligent. The record will further reflect that defense counsel has already paid the fine and court costs. The probationary part of the sentence should be and hereby is discharged as improved. And the Court hereby dismisses the charge of running a red light with prejudice. The parties are excused.” The judge smiled wanly at my father.

Outside the old courthouse by the railroad tracks my father told me there is more than one way to skin a cat. He had worked out a probation before judgment deal and paid the fine and court assessments for me. All I had to do was plead guilty and the case would be dismissed. No points on my license.

But, I am still angry I did not get my apology from the Chief of Police. 😡
Fee Dispute Committee

The Fee Dispute Committee is a Standing Committee of the DSBA formed for the purpose of providing a process to resolve by arbitration fee controversies between lawyers and their clients or between lawyers who succeed each other. In controversies of less than $100,000, a single arbitrator hears the dispute and if greater than $100,000, the dispute is heard by two arbitrators. This process is not available to parties when fees are being set by a court or administrative agency; matters where fees are fixed by law; or matters where questions of ethical conduct are before the Board of Professional Responsibility. Cases are self-referred to the committee from the DSBA website: www.dsba.org/sections-committees/standing-committees/fee-dispute/.

Dennis L. Schrader has been chair of the committee since 2017 and has 13 attorneys who help him resolve the cases that he receives. He has indicated that he has “had the good fortune to have had many volunteers who have given of their skill and time to act as arbitrators.” He asked us to recognize:

Kevin M. Baird
Crystal L. Carey
Andrew W. Gonser
Reneta L. Green-Streett
Theresa McQuaid Hayes
William D. Johnston
Hon. Craig A. Karsnitz
Richard C. Kiger
Megan Sanfrancesco
Yvonne Takvorian Saville
Ronald D. Smith
Jeffrey Alexander Young
Robert B. Young

TOP 5

LIFE LESSONS WE SHOULD LEARN FROM THE CORONAVIRUS

1. Working from home should be an option for many more people.
   During this pandemic, many are learning their jobs could be possible at home. It may be worth a look at the end of all this to see just how we can cut down on traffic, pollution, stress, and wasting resources like gas, etc.

2. It’s okay to take a sick day.
   In fact, it is quite possible you may be saving a life by doing so and not just your own.

3. The internet should be a basic right.
   People unable to get online right now lack a meaningful way to contact family, work, and influence those who are making life decisions for them. Education is impossible without it.

4. Everyone should know how to cook.
   It is one of the most important skills one could have, particularly when a city goes into lockdown like New York or an entire state like California.

5. We must learn how to be content alone.
   Eventually binge watching The Office for the ninth time will not be enough. Your body and mind need to be able to rest, be still and do nothing once in a while.

6. Know where to invest
   You should really invest in toilet paper, which is apparently the new currency of the apocalypse.


Illustrations by Mark S. Vavala

FOR NEXT MONTH...

What’s your best work from home tip?
Email Rebecca Baird at rbaird@dsba.org and your response could be in the next Bar Journal.
REPORT OF THE NOMINATING COMMITTEE

The Nominating Committee met on February 25, 2020 and nominated the following for officers and membership on the Executive Committee for the year July 1, 2020 to June 30, 2021:

Vice President-at-Large: Charles J. Durante
Vice President, New Castle County: Kate Harmon
Secretary: Mary Frances Dugan
Assistant Secretary: Thomas P. McGonigle
Treasurer: Francis J. Murphy, Jr.
Assistant Treasurer: Reneta L. Green-Streett
Members-at-Large: Loren R. Barron
Crystal L. Carey
Monica A. Horton
Denise Del Giorno
Nordheimer
David A. White
Jennifer Ying

In addition, the Committee nominated:
David A. Felice to a 4-year term as the Delaware State Bar Association representative to the Delaware Bar Foundation.
Benjamin Strauss to a 2-year term as the Delaware State Bar Association representative to the ABA House of Delegates.

This report is being filed pursuant to Section 6.16(e) of the Association Bylaws. Section 6.16(f) of the Bylaws of the Association provides:

“Any ten members of the Association may nominate other members in good standing of the Association for any office for which nominations have been made by the committee by filing a signed written petition with the Secretary of the Association within ten days after the report of the Committee has been published. If a petition nominating other candidates be duly filed the Secretary shall publish notice, in a Bar Association publication or by any other reasonable means of notification, of the petition with the name(s) of the candidate(s) proposed so that the membership has notice of at least fourteen days prior to the election of the names of all candidates so nominated. There shall be no other nominations.”

OF NOTE

Condolences to Darrell J. Minott, Esquire, on the death of his wife, Evon K. Minott, who died on February 27, 2020.

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

DISCIPLINARY ACTIONS

REINSTATEMENT

In re Donald C. Vavala, III
Delaware Supreme Court No. 57, 2020
Effective Date: February 24, 2020

By Order dated February 24, 2020 the Delaware Supreme Court reinstated Donald C. Vavala, III to the Delaware Bar, effective immediately, subject to certain agreed conditions.

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.

Stay Tuned for Member Appreciation Events - Details to Follow!!
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 Ann Jacobs, Esquire, Co-Chair*
Victor F. Battaglia, Sr., Esquire
Dawn L. Becker, Esquire
John P. Deckers, Esquire
David J.J. Facciolo, Esquire
David J. Ferry, Jr., Esquire
Robert D. Goldberg, Esquire
Bayard Marin, Esquire
James K. Maron, Esquire
Wayne A. Marvel, Esquire
Michael F. McTaggart, Esquire
Denise D. Nordheimer, Esquire
Elizabeth Y. Olsen, Esquire*
Kenneth M. Roseman, Esquire*
Hon. Janine M. Salomone
Yvonne Takvorian Saville, Esquire
R. Judson Scaggs, Esquire*
David A. White, Esquire
Gregory Brian Williams, Esquire
Hon. William L. Witham, Jr.

Kent County
Mary E. Sherlock, Esquire, Co-Chair*
Crystal L. Carey, Esquire
Edward Curley, Esquire
Elizabeth O. Groller, Esquire
Clay T. Jester, Esquire

Sussex County
Candance E. Holmes, Esquire, Co-Chair
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

April 2020

Wednesday, April 1, 2020
Securely Increase Productivity Using Your Home Technology
1.0 hour CLE credit in Enhanced Ethics
Live Webinar via Zoom

Thursday, April 2, 2020
Town Hall for Small Firms During the COVID-19 Crisis
Live Webinar via Zoom

Tuesday, April 14, 2020
The Basics of Defending a Residential Eviction Case
2.0 hours CLE credit
Live Webinar via Zoom

Monday, April 20, 2020
Superior Court Mediation Training at the DSBA
6.0 hours CLE credit (The remaining training to occur at a later date.)
Live Webinar via Zoom

April Postponements

Thursday, April 2, 2020 Postponed to Thursday, September 10, 2020
Small Firms Conference
5.0 hours CLE credit including 1.0 hour Enhanced Ethics credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James, LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, April 14, 2020 Postponement TBD
Short Topics in Real Estate
3.8 hours CLE credit

Tuesday, April 28, 2020 Postponement TBD
Franchising and Basic Trademark Concepts: The Legal Aspects
2.0 hours CLE credit

May 2020

Monday to Friday, May 4 – 8, 2020
DE-LAP Wellness Week: Various Webinar Workshops
Live Webinar via Zoom

May Postponements

Friday, May 1, 2020 Canceled
Law Day Luncheon
Law Day Awards will be given out at a future Awards Event TBD

Tuesday, May 5, 2020 Postponed to Tuesday, September 15, 2020
Workers’ Compensation Practically Speaking
6.5 hours CLE credit including 1.0 hour Enhanced Ethics credit
Chase Center on the Riverfront 815 Justison St., Wilmington, DE

Wednesday, May 13, 2020 Postponement TBD
Estates & Trusts CLE
3.0 hours CLE credit

Thursday, May 14, 2020 Postponement TBD
Fundamentals of Law Practice Management and Technology 2020
6.0 hours CLE credit in Enhanced Ethics

Dates, times, and locations of Events and CLEs may change after time of press, please consult the DSBA website for the most up-to-date information at www.dsba.org.
SECTION & COMMITTEE MEETINGS

April 2020

Wednesday, April 1, 2020 • 12:30 p.m.
Women and the Law Section Meeting
Conference Call Meeting, see Section listserv message for call-in information

Wednesday, April 8, 2020 • 4:00 p.m.
Real and Personal Property Section Meeting
Conference Call Meeting, see Section listserv message for call-in information

Monday, April 13, 2020 • 12:30 p.m.
Litigation Section Meeting
Conference Call Meeting, see Section listserv message for call-in information

Wednesday, April 15, 2020 • 9:00 a.m.
ADR Section Meeting
Conference Call Meeting, see Section listserv message for call-in information

Wednesday, April 15, 2020 • 12:30 p.m.
Torts and Insurance Section Meeting
Conference Call Meeting, see Section listserv message for call-in information

Thursday, April 16, 2020 • 12:00 p.m.
Executive Committee Meeting
Zoom Meeting, link will be sent via email

Thursday, April 16, 2020 • 4:00 p.m.
Elder Law Section Meeting
Conference Call Meeting, see Section listserv message for call-in information

Thursday, April 23, 2020 • 4:00 p.m.
Family Law Section Meeting
Zoom Meeting, see Section listserv message for link

Friday, April 24, 2020 • 12:00 p.m.
Workers’ Compensation Section Meeting
Conference Call Meeting, see Section listserv message for call-in information

Tuesday, April 28, 2020 • 12:00 p.m.
Government and Consumer Law Section Meeting
Conference Call Meeting, see Section listserv message for call-in information

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

EXECUTIVE COMMITTEE

William Patrick Brady
President

Michael F. McTaggart
President-Elect

Kathleen M. Miller
Vice President-at-Large

Charles J. Durante
Vice President, New Castle County

Jeffrey Alexander Young
Vice President, Kent County

Stephen A. Spence
Vice President, Sussex County

Samuel D. Pratcher III
Vice President, Solo & Small Firms, New Castle County

Reneta L. Green-Streett
Secretary

Mary Frances Dugan
Assistant Secretary

Kate Harmon
Treasurer

Francis J. Murphy, Jr.
Assistant Treasurer

David J. Ferry, Jr.
Past President

The Honorable Sheldon K. Rennie
Judicial Member

Loren R. Barron
Assistant to President

Thomas P. McGonigle
Legislative Liaison

Ian Connor Bifferato
Adrian Sarah Broderick
Crystal L. Carey
Renee Duval
Kaan Ekiner
Brian J. Ferry
Richard A. Forsten
Monica A. Horton
Denise Del Giorno Nordheimer
Adam V. Orlacchio
David A. White
Jennifer Ying
Members-at-Large

Mark S. Vavala
Executive Director

The Big Island CLE, which was set to take place between March 23-27, has officially been postponed in light of the current coronavirus pandemic. The program is now scheduled for December 7-11, 2020.

More information will be available in the coming weeks.
Video Teleconferencing in the Practice of Law During the Pandemic

The concept of video teleconferencing has been with us for many years. My first experience with it was 1993. William and Mary Law School had a technology experimental project called Courtroom 21, chaired by the famous legal scholar Frederic Lederer. He invited my advanced trial advocacy class at Delaware Law School for a field trip via video teleconference. We were hosted by a communications company called MCI. The experience was clunky, slow, and at the same time marvelous.

The technology developed over the next few years. The prices became more reasonable as more businesses added video to conference rooms. Many of the Am Law 100 bought into it, bringing their local offices together for partner and practice group meetings. Courts began adding it to their budgets as an alternative to live appearances for arraignment and bail hearings. By the turn of the century conference room video teleconferencing was a mature technology. And then we were attacked on September 11, 2001. Many of us in the legal technology field believed air travel as we knew it was over. After all, lawyers had an alternative to flying around the world for depositions, court appearances, and client meetings. CISCO developed a virtual meeting room, making the immersive video experience so real it was as if you could pass the bagel to the person on the other side of the screen. But, the practice as normal returned, and video teleconferencing has never actually developed into an everyday resource. Audio teleconferencing is quite common; and email has even replaced the telephone in large measure.

Now we find ourselves at a unique place in our history. We are sequestered at home. No office, no travel, no in person meetings and no conferences. COVID-19 has changed our lives. Certainly, the inconvenience and business interruption will be temporary; but what can we do in the meantime to keep our clients properly serviced, maintain our court appearances, and manage our law practices — large and small? The answer, once again, is video teleconference.

I have found three exceptional desktop video teleconference services available — Zoom, WebEx, and Citrix GoToMeeting. Of course, there is also Skype — I have never been a fan. Each of these services has a free trial or consumer version to give you a sense of whether it will be of value to your workflow. Let me use Zoom as my example to explain what it can do for you. I prefer Zoom because it is more user friendly and less intimidating.

For the solo or small practitioner, the Zoom subscription is $14.99 a month per host. You will find there are other very attractive plans for larger organizations (www.zoom.us/pricing). Think of it this way — each billing attorney or other legal professional ought to be a host. You can have as many conferences with as many participants as you would like (up to 100). The participants do not need a subscription. As the host you send...
contact information via email with the time and date of the call. You can also give special people a personal contact number, permitting them to drop by whenever they want — assuming you are available. The call can be both video and audio or simply voice only. Of course, security is on every lawyer’s mind. Zoom, as well as the others mentioned, promises encryption and added security. Should you have an interest, the link to Zoom’s white paper on security is www.zoom.us/docs/doc/Zoom-Security-White-Paper.pdf.

You have many options for scheduling a call, including passwording, keeping folks in a waiting room until you let them in, and registration. Connections can be made with a desktop or mobile device. Once connected, each participant with a camera is visible. As the host, you can share your screen and show documents, annotate documents, and record the session. You can also permit the participants to show their screens and annotate. The process is simple.

Let me end with one caveat — bandwidth. Since we are talking about working from home, Internet speed is an important issue. Should you find the sound and picture are not in sync or the image is not clear or pixelated, you may need to upgrade your Internet speed with your Internet provider (probably Verizon or Comcast). This may cost an additional $20-$40 per month depending upon your experience. If you are already a TV streamer, I expect your Internet speed will be just fine.

I urge you to try video teleconferencing while we are experiencing this new stay at home practice of law. It is a safe way of social distancing without sacrificing your practice. Should you have any questions and need some help, let me know. I will send you a link and we can visit. Who knows, this may become the new normal.

Richard K. Herrmann is a Visiting Professor at Delaware Law School. He can be reached at rkherrmann@widener.edu.

“Tips on Technology” is a service of the E-Discovery and Technology Law Section of the Delaware State Bar Association.
“Ethically Speaking” last provided a digest of American Bar Association Formal Opinions issued by the Standing Committee on Ethics and Professional Responsibility in the April 2019 column which covered opinions issued through February of 2019. This month, we close out 2019 with a digest of two subsequent opinions you might have missed.

Formal Opinion 488 (September 5, 2019)
Judges’ Social or Close Personal Relationships with Lawyers or Parties as Ground for Disqualification or Disclosure

The Committee noted that Rule 2.11 of the Model Code of Judicial Conduct identifies situations in which judges must disqualify themselves because their impartiality might reasonably be questioned. The Rule covers family and personal relationships, but is silent with regard to other relationships as a ground for disqualification or disclosure. This ABA opinion cautions judges about three categories of relationships between judges, lawyers, or parties which may also require recusal or disclosure under Rule 2.11.

Acquaintances

The Opinion noted that a judge and lawyer should be considered “acquaintances” when their interactions outside of court are merely coincidental or superficial, such as being attendees of the same place of worship or where their interactions occur at events such as bar association or other professional meetings. Other examples cited include social contacts at a country club or gym, being neighbors, having mutual friends, or having represented co-parties in litigation before the judge took the bench. The Committee noted that in these types of relationships, neither the judge nor the lawyer seeks contact with the other, and the same analysis should apply to a judge’s relationship with a party.

The Opinion concludes that a mere acquaintanceship is not a reasonable basis to question a judge’s impartiality. Therefore, a judge has no obligation to disclose his/her acquaintance with a lawyer or party to other lawyers or parties in a proceeding. However, a judge may disclose the acquaintanceship if the judge so chooses.

Friendships

The ABA opined that while “friendship” implies a closer relationship than an acquaintance, not all friendships are the same. Some can be professional while others are social. Some can be close, others more casual.

Because of the wide potential range of depth of friendships, the Committee noted that caselaw has long held that not all friendships require judicial disqualification. Instead, the Committee recommended a fact-driven analysis as to when a friendship rises to the level requiring disclosure or disqualification. A judge should disclose a friendship to the other lawyers or parties of a proceeding if the judge “believes the parties or their lawyers might reasonably consider relevant to a motion for disqualification, even if the judge believes there is no basis for disqualification.” The Opinion goes on to note that if after disclosure, a party objects to a judge’s participation in the proceeding, the judge has the discretion to either continue to preside over the proceedings or to disqualify himself/herself.

Close Personal Relationships

The Opinion focused on relationships that exceed both acquaintance and friend, specifically, romantic relationships. The Committee recommended that a judge disclose such relationships to the lawyers or parties in the proceeding even if the judge believes that he or she can be impartial notwithstanding the relationship. However, after disclosure, it is again left to judicial discretion as to whether the judge should disqualify himself/herself.

Formal Opinion 490 (December 4, 2019)
Obligations Related to Notice When Lawyers Change Firms

This Opinion follows up on Informal Opinion 1457 (April 29, 1980) in which the ABA offered a sample joint letter from the firm and the departing attorney to advise clients of the departure and to solicit the client’s wishes with regard to future representation and ABA Formal Opinion 99-414 (September 8, 1999) in which the Committee concluded that departing attorneys not only had a right, but an obligation under the
Because of the wide potential range of depth of friendships, the Committee noted that caselaw has long held that not all friendships require judicial disqualification. Instead, the Committee recommended a fact-driven analysis as to when a friendship rises to the level requiring disclosure or disqualification.

Professional Conduct Rules to keep the client reasonably informed about the status of their matter by informing the client of their departure.

Formal Opinion 489 explicates the departing attorney’s and firm’s obligations and prohibitions with regard to notifying clients. The Committee noted that both the departing attorney and the firm have ethical obligations. The departing attorney should provide sufficient notice of the intended departure, and the firm should work with the departing attorney to notify clients. The Committee also noted a joint obligation of the attorney and firm to work together to ensure the transition of files as directed by the clients. The ABA recommends that firms have written policies in place to provide guidance to lawyers about the procedures relating to departures.

While noting that some jurisdictions have professional conduct rules which prohibit a lawyer from unilaterally contacting clients to advise them of their departure from the firm, under the Model Rules, departing lawyers need not wait to inform clients of their impending departure, providing that the firm is informed contemporaneously. The Committee also notes that the firm may also contact clients to inform them of the lawyer’s impending departure.

While the ABA still suggests that the preferable method is for the departing lawyer and the firm to issue a joint communication to clients requesting the clients to elect who will continue to represent them, departing lawyers still have a duty to make contact with all clients with whom the lawyer has had significant client contact to advise that the lawyer “intends” to change firms.

The Opinion cites Rule 5.1 in support of the law firm’s obligation to establish reasonable procedures and policies to assure the ethical transition of client matters when lawyers elect to change firms. Model Rule 5.1(a) provides that a lawyer in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurances that all lawyers in the firm conform to the Rules of Professional Conduct.” The Committee also notes that the firm should not solicit the departing lawyer’s clients to stay with the firm if the departing lawyer is the only lawyer at the firm with the expertise to represent a client on a specific matter unless the firm has the ability to retain other lawyers with similar expertise to continue the representation. The Committee opined that the firm and departing lawyer must coordinate to assure that all electronic and paper records for the matters are organized and up to date so that the files may be transferred to the new firm of the client’s choice.

The Committee noted that Model Rule 5.6 prohibits restraints on a client’s choice of counsel. Notice periods in which an attorney can advise clients of their departure cannot restrict a client’s choice of counsel or the rights of lawyers to change firms. Model Rule 5.6(a) states:

A lawyer shall not participate in offering or making a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement.

The ABA Opinion disfavors punitive measures taken against a departing attorney during the period following notice and preceding the actual departure. For instance, the lawyer cannot be required to work from home or remotely or deprived of appropriate and necessary support staff or other assistance from the firm normally provided to effect the representation of the clients. Similarly, the Committee noted that firms cannot prohibit or restrict access to email, voicemail, files, electronic court filing, and other systems necessary for the departing lawyer to provide competent and diligent representation during the notice period. If there are exigent circumstances, such as a lawyer’s immediate departure from a firm (involuntarily), the departing attorney’s clients must still be notified of the departure and the firm should provide the lawyer with a list of their current and former clients for conflict-checking purposes.

Look for a follow up column late this year digesting whatever words of wisdom the ABA chooses to offer in 2020.

"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 seven years are available on www.dsba.org.

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Stop, Prioritize, and Shift

It is said that information in literature is like a mirror, reflecting the ideas and inner searching of an age. This is more relevant today than in recent years. As a direct result of the current COVID-19 pandemic, rarely has information and data been a clearer mirror into our culture.

This new image reflects the shift from involvement in-person to involvement through technology. There is nothing more powerful than people supporting each other and bearing a crisis together. We know that major scientific discoveries are no longer made by isolated geniuses, but rather by well-equipped teams. Similarly, the Delaware legal community has formed a well-equipped team to keep Delaware’s legal professionals cool under fire and well through the current intense days of the COVID-19 pandemic and beyond.

Stop, Prioritize, and Shift

Undoubtedly, we cannot allow the mass media to dampen our positivity and even destroy our sense of well-being. Rather, we need to heed the advice given, but not be disillusioned.

If we do not, shame on us. Make no mistake, extraordinary legal professionals find meaning in — and learn from — the most negative events. Fortunately, and in most cases, the legal professional emerges from adversity stronger, more confident in themselves and their purpose, and more committed to their work.

In this period of monumental change, the Delaware Lawyers Assistance Program (DE-LAP) understands that the culture of the legal community makes it difficult to ask for help. Let this be a time in our legal culture that allows for lawyers to engage in deep self-reflection, examine values, question assumptions, hone judgment, and shift gears. Maybe even eliminate the stigma of asking for help.

DE-LAP, together with The Delaware Lawyers Assistance Fund (DELAF), have developed a free, confidential call-in service for Delaware’s legal professionals. This service is a way for Delaware judges, lawyers, and legal professionals to discuss anxieties and concerns with DE-LAP’s core team of licensed, health-care professionals during this coronavirus crisis and time of upheaval.

If you or someone you know needs to just talk — please take advantage of DE-LAP’s mental health call-in service designed especially for the legal culture.

Call the DE-LAP core licensed team directly (see box below), or for more information call DE-LAP’s confidential line (302) 777-0124 or email cwaldhauser@de-lap.org

Moreover, DE-LAP has partnered with the DSBA to work together on fresh new ways for you to join us through online weekly events to help aid judges, lawyers, and legal professionals on issues of massive shifts in workplace policies, including: various disaster planning and law office management tips; reassessing the value of congregating in offices; renewing the debate about remote work models; and self-care — both physically and mentally. In addition, look for Wellness Wednesday; DE-LAP’s on-line wellness inventory assessment and on-line virtual assistance; and DE-LAP’s confidential online support groups. You can also listen to the DE-LAP podcast, Attorney Buoyancy.
Let this be a time in our legal culture that allows for lawyers to engage in deep self-reflection, examine values, question assumptions, hone judgment, and shift gears.

DE-LAP, DELAF, and the DSBA felt it was important to impress upon legal professionals that they are not alone in their fears. There is something comforting about talking to people who feel the same way. On the other hand, we know too that it is especially important for people to physically isolate from others. Subsequently, we thought that we could join forces and give you a really powerful way to connect with other people who are experiencing the same thing.

For more information on this, or other issues that are affecting your quality of life or quality of professionalism, call DE-LAP’s free confidential service (302) 777-0124 or email cwaldhauser@de-lap.org.

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

### MENTAL HEALTH RESOURCES FOR THE LEGAL PROFESSION DURING COVID-19 OUTBREAK

#### ANXIETY
To get free, confidential, 24/7 support for anxiety, text “HOME” to the Crisis Text Line: 741741

#### OFFICE MANAGEMENT/LEADERSHIP
This article discusses organizational leadership and managing COVID-19 panic: https://www.forbes.com/sites/janbruce/2020/03/05/the-leaders-guide-to-managing-covid-19-panic/#726c5e5d59ea

#### PANIC

#### STAYING MENTALLY HEALTHY
Challenges for mental health and coping mechanisms during COVID-19 are outlined by the CDC at: https://www.cdc.gov/coronavirus/2019-ncov/about/coping.html

Great tips for staying mentally healthy: https://www.changedirection.org/staying-mentally-healthy-during-covid-19/

Find tips for managing our mental health in troubling times: https://afsp.org/taking-care-of-your-mental-health-in-the-face-of-uncertainty/

National Association for the Mentally Ill Online Support Groups: https://namimainlinepa.org/online-and-telephone-support-groups/?fbclid=IwAR0QZnWSDebKDTYZM6l1mhPA0G7xZKrJi3AJ-YK-NiZlGkQhRFksAoo1DiA

Depression and Bipolar Support Alliance: https://www.dbsalliance.org/support/chapters-and-support-groups/online-support-groups/

#### STRESS

#### SUBSTANCE ABUSE RESOURCES
AA: http://aa-intergroup.org/directory.php

Alanon: https://al-anon.org/al-anon-meetings/electronic-meetings/

Author Brian Cuban’s blog “The Addicted Lawyer” offers guidance and options for recovery meetings: http://briancuban.com/blog/responsible-recovery-in-pandemic-times/

#### SUICIDE
Free, confidential, 24/7 support for people in distress, prevention and crisis resources for oneself and others. The Suicide Prevention Lifeline: 1-800-273-TALK or https://suicidepreventionlifeline.org

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Make a motion for help.

Asking for help can be difficult. Knowing help is available makes it a little easier.

Don’t suffer silently. We do together what need not be done alone.

Free, confidential services for Judges and Lawyers start with DE-LAP.
Call confidential private line: (302) 777-0124 or e-mail: cwaldhauser@de-lap.org.
Delaware Bankruptcy Judge Holds That Increased Chapter 11 U.S. Trustee Fees Pass Constitutional Muster

BY MATTHEW B. HARVEY, ESQUIRE

It costs a lot of money to go broke. In the case of a chapter 11 bankruptcy, the cost includes quarterly fees payable to the Office of the United States Trustee (the “UST”), a component of the Department of Justice that oversees bankruptcy cases. The UST’s oversight program is funded by chapter 11 debtors pursuant to 28 U.S.C. § 1930(a)(6), which requires each debtor to pay quarterly fees until its case is closed or dismissed. The fee is calculated as a percentage of the debtor’s “disbursements” in each quarter. The fees collected are placed in a UST fund to pay the costs of the UST’s oversight of chapter 11 cases.

For many years, the fee was capped at $30,000 per quarter. However, with the UST fund balance declining, Congress amended the statute to temporarily increase chapter 11 quarterly fees for each year between 2018 through 2022 in which the UST fund is below $200 million. Under the new law, the maximum fee for each quarter in which disbursements exceed $1 million is the lesser of 1 percent of disbursements or $250,000. This means that chapter 11 debtors disbursing $25 million or more in a quarter saw quarterly fees jump from $30,000 to $250,000 — an 833 percent increase. The amendment became effective January 1, 2018, and the UST takes the position that the amendment applies to all pending chapter 11 cases — even those commenced before the amendment took effect.

The UST program is not national, however. Alabama and North Carolina do not participate in the UST program. Bankruptcy cases in those states are overseen by a “Bankruptcy Administrator” (“BA”) program, which is part of the judiciary. A companion provision — section 1930(a)(7) — states that the BA program “may require” chapter 11 debtors “to pay fees equal to those imposed by” section 1930(a)(6). The BA program adopted the increased fees effective October 1, 2018, but only as to cases filed on or after that date. This created a disparity in fees for pending cases commenced before October 1, 2018. In UST districts, a debtor whose case was commenced before October 1, 2018, may pay $250,000, while a similarly situated debtor in a BA district may pay $30,000 per quarter.

Given the dramatic increase and disparity between UST and BA districts, debtors in UST districts with cases pending at the time of the enactment have raised constitutional and other legal challenges to the amendment. Every challenge has argued that the law is unconstitutionally non-uniform under one or both of the U.S. Constitution’s “Uniformity Clause” (art. I, § 8, cl. 4), which authorizes Congress to enact “uniform laws on the subject of bankruptcies throughout the United States.” Many of the challenges have also argued that the law is improperly being applied retroactively to cases pending before its enactment.

A slim majority of courts have found the amendment to be unconstitutional. In an opinion issued on January 9, 2020, Judge Mary F. Walrath of the U.S. Bankruptcy Court for the District of Delaware joined a minority holding that the amendment is constitutional.

The Majority Rulings

In In re Buffets, LLC, 597 B.R. 588 (Bankr. W.D. Tex. 2019), the first case to consider a constitutional challenge to the amendment, the court ruled the amendment was unconstitutional as to cases pending at the time of enactment. The court held that the fee was non-uniform between UST districts and BA districts. Because Congress provided no justification for the non-uniform fee, the law was “irrational and arbitrary,” and unconstitutional. The court also held that the amendment did not apply retroactively because it imposed new liabilities and nothing in the statute or legislative history signals retroactive application.

The bankruptcy court in In re Circuit City Stores, Inc., 606 B.R. 260 (Bankr. E.D. Va. 2019), similarly found the
amendment to be unconstitutional as to cases pending at the time of enactment. The court held that if the increased fee was considered a “tax,” it was unconstitutional under the Uniformity Clause because similarly situated debtors in BA districts were not subject to the same fee, resulting in a constitutionally prohibited non-uniform tax based on geography. Similarly, the court held that if the increased fee was considered a “user fee,” it was unconstitutional under the Bankruptcy Clause because it represented a non-uniform law on the subject of bankruptcies based on geography. The court rejected, however, the challenge that the law could not be applied, retroactively, to cases pending on the effective date of the new law.

Finally, in In re Life Partners Holdings, Inc., 606 B.R. 277 (Bankr. N.D. Tex. 2019), the bankruptcy court reached the same result, holding the provisions unconstitutional and adopting the Uniformity Clause and Bankruptcy Clause rulings from Circuit City, as well as the retroactive application holding from Buffets.

**Judge Walrath Joins the Minority**

On January 9, 2020, Judge Walrath issued her opinion in In re Exide Technologies, 611 B.R. 21 (Bankr. D. Del. 2020), upholding the amendment. Judge Walrath first held that the fee increase was not retroactive because the amendment applies only to disbursements made after the amendment’s effective date. It does not reach fees or disbursements made earlier in the case. Therefore, the amendment is more akin to a prospective tax increase.

Second, Judge Walrath found that the fee was not an impermissible user fee. Larger chapter 11 cases with more disbursements are more complex and require more attention from the UST. Thus, the amount of the fee increase reflects the anticipated increased burden on the UST.

Third, and perhaps most significantly, Judge Walrath held that the amendment did not violate the Bankruptcy Clause. Judge Walrath reasoned that the uniformity requirement does not prevent laws from applying only to particular regions to address unique geographic problems. Judge Walrath found that the amendment was enacted to address a problem specific to UST districts — underfunding of the UST fund — and thus was appropriately geographically limited to those districts. Additionally, the statute provides that the BA program may charge fees equal to UST fees, and thus the BA’s failure to charge equal fees was not a problem of uniformity but a failure of enforcement.

The only other court to reach the same result as Judge Walrath is the bankruptcy court in In re Clinton Nurseries, Inc., 608 B.R. 96 (Bankr. D. Conn. 2019), where the court applied similar reasoning.

**The Last Word Awaits**

Although Judge Walrath’s opinion is well reasoned, it surely is not the last word on the issue. The debtors in Exide are seeking a direct appeal to the U.S. Court of Appeals for the Third Circuit. There also is a pending proposed class action in the Court of Federal Claims challenging the amendment. Moreover, other decisions discussed above are currently before the relevant circuit’s Court of Appeals or pending certification to such courts. Accordingly, there may be Court of Appeals rulings on the issue in the coming year. In the meantime, debtors must adjust their finances to account for the fees and seek to close or dismiss their chapter 11 cases as promptly as possible to avoid the increased fees.

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Matthew B. Harvey is a Partner at Morris, Nichols, Arst & Tunnell LLP in the Business Reorganization & Restructuring Group. He can be reached at mharvey@mnnat.com.
IN MEMORIAM

William Derek Rimmer, Esquire
1965 - 2019

BY ANTHONY M. FRABIZZIO, ESQUIRE

William D. Rimmer passed away on December 26, 2019, after a long, hard-fought battle with cancer. He had been a member of the Heckler & Frabizzio family, initially as an associate and then as a partner, for nearly 26 years. The firm now has a large void to fill and we will miss him.

Bill’s practice at the firm was dedicated solely to workers’ compensation defense work. It is a fast-paced, demanding and time-consuming practice. Bill exemplified practicing the firm’s core values of cooperation, accountability, service excellence, zeal, integrity, professionalism, and pre-eminence.

Bill loved life but had three focal points of that love.

First and foremost, family was everything to Bill. He constantly talked about his wife Mary, to whom he was married for almost 30 years, and his children Chloe, who is now 26 years old, and Zachary, who is now 23 years old. They were all a great source of pride and he very much loved them. He also fondly spoke of his immediate and extended family both here and in England.

Second, Bill really loved being an attorney and was proud of our profession. He was a member of the Delaware State Bar Association and served as past Chair of the Delaware State Bar Association’s Section on Workers’ Compensation. He was also a member of the Defense Council of Delaware, the American Bar Association, the Justice Randy Holland Workers’ Compensation Inn of Court, and the Delaware Claims Association. Bill was rated AV “Preeminent” in insurance defense litigation by Martindale-Hubbell and received the Delaware Top Lawyer for Workers’ Compensation Defense by Delaware Today magazine from 2015 through 2019. He was a great example of the “Delaware Way” to practice law. With clients he took the time to get to personally know them and diligently represented their interests with skill and success. With his partners, he always put the firm above any personal goals. He enjoyed bringing in new clients and was quite proud of that skill. To opposing counsel, he was pleasant, thoughtful, humorous, and fair. Most attorneys enjoyed working a case with him.

Third, Bill loved all sports but particularly soccer. He was an accomplished soccer player in his youth and at Drew University, where he was team MVP in 1986. He continued to play the game recreationally in adulthood to include the NCC Adult League. But he really excelled at coaching soccer for many different boys’ and girls’ teams at all age levels. Many of his teams, to include FC Storm (boys); Kirkwood (girls); Delaware Saengerbund (boys), won state championships and some advanced to Regionals and Nationals. He was named competitive boys Coach of the Year in 2012 for the State of Delaware and USYSA Region 1. He also served on the Board for many years and most recently as President of the Delaware Youth Soccer Association, a position he reluctantly had to relinquish because of his battle with cancer.

Bill was first diagnosed with cancer over two years before he passed, and he fought it every step of the way. I have never seen anyone more optimistic that he would win the battle. With the receipt of every bad news that the cancer had spread or morphed into another type or a different type of treatment was needed, he would just look ahead to the next step in the fight. And through it all, he lived and worked as normally as possible with most clients/colleagues/friends not knowing he was battling cancer. Which is the way he wanted it to be.

Bill is gone too young and too soon. But what an inspiration he has been to me personally, to his family, and to the Heckler & Frabizzio family. He leaves quite a legacy and we were lucky to have had him share with us his life and the practice of law.

And so, we say goodbye…until we meet again.
**IN MEMORIAM**

**F. Alton Tybout, Esquire**

1929 - 2020

BY B. WILSON REDFEARN III, ESQUIRE

**Died With His Boots On**

On January 8, 2020, F. Alton Tybout (age 90), one of Delaware’s foremost trial lawyers, collapsed while arguing his case for a personal injunction in the Superior Court, 4th Appellate District, Riverside California. He died the following day. For those lawyers who did not have the opportunity to adjudicate a case with Alton Tybout, know that he was a most eloquent barrister, completely prepared for every eventuality. His list of winning arguments is legendary.

Following his university education at Duke (Bachelor of Arts) and then Yale (Bachelor of Laws), he was Delaware’s Chief Deputy Attorney General, and then a partner in the firm of Prickett, Prickett & Tybout. In 1965, he was the founding partner of Tybout & Redfearn, now practicing as Tybout, Redfearn & Pell. He chaired numerous committees for the Superior Court, the Supreme Court of Delaware, and the Third Judicial Circuit. He was also active with the American Judicature Society and a Fellow of the American College of Trial Lawyers. He practiced until he was seventy, always preparing the major portion of his legal research. Regardless of the significance of the case at hand, no lawyer was better prepared.

Alton Tybout was a true gentleman at the Bar. His ethics and civility, along with his droll sense of humor, were both remarkable and memorable. For a lengthy period he served on the Supreme Court Board of Professional Responsibility. At the time of his death, Ty was retired and living with his wife, Julie, in Rancho Mirage, California. All who practiced with or against him will remember him as an advocate of the highest order.

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Taking the Broader Perspective

“Despite evidence to the contrary, we all use our brains.” So begins Scott Adams (the creator of the Dilbert comic strip) in his latest book Loserthink: How Untrained Brains Are Ruining America. Adams continues:

Most of us have never learned how to think effectively. I’m not talking about IQ or other measures of intelligence, which matter in their own way, of course. I’m talking about thinking as a learned skill. We don’t teach thinking in schools, and you can see the results of that nearly every day. If you use social media, or you make the mistake of paying attention to other people’s opinions in any form, you’re probably seeing a lot of absurd and unproductive reasoning I call loserthink…. My observation, after several decades on this planet, is that clear thinking is somewhat rare. And there’s a reason for that. No matter how smart you are, if you don’t have experience across multiple domains, you’re probably not equipped with the most productive ways of thinking.

Meanwhile, in Range: Why Generalists Triumph In A Specialized World, author David Epstein begins with a brief biographical comparison of Tiger Woods and Roger Federer, two of the most successful athletes ever in their respective sports. Woods’s father famously gave his son a golf putter at the age of seven months, and Woods won his first golf tournament in a ten-and-under competition at the age of two. Woods’s father focused his son on golf — and only golf — growing up. Roger Federer, however, never engaged in such hyper-specialization. Basketball, handball, squash, tennis, badminton, soccer, wrestling, skiing, swimming. He played all sorts of sports growing up. Nearing his teens, Federer started to play more tennis than anything else, but his parents never pushed him. Federer credits the wide range of sports he played as contributing to his athleticism and hand-eye coordination. Epstein concludes his introduction as follows:

The challenge we all face is how to maintain the benefits of breadth, diverse experience, interdisciplinary thinking, and delayed concentration in a world that increasingly incentivizes, even demands, hyperspecialization. While it is undoubtedly true that there are areas that require individuals with Tiger’s precocity and clarity of purpose, as complexity increases — as technology spins the world into vaster webs of interconnected systems in which each individual only sees a small part — we also need more Rogers:
people who start broad and embrace diverse experiences and perspectives while they progress. People with range.

Although Adams and Epstein are looking at the world from different perspectives, and are trying to solve different problems, they nevertheless reach the same conclusion: generally speaking, people should not over-specialize. Rather, people should try different things, should have experience in different things, and should be able to view the world from different perspectives.

Adams and Epstein are saying the same thing and reaching the same conclusion, but their approach and their books are different. Adams is writing more of a “self-help” book. He makes his case and offers strategies and advice a reader can employ to stretch their own thinking, to avoid “loserthink,” and to find range. Epstein employs real world stories, tragedy, and history to conclusively demonstrate that range has been the driving force behind virtually all great human advances.

Thomas Alva Edison had range. One of America’s greatest inventors, he never specialized, let alone hyper-specialized. Albert Einstein, by contrast, made early big breakthroughs, but then spent his last 30 years in a fruitless quest for a single, grand unifying theory. Epstein would say Einstein over-specialized during those final 30 years.

Epstein tells the story of the now largely-forgotten figlie del coro (the “daughters of the choir”), 17th century Venetian women, raised in orphanages, who were the musical virtuosos of their day. Vivaldi wrote 140 concertos especially for them. Many on the call were concerned with the “o-rings,” and whether they would perform as intended given the low temperature the day and night before the launch. Ultimately, the decision was made to proceed, but Epstein wonders if a different decision might have been reached with more range among those on the call. It is chilling to read the account of the conference call, as the engineers grappled with the unknowns, made all the more so because the reader already knows how things will end.

Epstein does not mean to suggest that no one should specialize, but he does believe early head starts are overrated. Rather, it is the journey that matters. Having a broad background can, paradoxically, make specialization better.

Scott Adams is also calling for range in Loserthink, but he is calling for range in one’s own thinking about the world and in reacting to the statements of others. In various chapters, he describes thinking like a psychologist, like an artist, like a historian, an engineer, a leader, a scientist, an entrepreneur, and an economist (oddly, perhaps, he never suggests folks think like a lawyer). He describes how others often view issues and problems, and why it can be helpful to consider those approaches.

Adams is serious, and his observations are well put and helpful, but all of this is done with the touch of humor one would expect from the creator of the Dilbert cartoon.

Adams also provides extensive advice on how to break out of one’s own “mental prisons,” as well as helping others do so. When someone says they know what someone else was thinking, it is helpful to remember that no one can read minds. Context matters, too. To illustrate this point, Adams explains how, one day, on his live daily Internet show, viewers started responding, “Boo! Boo! Boo!” Even as he was going through his presentation for the day, Adams was also trying to figure out what was going on and what he had said or done to elicit this response. And the response kept getting stronger. “Boo! Boo! Boo!”

Then Adams realized that his cat, named “Boo,” had wandered into the background of the video shot. Viewers knew the cat’s name and were not booing Adams, but shouting out for the cat. Context matters.

Even as Adams is telling stories about his cat and other things, he is making his point. We need to be open-minded. We need to recognize when we are engaged in limiting thinking behaviors. He is right to observe that we do not teach thinking in school, but maybe we should.

What, then, can Adams and Epstein tell us about the practice of law and our legal system? Neither book deals with legal issues, yet both are more relevant than they might first appear. To be a better lawyer, one needs range. One needs to think more broadly than a narrow legal specialization might first suggest. If you only do litigation, try and do some transactional work — and vice versa. Seeing legal issues from different perspectives will only make your legal work stronger. Pro bono offers a wonderful opportunity to see a different side of the law. As a young lawyer in particular it is important to try and do as many different things as possible.

The quest for range should go beyond legal work itself. Get involved in organizations unconnected to the law. You can bring a legal perspective to those organizations and you can learn other non-legal perspectives from such work. Take some time to be active in your community. Engage in public service.

Ultimately, the greater range one possesses, the better one will be as a lawyer in whatever field one practices. Epstein demonstrates time and again in his book that these other perspectives one brings from other fields to his or her field of specialization are often what sets innovation and discovery in motion. Adams demonstrates that no matter how clear and conscientious a thinker we are, we are always in danger of lapsing into “loserthink.” Only by seeking different perspectives, and by recognizing the mental traps we often fall into, can we, as lawyers and as citizens, create a better society. Neither Loserthink nor Range is marketed as a book for lawyers, but both have much to teach us.

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

To commemorate the filing of tax returns, I asked our colleagues across our great state about the restaurants they return to again and again. Join me as they take us from Rehoboth Beach, our southern city on the Atlantic, to Glen Mills, just over our northern state line. Whether it is a first visit or a return, Happy (Tax) Returns!

Where Do You Return Again and Again?

Carolyn McNeice of Parkowski, Guerke & Swayze, P.A. and Jerome (Jerry) Capone of the Office of Defense Services

The Back Porch
59 Rehoboth Avenue, Rehoboth Beach, DE

Dinner on the back porch at The Back Porch on a lovely summer evening is a distinctly delightful experience. The rabbit bolognese is Jerry’s favorite restaurant meal in all of Rehoboth Beach. And, if you can’t decide whether to order red or white wine, have both! The wine list here is long, varied, and very reasonably priced.

Myron T. Steele (former Chief Justice) of Potter Anderson & Corroon LLP

Sambo’s Tavern
283 Front Street, Leipsic, DE

On the Leipsic River, inches from the source of Delaware crabs, clams, and oysters, Sambo’s Tavern is a classic, rustic crab house where “everybody knows your name.” Even the foreign (anywhere west of the Chesapeake Bay) early crabs are fresh, and the later soft shells, although deep fried, are special. The shrimp, clams, rockfish sandwiches, and Bay seasoned fries never disappoint.

Sambo’s can be a bit loud, but after the atmosphere and the cold beer, who cares. This is a must experience for those visiting in order to get the full flavor of Southern Delaware (and not just because it’s five miles from my home).

Candace E. Holmes of Schmittinger and Rodriguez, PA

Cantwell’s Tavern
109 Main Street, Odessa, DE

A colleague and I visit Cantwell’s Tavern for an annual dinner date. Cantwell’s is a quaint restaurant with a warm and friendly environment. It provides a great setting for “girl chat.” The menu is replete with delicious entrees, especially the crab cakes. The combination of good company, a cozy environment, and great food keeps us returning year after year.

Robert (Bob) Pasquale of Doroshow Pasquale Krawitz & Bhaya

Legal Grounds Café
1208 Kirkwood Highway, Elsmere, DE

The barista and cooks are always warm, professional, and friendly. The coffee and espresso drinks are consistently delicious, with specialty lattes dressed with inventive latte art. The food is always fresh, made from scratch, with specials and all-time favorites such as the salmon-avocado toast. Lastly, the café is uniformly pristine with artwork always adorning the walls.

William (Bill) Manning of Saul Ewing Arnstein & Lehr LLP

Picolina Toscana
1412 North DuPont Street, Wilmington, DE

For decades, our “go-to” restaurant has been the several iterations of Toscana, owned by Dan Butler. As the name suggests, the style is Tuscan, but the menu appeals to any set of tastes. It has the ambience of fine dining (linen, seasoned wait staff, and fresh silverware between courses), but the prices are not a gouge. The wine list is huge (and has a wonderful selection of Italian reds), and will not require a mortgage loan. I always have difficulty selecting an entrée, but the grilled pork chop frequently comes to mind. If Osso Bucco is being served, try it. The starters are stars of the menu, and Dan has been threatened with violence lest he remove his Carpaccio di Manzo. I doubt you’ll find a better beef carpaccio anywhere. The Calamari and Grilled Octopus are also fabulous. Dan can accommodate large groups toward the back, but couples also feel at home.

Yvonne Takvorian Saville of Weiss, Saville & Houser, P.A.

Le Shio
2303 Concord Pike, Wilmington, DE

Le Shio is a contemporary Wilmington restaurant offering a fusion of Japanese, Chinese, and South East Asian Cuisine. Our family favorite and “go-to” restaurant several times a month,
it has never left us disappointed. The ingredients are always fresh and the sushi rolls are unique (including “the blackstone” — shrimp tempura, cream cheese, and topped with seared filet mignon). For the non-sushi palates, they offer a nice variety of noodle dishes, grilled and hibachi specials, and make-your-own wok creations. Eat-in or dine-out options are available, as well as great sushi party trays.

Kiadii Harmon of Mintzer Sarowitz Zeris Ledva & Meyers LLP

*Cafe Sitaly*
1710 Naamans Road, Wilmington, DE

The restaurant my family returns to again and again is Cafe Sitaly. It is a small, family-run Italian restaurant with only about five booths and two tables. Cafe Sitaly has gluten-free options, including pasta, which is critical for my family. The restaurant is almost always packed because of its consistently delicious classic Italian dishes. It is the type of place where after one or two visits, they know who you are. It is a small establishment that one might otherwise overlook, but it is one of the better Italian restaurants in New Castle County.

Cheryl Siskin

*Harvest Seasonal Grill and Wine Bar*
549 Wilmington Pike, Glen Mills, PA

Despite its location in a shopping center, Harvest offers big city quality and variety. The bar is open and bright and offers a full range of standard options as well as a wide array of seasonal selections. The restaurant is a bit noisy, but not intolerable. The menu, which changes seasonally, but retains many popular favorites, offers something for everyone, from the ravenous carnivore to the purest vegan, to the weight conscious. And for dessert, mid-sized cups are brought to your table for you to select on the spot, and since the portions are small, it’s easy to justify at least one per person. After all, it’s just a couple of bites...

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**Susan E. Poppiti** is a mathematics teacher at Wilmington Friends Upper School and provides cooking instruction through La Cucina di Poppiti, LLC. Susan can be reached at spoppiti@hotmail.com.
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Over 30 years ago, in preparation for a Delaware State Bar Association seminar, Wendie Stabler and I developed a set of principles to guide Delaware lawyers when negotiating and drafting a commercial property lease. Frankly, these principles will apply, in my opinion, to most, if not all, commercial real estate transactions.

Thirteen years into retirement, I came across these principles as I was disposing of old materials and other clutter. I reviewed and pondered them, then concluded they had universal value and should be shared with the Delaware Bar again.

In terms of attribution, I cannot recall if we plagiarized the principles, modified somebody else’s work, or created an original set of principles. Nevertheless, here it goes:

1. Businesspeople make the deals, not lawyers. Point out the risks, but let the client decide whether to take them.
2. Lawyers reflect the deal in writing.
3. Always raise material issues not addressed by the parties.
4. Be sure you understand your clients’ objectives and be sensitive to particular concerns.
5. Never avoid correcting errors or omissions in the documents even though such change appears to favor the other party.
6. Deal must be fair to all parties and should be a “win-win” transaction.
7. Timeliness is essential.
8. Communication is essential.
9. Never misrepresent what you have done and never say you will do something that you know you cannot do.
10. Never lose your sense of humor.
11. Always be courteous.
12. Avoid personal attacks.
13. Make sure the “numbers work.”
14. Never be unworthy of unqualified trust by your clients and other counsel.

Personally, I have found in my many years of transactional practice that the “Principles” served me well. I diligently tried to apply them. I hope some other lawyers will benefit from our “Principles from the Past.” ☺
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