REFLECTIONS ON DIVERSITY
A Call to Action from the Chair of the Multicultural Judges and Lawyers Section
The 70th Anniversary of Parker v. The University of Delaware
The Case for Diversity and Inclusion in Business
GET INVOLVED IN DSBA LEADERSHIP!

The Delaware State Bar Association is looking for a number of talented members to join the 2020-2021 Executive Committee and lead the DSBA to continued success.

The following positions on the Executive Committee of the Association must be filled for the year 2020-2021:
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 the term as noted:
One (1) DSBA Representative to the Delaware Bar Foundation Board:
Four-year term

One (1) DSBA Delegate to the ABA House of Delegates:
Two-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 email at: mvavala@dsba.org or by mail at: Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE 19801 by February 11, 2020.

WE NEED YOUR HELP TO FIND STRONG LEADERS FOR THE FUTURE!

The Nominating Committee consists of:
Michael Houghton, Chair
David J. Ferry, Jr., Vice-Chair

New Castle County
Tarik J. Haskins (2020)
Norman M. Powell (2020)
Geoffrey A. Sawyer III (2020)
Patricia R. Urban (2020)
Bryan Townsend (2020)
Patricia A. Winston (2020)
Jessica Zeldin (2020)
Timothy S. Ferry (2021)
Peter S. Kirsh (2021)
N. Christopher Griffiths (2021)
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Shakuntla L. Bhaya (2021)
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P. Clarkson Collins, Jr. (2022)
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Jeffrey S. Goddess (2022)
Loren Holland (2022)
Shannon D. Humiston (2022)
Julia B. Klein (2022)
Antoinette D. Hubbard (2022)

Kent County
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Alexander W. Funk (2021)
Laura A. Yiengst (2022)

Sussex County
Hon. Patricia W. Griffin (2020)
Christophe Clark Emmert (2021)
Chase T. Brockstedt (2022)
Call for Executive Committee Nominations

Nominations Sought for First State Distinguished Service Award

The Often Overlooked Chancery Decision: Parker v. University of Delaware

Photographs and Sponsor Recognition from the Dr. Martin Luther King, Jr. Breakfast and Statewide Day of Service

Announcing the 2nd Annual DSBA Baking Contest

FEATURES

COLUMNS

DEPARTMENTS

Call (302) 658-5279, ext. 102
Email: rbaird@dsba.org
Read The Bar Journal online at www.dsba.org

Background Photograph is of the North entrance of Memorial Hall. Bottom right. Set of two. Circa 1950’s.

Photo courtesy of the University of Delaware Archives and Records Management
This month’s President’s Corner is guest authored by Kiadii Harmon, Chair of the Multicultural Judges and Lawyers Section. I asked Kiadii to write about the importance of diversity and how we can help the MJL Section expand inclusion in the Bar and throughout Delaware. While the Delaware legal community has much to be proud of when it comes to diversity, both in terms of historic decisions made by our Courts and the men and women who have served with distinction in our Bar and on the Bench, to say that there is room for improvement would be a gross understatement. Similarly, the limited space permitted in this column only scratches the surface of what can be said about diversity and the benefits it brings to our community. As you read Kiadii’s article and the other contributions in this month’s Bar Journal, I ask that each of you not only ask yourselves what you can do to increase diversity, but also resolve to put that into practice in order to make a continuing difference going forward.

For the past two years it has been an honor and a pleasure to serve as Chair of the Multicultural Judges and Lawyers Section of the Delaware State Bar Association (“MJL”). During part of my time as Chair, I have had occasion to work with Bar Association President Bill Brady. Frankly, these last few years have been rather dynamic and have provided ample opportunity for the MJL to engage in meaningful reform, progress, and awareness. So, when Bill asked me to write the “President’s Corner” for February 2020, I jumped at the opportunity to discuss how every member of the Delaware State Bar Association can help the mission of the MJL.

The MJL is not a group of people that are seeking special treatment. The purpose of the MJL is to foster communication and understanding among diverse groups within the legal and greater community at large, work towards increasing diversity within the legal community, encourage public service rendered by its members, and promote the professional development and interests of its members. This purpose as stated in the MJL bylaws assumes a few things: (i) increasing diversity within the legal community is a good thing for the legal community; (ii) public service is a good thing and benefits our entire community; and (iii) professional development is a good thing and benefits our Bar as a whole. I do not think many people would argue that public service and professional development are good and necessary. However, there is a backlash or undercurrent of antipathy towards diversity.

In 2015, the American Bar Association established the ABA 360 Commission on Diversity and Inclusion. Its mission is to enhance diversity and inclusion at all levels within the ABA regardless of race, ethnicity, age, gender, religion, sexual orientation, gender identity, disability,
The purpose of the MJL is to foster communication and understanding among diverse groups within the legal and greater community at large, work towards increasing diversity within the legal community, encourage public service rendered by its members, and promote the professional development and interests of its members.

economic status, and other diverse backgrounds. In addition to these goals, the ABA aspires to recruit members who are diverse geographically, generationally, and by type of employment sector. The ABA’s statement on diversity is a solid base-level understanding of what is meant when we are discussing diversity. Diversity is not about replacing or excluding a qualified individual in favor of an unqualified individual who comes from a protected class. Moreover, consider the reality that, in our country, groups of people have been systematically precluded from engaging in society as equals for centuries. Centuries of marginalization cannot be erased by legislation or jurisprudence. Equality is a concept that is born out in the actions we take as people. Those actions begin to take form in our hearts and minds. Promoting diversity and inclusion in the legal community promotes representation and furthers the concept of equality while recognizing historical inequities that have significantly and meaningfully marginalized large populations of people.

I do believe there is cause to be optimistic. Recently, I heard a politician here in Delaware acknowledge the link between the Jim Crow era past to the mass incarceration present. This type of acknowledgement is precisely the type of awareness that will help to increase diversity and inclusion in the Delaware legal community. There is a role for everyone in striving to reach that end. Diversity is about more than race, ethnicity, gender, sexual orientation, gender expression, or ability. It encompasses geographic, socio-economic, and cultural diversity as well.

If we as a legal community make a concerted effort to be more representative of the community we serve, we will in fact be able to provide better service to that community. The MJL is a section for everyone. Allies are invaluable in the effort to increase diversity and inclusion, amplifying the voices already making that call. If you are interested in keeping the Delaware legal community among the elite legal communities in these United States, become a member of the MJL Section.

Kiadii S. Harmon is the husband of Kate Harmon, Esquire. He is an associate attorney at Mintzer, Sarowitz, Zeris, Ledva & Meyers, LLP and would love to discuss this topic with you further at any time. He can be reached at KHarmon@DefenseCounsel.com.

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Increasing Diversity Awareness Through Travel

Over the holiday, my wife and I took our kids to Europe for their first time. They have been to Mexico and to islands in the Caribbean, and had proved to be excellent travelers. But, we had never taken them out of the Western Hemisphere. The long break gave us a good opportunity to take their travels to another level, in both experience and distance. So, to the other side of the Atlantic we went.

While water parks, cruise ships, and kids’ clubs have served us well in the past, we did not include them on this itinerary. Instead, we wanted to expand their exposure to other cultures, because we believe it is one of the best kinds of education that exists beyond academia. They are seeing diversity that we hope is expanding their minds, and building in them greater curiosity and tolerance for the unfamiliar. They are tasting new and different foods, they are hearing unfamiliar languages, and they are seeing historical sites firsthand, not just reading about them in text books.

I will never forget the first time I saw my son eat a whole fish on a remote beach favored by locals in Jamaica. The menu at the restaurant consisted of a chalk board listing what type of fish they had caught that day, with the catch displayed on ice in a large open cooler sitting in the center of the room. We pointed at our selection, and they prepared it, head and tail included. The fish’s big mouth, full of rows of teeth, did not deter our kids from devouring it.

So I should not have been surprised — but was— when our son ordered frogs legs for dinner at a bistro in Paris. Had it not been for his bold, adventurous spirit, I definitely would not have ordered them (“do as I say…”), nor would I have been...
compelled to try them. But, because he did, I did too. And yeah, they tasted like really good chicken wings.

In Spain, I signed our family up for meal prep with a local chef. She took us food shopping in a market that was nothing like my kids had ever seen before. It certainly did not look like our local Acme. La Boqueria, as it is known, came to life in 1840, and I imagine still looks much like it did back then, with almost every type of farm animal on display for purchase, many with their eyeballs and snouts and tails still attached.

Then we hit the kitchen to prepare our own traditional Spanish dinner. Who knew that my kids, after cutting the muscle out of Cuttlefish, would then actually try it! While this type of meal may be commonplace in Spain and elsewhere, my kids know about them now because we as a family ventured out of our comfort zone. We saw how people in another country live and shop and cook and eat. And we brought home some new ideas for our own kitchen.

My kids know some Spanish, thanks to my wife and their Colombian grandmother. But to hear them expand their vocabulary was thrilling, as they listened carefully to shopkeepers and waiters speaking Spanish. And by the time we left Paris, my daughter was able to say please, thank you, you’re welcome, and a few other phrases in French, a language she had never spoke before. One morning, she even — correctly— asked our waiter for the check in French, much to his amazement, and mine.

Culturally, they learned new traditions for a holiday they thought they knew everything about. Come December, alongside their Advent calendars, guaranteed you will find a “caga tio” in our house among our Christmas decorations. (Just about every child in Barcelona has the wooden figurine in their home. The children look after their caga tio carefully, feeding it Turron and orange peel every day. The more they feed it, the more Christmas presents caga tio will poop out. Not kidding. Look it up!) They also learned about Barcelona’s long history of fighting for independence. Their rapt attention, as they walked the narrow cobblestone streets of the Gothic quarter listening to our tour guide, amazed me. So did the respect they showed the guide. It has got to be a compelling moment for a young person to stand on the very site where people were beheaded in Paris, during the French Revolution. The cathedrals in both countries, each unique in fascinating ways, provided the backdrop for stories of religious persecutions, and the perseverance of believers. They can certainly read these stories in books, but actually standing on these very sites, where impassioned storytellers (our guides) relayed important moments in history, is everlasting.

Even architecturally, our kids learned amazing lessons. Casa Batllo in Barcelona, designed by Antoni Gaudi, showed them how a house could be built without straight lines. We never would have predicted it, but Casa Batllo turned out to be one of their top three favorite sites. (The Eiffel Tower ranked pretty high, too.)

With these seeds planted, we hope they will continue to explore different cultures and languages — whether in school, among new acquaintances, or as future world travelers. They now have a better idea of all the diversity the world has to offer.

Prejudice — how it starts and why it continues — can be complicated. But at its root is fear and ignorance. Travel can be an antidote. Interactions with unfamiliar people and foreign cultures have the power to bust stereotypes and trample dangerous beliefs.

This latest trip expanded our kids’ horizons. And we had a whole lot of fun. My wife and I are now confident that the next trip we plan does not necessarily need to include a theme park or a lazy river.

Bar Journal Editor Jason C. Powell is the managing director of The Powell Firm, LLC, in Wilmington, Delaware. He may be reached at jpowell@delawarefirm.com and more information is available at delawarefirm.com.
Lexology: The DSBA Newsstand

LEXOLOGY. Looking for a newsfeed tailored to your interests? If you need to keep up with a certain area of law, court, or jurisdiction, your DSBA membership gets you free access to Lexology emails. Quite a few attorneys have already opted into this service and receive a morning email (or weekly, if desired) which keeps them abreast of things they have to know. DSBA Members can activate their account with Lexology by going to the Member Benefits page of the DSBA website and selecting what they want to receive. Opting in (and out) is very easy. Lexology keeps track of global legal cases and news. Having the news personalized to your interests helps weed out the information you do not need. In a busy world, that is most helpful; and in a world where remaining on top of your game is vital, this is one way of conveniently and frugally doing so. For more information, visit the Member Benefits page of www.dsba.org. 

DIVERSITY TRENDS FOR THE 2020s

1. It Is Still Time to Talk About Race
While there is more awareness about racial inequality, the increasing backlash, often from white people, has made the discussion of race prevalent, political, and necessary.

2. Gender Is Not Just About Women
The progressive decade of the 2010s has slowed, but discussions about gender equality, #MeToo, and transgender issues have kept gender issues at the forefront of the news. The 2020s will likely continue to delve into this topic, perhaps in the area of men’s health, fatherhood, and #HeForShe.

3. Class Will Re-Emerge As a Rallying Cry
When the Berlin Wall fell and the hope of the U.S. emerging as the world’s only superpower became likely, class became less important. However, the Great Recession, Occupy Wall Street and the banking scandals, Brexit, and the discussions of the 1 percent has divided classes in America and across the world in business centers like Hong Kong and the UK. Increasingly, diversity will encompass the working class.

4. Diversity of Age Will Become an Issue
Young voters and older voters are showing their differences on issues such as healthcare, sexual mores, and financial reform. Class and the economy are likely big factors in this ever more prevalent divide.

5. There Will Be More Focus On Cognitive Diversity
From social media to mainstream media like The Joker, mental illness has finally moved from a taboo subject or the butt of a joke to a real issue that will require focus and understanding in order to protect those who are affected.


IF YOU WERE NOT A LAWYER, WHAT WOULD YOU BE?

“Though I can’t imagine any actual avenue for making a living, other than the practice of law, which I have always loved, if I couldn’t do that, I would have been happy coaching baseball or lacrosse, or (if independently wealthy) writing lyrics. I have thoroughly enjoyed pursuing both of those great avocations.”

ROBERT B. YOUNG, ESQUIRE
Reger Rizzo & Darnall LLP
DSBA MEMBER
PAST PRESIDENT, 2004-2005

“I’ve been singing for audiences since I was four years old, and I classically trained through college. Fortunately, even with a full-time legal practice, I still have opportunities to sing on stage, including events in my hometown, Opera Delaware, and naturalization ceremonies.”

JENNESS E. PARKER, ESQUIRE
Skadden Arps Slate Meagher & Flom LLP
DSBA MEMBER

FOR NEXT MONTH...
What advice do you have for the new admittees to the Delaware Bar?
Email Rebecca Baird at rbaird@dsba.org and your response could be in the next Bar Journal.
OF NOTE

Condolences to the family of William D. Rimmer, Esquire, who died on December 26, 2019.
Condolences to the family of F. Alton Tybout, Esquire, who died on January 9, 2020.
Condolences to The Honorable Kathleen C. Lucas on the death of her mother, Clare Lucas Violetti, who died on January 26, 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

PRIVATE ADMONITION

ODC File No. 113587-B
Effective Date: December 30, 2019

A Delaware lawyer was privately admonished for violations of the Delaware Lawyers’ Rules of Professional Conduct (“Rules”) in connection with his failure to supervise his non-lawyer staff. The private sanction was offered by a Panel of the Preliminary Review Committee and imposed with the consent of the lawyer. Respondent failed to have reasonable safeguards in place, which would assure the employees’ conduct was compatible with the professional obligations of the lawyer.

PRIVATE ADMONITION AND PRIVATE PROBATION WITH CONDITIONS

ODC File No. 114162-B
Effective Date: January 14, 2020

A Delaware lawyer was privately admonished and placed on a private probation with conditions for violations of Rules 8.4(b) and 8.4(d) of the Delaware Lawyers’ Rules of Professional Conduct. The violations stemmed from the lawyer’s guilty plea to possession of amphetamines in the state of New Jersey, the entry of which was stayed pending the lawyer’s completion of a pretrial diversion program. In mitigation, the PRC considered the lawyer’s: (a) lack of prior disciplinary record; (b) absence of dishonest or selfish motive; (c) full and free disclosure to ODC and cooperative attitude (including voluntary withdrawal from the practice of law for a period of a year); (d) character and reputation; (e) interim rehabilitation (including full compliance with DE-LAP’s conditions and recommended treatment); (f) imposition of other penalties; and (g) remorse. This disciplinary sanction was conditioned upon the lawyer’s successful completion of the New Jersey pretrial diversion program and continued cooperation with DE-LAP and its recommendations.

SEEKING NOMINATIONS

The Delaware State Bar Association and the Awards Committee are seeking nominations for the First State Distinguished Service Award to be presented at the 2020 Bench & Bar Conference. The award is described below:

This award is given annually at the Bench & Bar Conference to a member of the Delaware Bar who, by exemplary leadership and service dedicated to the cause of good citizenship in civic and humanitarian service over a period of many years has maintained the integrity and honored recognition of the legal profession in community affairs and who, as an outstanding Delawarean, unceasingly advances the ideals of citizen participation and community accomplishment, thus reflecting high honor on both country and profession.

SUBMIT NOMINATIONS BY MARCH 6, 2020 TO:
Mark S. Vavala, Executive Director
Mail: DSBA, 405 N. King Street, Suite 100, Wilmington, DE 19801 or Email: mvavala@dsba.org

Please include: The name, firm, and title/occupation of the Candidate; name and contact information (firm, address, email, phone, and fax) of the individual nominating the Candidate; and a brief statement of the reasons the Candidate is deserving of the Award.
Professional Guidance Committee

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

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DSBA/DE-LAP Liaison

*Certified Practice Monitor

CALENDAR OF EVENTS

February 2020
Wednesday, February 12, 2020
Mental Health Defenses in Delaware
2.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James, LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, February 19, 2020
Hate Crimes in Delaware and the Country
2.5 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James, LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, February 27, 2020
Hot Topics in Government and Consumer Law: HOA Disputes, Blight, and Body Cameras
3.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James, LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

February 28, 2020 and Saturday, February 29, 2020
The 28th Annual Women and the Law Section Retreat
Atlantic Hyatt Place, Dewey Beach, Dewey Beach, DE

March 2020
Tuesday, March 3, 2020
DE-LAP Behind the Cool Image Workshop Five: Wellbeing Through Time Management for Lawyers
1.0 hour CLE credit in Enhanced Ethics
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James, LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, March 5, 2020
Labor and Employment Law Update 2020
4.8 hours CLE credit including .08 hour Enhanced Ethics
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James, LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, March 12, 2020
Fundamentals of Criminal Law
2.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James, LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Wednesday, March 18, 2020
Landlord-Tenant Pro Bono Workshop
2.0 hours CLE credit
Delaware State Bar Association, Wilmington, DE
Webcast to Morris James, LLP, Dover, DE
Webcast to Tunnell & Raysor, Georgetown, DE

Sunday, March 22, 2020
DSBA Baking Contest
Delaware State Bar Association, Wilmington, DE

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

February 2020

Wednesday, February 12, 2020 • 4:00 p.m.
Real and Personal Property Section Meeting
Brian Frederick Funk, P.A., 24 Polly Drummond Hill Road, Newark, DE

Friday, February 14, 2020 • 12:00 p.m.
Litigation Section Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Friday, February 14, 2020 • 12:00 p.m.
Workers’ Compensation Section Meeting
Elzufon Austin & Mondell, P.A., 300 Delaware Avenue, Suite 1700, Wilmington, DE

Tuesday, February 18, 2020 • 12:30 p.m.
Labor and Employment Section Meeting
Connolly Gallagher LLP, 1201 North Market Street, 20th Floor, Wilmington, DE

Wednesday, February 19, 2020 • 9:00 a.m.
ADR Section Meeting
Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE

Thursday, February 20, 2020 • 12:00 p.m.
Executive Committee Meeting
Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, February 20, 2020 • 12:30 p.m.
Torts and Insurance Section Meeting
Tybout, Redfearn & Pell, 750 Shipyard Drive, Suite 400, Wilmington, DE

Thursday, February 20, 2020 • 4:00 p.m.
Elder Law Section Meeting
The Levinson Firm, 1326 North King Street, Wilmington, DE

Monday, February 24, 2020 • 4:00 p.m.
Taxation Section Meeting
PNC Hawthorn, 222 Delaware Avenue, Suite East 1800, Wilmington, DE

Thursday, February 27, 2020 • 4:00 p.m.
Family Law Section Meeting
Bayard, P.A., 600 North Market Street, Wilmington, DE

March 2020

Tuesday, March 3, 2020 • 3:30 p.m.
Estates and Trusts Section Meeting
Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington DE

Wednesday, March 11, 2020 • 4:00 p.m.
Real and Personal Property Section Meeting
Brian Frederick Funk, P.A., 24 Polly Drummond Hill Road, Newark, DE

Wednesday, March 18, 2020 • 9:00 a.m.
ADR Section Meeting
Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE

Wednesday, March 18, 2020 • 6:00 p.m.
Young Lawyers Section Happy Hour
TBD

Thursday, March 19, 2020 • 12:30 p.m.
Torts and Insurance Section Meeting
Tybout, Redfearn & Pell, 750 Shipyard Drive, Suite 400, Wilmington, DE

Thursday, March 19, 2020 • 4:00 p.m.
Elder Law Section Meeting
The Levinson Firm, 1326 North King Street, Wilmington, DE

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

EXECUTIVE COMMITTEE

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Executive Director
When I attended law school, Many years ago, They taught the fundamentals, Of what you need to know.

Words had specific meanings, Every day the Profs would preach it. But, it seems those terms have changed, And no one wants to teach it.

Young lawyers needed face time, So partners could talk them through it. Now FaceTime gives them all the choice, Of where they want to do it.

Emoji was a pictograph, From a different race. Fishing’s (phishing) something you did, When you didn’t have a case.

Alexa was your daughter’s name. A Cloud just floated by. A Tweet came from a tiny bird, And a Bully made you cry.

Software once meant Cashmere. With a Virus you caught a cold. A Disk was something in your back, When you were getting old.

I find these terms are difficult, I often do confuse them. Siri keeps them in my Phone, So I do not lose them.

Discovery meant more paper, Not docs you cannot feel. Spyware dealt with agents, And Virtual once was real.

Amazon girls were very tall, A Mac you ate with cheese. These words we all used every day They weren’t just legalese.

Ransom came from calls or notes, Not data now called “Ware.” When you Googled you were impolite, Because you shouldn’t stare.

A Text was something in a book, A passage from afar. You certainly did not key it in While driving in your car.

Microwaves aren’t small hellos, Block chains aren’t made of steel, An E-ZPass is not a ball, And this Apple you don’t peel.

I could go on forever, But I’ll never win this race. These words keep changing every day, It’s hard to keep the pace.

So if you do not know the word, There’s no reason you should mind it. Go on the Web for the newest App And it will help you find it.
Fastcase is one of the planet’s most innovative legal research services, and it’s available free to members of the Delaware State Bar Association. Learn more at www.dsba.org/fastcase.
Top Ten Certificate of Compliance Tips

Because of the Certificate of Compliance, attorneys found to have books and records issues not only face discipline for those Rule 1.15 violations, but also for Delaware Professional Conduct Rule 8.4 offenses citing fraud, deceit, dishonesty, and conduct prejudicial to the administration of justice.

1. Visit the Lawyers’ Fund for Client Protection website linked to the Delaware Supreme Court webpage. There is plenty of useful information, including the Audit Program, which is also available in Volume 2 of the Delaware Rules. The Audit Program is a checklist which confirms Rule 1.15 compliance. It is the same checklist that the LFCP auditor will use to conduct your audit; it also tracks the questions contained in the Certificate of Compliance. In addition, the LFCP website contains a helpful explication of Rule 1.15 prepared by the accounting firm that performs the LFCP audits.

2. One of the more frequent non-compliance issues arises when the operating and trust accounts are first opened. Confirm that your accounts are correctly titled, as required by Rule 1.15A and that the accounts are in an approved bank. That list of approved institutions is also available on the LFCP website.

3. Make sure, especially if you practice in a multi-state firm, that all Delaware client funds — and only Delaware client funds — are deposited in the Delaware escrow account. Rule 1.15(a).

4. This is the perfect time to do an early spring cleaning of your fee agreements:
   - Make sure that your firm has the required written fee agreements in all contingency matters.
   - Whenever the firm receives a retainer (an advance payment of a legal fee), make sure that your fee agreements contain the required Rule 1.15(f) requirement that the retainer is refundable if not earned. Make sure the client is sent a notice, in writing, each time that there is a draw on the retainer, which cites the basis for that draw. LFCP auditors will ask you to produce copies or examples of such writings.
   - Finally, make sure that you fully understand the limitations of how fees can be considered “earned when paid” before structuring your fee agreements with language that attempts to circumvent the need to escrow retainers. Rule 1.5 Comment [10].
If you delegate your bookkeeping to others, do not simply ask your staff whether you are in compliance. Insist on seeing the reconciliations and reports. Too many attorneys have relied on such assurances of compliance only to find out later that the non-attorney staff were merely doing “drive-by” reconciliations comparing the check register balance with the bank statement. As a reminder, each client or matter subaccount has to be reconciled, and negative client balances constitute non-compliance.

As part of the process of reconciliations, you will be asked to certify that there are no stale checks. Before you certify, make sure that your staff is actually clearing outstanding checks. This can be accomplished by calling the payee to confirm that the check was received and that they intend to cash it. If that does not result in clearing the check, an outstanding check may also require a stop payment and re-issuance. Where the check has been outstanding for more than six months and the payee cannot be located, it may be necessary to escheat the funds to clear it. Rule 1.15(12)(E).

Review your list of funds in escrow to determine whether there is still a reason to continue to hold the funds. Failure to timely disburse funds to clients and third parties may constitute non-compliance with Rule 1.15(12)(G) and Comment 9(d).

Even if you determine that there is a continued need to hold funds in escrow, Rule 1.15 requires that you discuss with the client the merits and costs of transferring the funds to an interest-producing account. Rule 1.15(f).

Make sure that earned fees are swept from escrow on a timely basis. Rule 1.15(12)(G).

There may still be time to obtain a precertification of your books and records. The Certificate of Compliance usually provides an option to certify compliance which notes that the certification is offered in partial reliance on the advice and assistance of an independent Certified Public Accountant. Both the Delaware Rules Volume and the LFCP website contain the report format for the precertification by an independent CPA. Note that on the website, the Lawyers’ Fund states that “even though it’s not guaranteed, it is not likely that a law firm will be selected by the Lawyers’ Fund for an audit if their CPA firm has certified their compliance.” Even if your CPA is not able to confirm your compliance, your accountant may be able to assist you in becoming compliant before your own certification is filed or to assist you in accurately completing the Certificate of Compliance.

Finally, be truthful in the certification. Disclose any non-compliance. Many instances of Rule 1.15 non-compliance do not become the subject of a disciplinary matter or the imposition of a sanction. However, if you are found to be both non-compliant and to have filed a “false” Certificate with the Delaware Supreme Court regarding that compliance, you increase the chances of disciplinary consequence for the non-compliance.

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

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

Charles Slanina is a partner in the firm of Finger & Slanina, LLC. His practice areas include disciplinary defense and consultations on professional responsibility issues. Additional information about the author is available at www.delawgroup.com.
Work With Time and Not Against It

As a legal professional, we know time is one of our most precious commodities. In fact, our day is even measured by increments of time. On the other hand, we know that more often than not, personal time (wellbeing, sleep, nutrition, exercise, and play) is often sacrificed to work. Indeed, although time is always on our mind, it is often elusive.

While trying to be everything to everyone, both personally and professionally, we often may sacrifice our own well-being for our professional life. To our detriment, some of us might even show up to work already stressed and depleted of stamina. We are connected more than ever to our professional life and with only 24 hours in a day, something has to give. That something is often us!

Balancing work and life with clear boundaries is a commendable goal. Many are successful in designing, planning, and implementing boundaries; others are not. In fact, many of us envision ourselves as the white rabbit in Alice In Wonderland, running with a clock, and yelling “I am late, I am late for a very important date, no time to say hello or good-bye; I am late!”

Undoubtedly, time is our most important resource. Therefore, in order to maximize the time we have, we need to work with it, not against it. One way of working with time is by blending our personal and professional time rather than bifurcating it.

What Is Blending?

A textbook definition of blending is an act to mix smoothly and inseparably together and/or to mix in order to obtain a particular kind or quality; such as, blending a little red paint with the blue paint to make purple. For our purposes — blending work and personal life — the goal is to obtain a particular quality of blended life.

In Forget Work-Life Balance. Work-Life Blending Is the Key to Happiness, China Gorman quotes Harvard professor and researcher Joel Goh who has estimated that workplace stress accounts for up to $190 billion in healthcare costs every year in the U.S. — that is nearly eight percent of all corporate healthcare spending. David Lee, an expert on employee stress, sees increases in all of the following within high-stress workplaces: absenteeism, workers comp claims, litigation, grievances, accidents, error of judgment, violence, customer (client) complaints, and others. And, of course, all of these have huge costs associated with them.²

The 2014 National Study of Employers from Families and Work Institute provided convincing evidence that employees in more flexible
Work-life blending, instead of work-life balance, may be a better solution to working with time rather than against it. Instead of creating individual boundaries for the activities we do, blending them will focus on mixing together the different facets of our personal and professional life.

Workplaces are more likely to have less negative and stressful spillover from job to home, less negative spillover from home to job, better mental health, better overall physical health, low frequency of minor health and sleep problems and low general stress level. And that translates to healthier employees as well as healthier bottom lines. 3

Therefore, being the best version we can — both at work and at home — drives the approach of blending. Why? Because, we live in an era where all aspects of our lives are impossible to separate from another. Our boundaries are blurred. Thanks to technology, our professional life and our personal life are integrated. It is nearly impossible to divide them with clear boundaries. Work-life blending, instead of work-life balance, may be a better solution to working with time rather than against it. Instead of creating individual boundaries for the activities we do, blending them will focus on mixing together the different facets of our personal and professional life.

Bringing the In-Office Work Policy Up-to-Date

Using blending as a tool to manage boundaries and time offers healthy choices and integrates work responsibilities into the totality of daily life. Gorman suggests:

As leaders, we have more impact than we know just in our daily language and behaviors. While work-life balance may be a pipe dream and a fundamental misunderstanding of how the world works, leaders who make strong, healthy choices publicly are role models for their employees in integrating their work responsibilities into the totality of their daily lives. Simple actions like taking parental leave, not emailing subordinates at night and on weekends, stopping smoking, and losing weight are public examples that can be compelling for employees.

Gorman offers further suggestions to design, plan, and implement work-life blending:

- encouraging email-free weekends
- fitness breaks legitimized in the work schedule
- providing paid parental leave for new parents
- paid time off for volunteer activities

Make it a point to regularly ask yourself, and your staff, how they feel about the work they do and how you can make their environment a better one. The above approaches are guides not only to lessen work-related stress for yourself, but also your staff.

Work-Life Balance vs. Work-life Blending

In the article Work-Life Blending: Does It Work? co-authors Dr. Tchiki Davis and Blake Snow, point out the issues with achieving work-life balance:

at some point…we started moving away from pursuing work-life balance. Perhaps it was because we’re so miserable at it, or possibly — and maybe more likely — it was because our employers secretly (or not so secretly) are desperate to keep us productive, and therefore working, as many hours as is humanly possible…but, for these reasons, and maybe others, a new belief has emerged. It is this: work-life balance is impossible; therefore, we must embrace work-life blending instead.4

Work-life blending is about creating a partnership between yourself and your employer to create a more human context for integrating work into life. Davis and Snow state that:

The truth is that life involves trade-offs. Call it what you will, but ambitious professionals will always be confronted with imbalance, discord, competing priorities, compromise and conflicting responsibilities. How we manage these trade-offs determines whether we find equilibrium or become work-obsessed, relationship-neglecting narcissists who choose to look down at glowing objects instead of into peoples’ eyes when they speak to us.

We have to choose to find a more satisfying life-style — to work with time and not against it through blending and flexibility.

For more information about work-life blending, or other important issues affecting your quality of life and/or quality of professionalism call DE-LAP (302) 777-0124 or e-mail cwaldhauser@de-lap.org — we are confidential and free.

Notes:


Carol P. Waldhauser is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at cwaldhauser@de-lap.org.
Every Delaware lawyer takes pride in the fact that, of the five lower court decisions consolidated and heard together by the United States Supreme Court in *Brown v. Board of Education*, the consolidated decision from the Delaware Court of Chancery (*Belton v. Gebhart* and *Bulah v. Gebhart*) was the only lower court decision ordering integration. In remembering this important Delaware decision, though, there is an earlier decision — equally important — that is often overlooked.

In 1950, two years before the *Belton* decision, and four years before the Supreme Court’s *Brown* decision, Chancery’s young Vice Chancellor, Collins J. Seitz, then only 35, became the first judge in the nation to order the integration of a public university when he ordered the admittance of African-Americans to the University of Delaware in *Parker v. University of Delaware*, 75 A.2d 225 (Del. Ch. 1950). This year marks the seventieth anniversary of the *Parker* decision — a decision sometimes overlooked or forgotten in relation to its more famous progeny, *Belton* and *Brown*. Nevertheless, the Bar Association thought a brief history of the *Parker* case appropriate in light of its anniversary and to pay homage to one of Delaware’s great legal decisions.

Delaware seventy years ago was, of course, a different place than it is today. At that time, African-American students were not allowed to attend the University of Delaware if there was a course of study for the same degree in another institution in the state which allowed African-Americans to attend (Delaware’s public schools, like many in the country, were also segregated). Delaware State University (then known as Delaware State College) did allow African-Americans to attend. When Brooks Parker (for himself and others) sought an application form from the University of Delaware, pointing out, among other things, that Delaware State College had lost its accredited status, the request was nevertheless denied. In so doing, the University argued that Delaware State College was available to Mr. Parker. Mr. Parker, through his attorney, the legendary Louis L. Redding, promptly brought suit, seeking permanent injunctive relief against the University and ordering the University to make application forms available to, and to consider admission of, all persons, regardless of race. The University defended that under the then-applicable doctrine of “separate by equal,” first upheld by the Supreme Court in *Plessy v. Ferguson*, the University had no obligation to consider or admit Parker as a student.
Vice Chancellor Seitz's ruling came in August — only a few months after the filing of the lawsuit. In his decision, the Vice Chancellor assumed that segregation could be permitted under the “separate but equal” doctrine; however, he also began his analysis with citations to two United States Supreme Court opinions from June of that year, *Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents for Higher Ed.* In *Sweatt*, the Supreme Court unanimously held that a law school newly-created by the State of Texas for African-Americans was not equal to the University of Texas Law School and ordered the appellant admitted to the University of Texas Law School. In *McLaurin*, an African-American admitted to the University of Missouri graduate education program challenged the various conditions imposed by the school on his attendance (sitting in a separate, adjoining anteroom for classes, at a separate table in the library, at a separate table and time in the school cafeteria, etc.). The Court invalidated these restrictions as violating equal protection and held that once admitted to the program, McLaurin was entitled to be treated the same as other students.

In deciding the *Parker* case, Vice Chancellor Seitz conducted a personal inspection (with counsel for the parties) of both schools. He recounted in his opinion what he found at some length. He found the University of Delaware campus “a thing of beauty” (in doing so, he noted that he was “not unmindful of the necessity for objectivity because of my own undergraduate background” [a reference to his attendance at the University as an undergraduate student]). Conversely, he thought that at the Delaware State College campus “there was no particular plan behind the positions of the various buildings” and that “with very few exceptions the few good buildings at the College were inferior to nearly all of the comparable buildings at the University.” He considered the curricula, the faculty, the two schools’ libraries, the athletic facilities, the support provided students, and a host of numerous other factors. In each case, he found the University of Delaware markedly better than Delaware State College.

In similar “separate but equal” cases in other states, the courts had usually afforded the government the opportunity to improve the black school or facility that was found wanting, but Seitz would not do this. In his final paragraph, the Vice Chancellor concluded:

> It follows from my conclusions that the Trustees of the University by refusing to consider plaintiffs’ applications because they are Negroes have violated the guarantee contained in the Equal Protection Clause of the United States Constitution. The plaintiffs are therefore entitled to a permanent injunction in accordance with the prayers of their complaint.

In a speech years later, Seitz explained that he ordered integration because “to countenance delay was to deny [plaintiffs] relief.”

Although the Vice Chancellor’s decision was undoubtedly correct, it nevertheless marked the first time that a public university had been ordered to integrate. Moreover, it was the first time that any lower court had ordered integration of any educational institution. And, most uniquely of all, it was the first (and presumably only) time that a member of any court enjoined another member of his own court. At the time of the *Parker* decision, the Chancellor was a member of the University of Delaware Board of Trustees. Legend has it that, upon finishing his decision, Vice Chancellor Seitz went down the hall, entered the Chancellor’s office, handed him the decision, and said “I have just enjoined you.” The Chancellor’s response is lost to history, but it is noteworthy (and commendable) that no appeal of the *Parker* decision was taken by the University.

Certainly the State of Delaware has come a long way in seventy years, as has the University of Delaware and Delaware State University, as has the nation as a whole. *Parker, Belton,* and *Brown* all worked to change Delaware and America for the better. *Brown* is rightly celebrated today as one the Supreme Court’s greatest decisions, and *Belton* is rightly celebrated as one of Chancery’s greatest decisions, but we would all do well to remember and celebrate *Parker* too.
DSBA EVENTS

DR. MARTIN LUTHER KING, JR.
Annual Breakfast & Statewide Day of Service

Monday, January 20, 2020  |  Chase Center on the Riverfront
1. Wil Haygood, Acclaimed Biographer, Pulitzer Finalist, Award-Winning Author & Reporter gave the Keynote Address at the 7th Annual Dr. Martin Luther King, Jr. Breakfast.  
2. DSBA President William Patrick Brady, Esquire, delivered Introductory Remarks.  
3. MLK Event Committee Co-Chair Samuel D. Pratcher III, Esquire, gave Welcome Remarks.  
4. Attendees at the Dr. Martin Luther King, Jr. Annual Breakfast & Statewide Day of Service.  
5. MLK Event Committee Co-Chair, Reneta L. Green-Streett, Esquire, gave Closing Remarks.  
6. Tayler D. Bolton, Esquire, performed Lift Every Voice & Sing.  
9. United States Senator Christopher A. Coons.  
10. The Honorable Collins J. Seitz, Jr., Chief Justice of the Supreme Court of the State of Delaware.

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Volunteers at Wills for Seniors.  
Volunteers at the Friendship House.  
Volunteers who participated in the ice cream social and bingo event at the Ronald McDonald House.  
Volunteers at the Sunday Breakfast Mission.  
Volunteers at the Food Bank of Delaware in Newark.

“The time is always right to do what is right.”

- Dr. Martin Luther King, Jr.
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The 29th Annual Delaware High School Mock Trial Competition will be held at the Leonard L. Williams Justice Center, 500 N. King Street, Wilmington Delaware on Friday, February 21 and Saturday, February 22, 2020. In the event of inclement weather on one of the competition days, the snow date is Saturday, March 7, 2020. The time commitment to judge a round is approximately four hours. This time includes an orientation for volunteers prior to your scheduled round, judging the competition round, and student debriefing after the round. To learn more about the Delaware High School Mock Trial Competition and the Delaware Law Related Education Center, please visit www.delrec.org or contact Pat Quann at delrecntr@aol.com or the Mock Trial Committee at mocktrialde@gmail.com.

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To volunteer to judge this year’s Delaware Mock Trial Competition, please click the link on the Home Page of our web site at www.delrec.org. Confirmation of assignments will be sent out by email by early February, along with a confidential bench brief, competition details, and information about obtaining CLE credit for your participations.
Although the Civil War ended slavery as a practical matter, it was the Thirteenth Amendment that formally ended slavery throughout the country. Even then, the Thirteenth Amendment did not do enough, and Congress (and the states) thereafter adopted the Fourteenth and Fifteenth Amendments in short order. Pulitzer Prize-winning professor Eric Foner calls these three amendments “the second founding” and argues that these amendments remade the Constitution (and our nation) legally, politically, and socially. In *The Second Founding: How the Civil War Remade the Constitution*, Foner tells the tale of the creation and adoption of each of these three amendments, including why, in fact, there are three amendments and not just one (or more than three).

In hindsight, and with the advantage of history, it seems hard to understand the opposition that each of the three amendments faced as they worked their way through the process, but each amendment did face opposition and debate as well as contests over drafting, direction, and scope.

Even the Thirteenth Amendment, abolishing slavery, faced some opposition before going on to pass Congress and be adopted. There were concerns over wording (language from the Northwest Ordinance of 1787 was used), but, even more, there were questions about whether slavery should be abolished at the national level or by states. Northern border states also initially questioned the abolition of slavery in their states when they had remained loyal to the union. Ultimately, though, the Thirteenth Amendment was passed by Congress on January 31, 1865 and certified as having received the necessary three-quarters’ approval of the states on December 18, 1865.

Merely abolishing slavery, though, did not solve the nation’s problems. President Johnson and the Republicans in Congress split over Reconstruction policies. Although free from bondage, blacks in the South (and, indeed, in the rest of the country) did not enjoy full equality. By January 1866, some seventy further amendments were proposed for the Constitution. The Congressional Joint Committee on Reconstruction held extensive hearings on conditions in the South and ultimately hammered out the language that became the Fourteenth Amendment — the longest amendment to the Constitution and the one that would become the most transformative. The process was not easy, and the various debates on particular issues are fascinating to consider 154 years later.

One of the concerns addressed was the original three-fifths clause from the Constitution. Because former slaves were now free, representation of the former slave states would increase in the House of Representatives. Yet, there was worry that the former slave states would limit or prohibit the voting rights of the free slaves. Thus, section 2 of the Fourteenth Amendment provides that if voting rights are denied, except for participation in rebellion or crime, the basis for representation in the House would be reduced. Today this section is little discussed or considered. Similarly,
The Fourteenth Amendment, though, did not fully do its job — at least when it came to the right to vote. Public agitation and discourse grew in volume calling for another constitutional amendment which would make clear that the right to vote could not be denied on the basis of race.

Section 4 of the amendment prohibited the United States or any state from paying any war debts of the seceded states. Again, a section little discussed today, but one of great import at the time. The Fourteenth Amendment was adopted by Congress in 1866, and became a part of the Constitution in 1868.

The Fourteenth Amendment, though, did not fully do its job — at least when it came to the right to vote. Public agitation and discourse grew in volume calling for another constitutional amendment which would make clear that the right to vote could not be denied on the basis of race. Debate raged for some time and focused on two issues. Non-southern states, those in the north and those in the west, were initially resistant to calls for such an amendment. In the west, concerns (racism) over immigrants from Asia were an issue, whereas in the north, many states were not (initially) prepared to go so far as to extend the franchise to non-whites. In the end, these concerns were overcome, but they did initially provide some resistance.

The other debate over what became the Fifteenth Amendment was one of approach. Some believed that the amendment should establish a national standard, and that all who met the standard would be entitled to vote. Period. State control over voter qualifications would be stripped away. Others thought the issue should be left to the states, with only prohibitory language as to reasons that a person could not be disenfranchised. In the end, it was the second approach which prevailed, and so the Fifteenth Amendment simply states that the right to vote may not be denied on the basis of race, color, or previous condition of servitude. One unfortunate consequence of this approach (foreseen by some who argued for a national standard instead) was that it allowed states to impose conditions (literacy tests, poll taxes, etc.) more likely to disenfranchise blacks than whites, and this is what many southern states did until the Supreme Court struck such conditions down.

Like the Fourteenth Amendment, the Fifteenth Amendment was also ratified quickly. It was sent to the states by Congress in 1869, and received the necessary three-quarters’ approval in 1870.

And, with the passage of the Fifteenth Amendment, the “second founding” was complete. The Constitution, which had not been amended since 1804 (regarding balloting for president and vice-president separately in the electoral college), would not be amended again until 1913 (allowing the federal government to impose income taxes). That a second founding was necessary at all is, of course, the great tragedy of the original Constitution. Although many of the founders were anti-slavery, or believed that slavery would ultimately fade away, they tried to hold the “wolf by the ear,” as Thomas Jefferson once famously described it, rather than address the problem head on. That decision led to decades of bondage and, ultimately, a bloody civil war. Although there would still be much more work to do, with the Thirteenth, Fourteenth, and Fifteen Amendments, the country started down the road to a better place and began to right the greatest wrong of the founding era.

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A Sweet Search

What better way to celebrate our February holidays — Presidents’ Day and Valentine’s Day — than to discover the favorite sweets of U.S. Presidents. In his February 17, 2017 article in www.bakemag.com entitled “Hail to the Sweets: The Favorite Desserts of U.S. Presidents,” Brian Amick shares the favorite confections of our Commanders-in-Chief. I hid 20 of these desserts (and included the Presidents who savored them) below.

Apess (James Buchanan)
Apple Cider Creme Brulee (George W. Bush)
Apple Pan Dowdy (John Adams)
Blueberry Pudding (Franklin Delano Roosevelt)
Boston Creme Pie (Ulysses S. Grant)
Calas Tous Chauds (Zachary Taylor)
Charlotte Russe (Martin Van Buren)
Chocolate Cake (Donald Trump)
Chocolate Chip Cookie (George H.W. Bush/Bill Clinton)
Coconut Pie (Barack Obama)
Cream Peach Pie (Herbert Hoover)
Cry Babies (James Monroe)
Devils Food Cake (Chester A. Arthur)
Fat Rascals (Theodore Roosevelt)
Frozen Delight (John F. Kennedy)
Great Cake (George Washington)
Lemon Custard Pie (Abraham Lincoln)
Macaroon (Ronald Reagan)
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**GARY SPITZER**, Founder of the Gary & Silvia Spitzer Foundation Fund at the DCF, pictured at Easterseals of Delaware and Maryland's Eastern Shore

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MANNING GROSS + MASSENBURG LLP (MG+M) is recruiting a junior to mid-level Associate for our Wilmington, Delaware office. This Associate will be working primarily on Delaware litigation. Delaware bar license or pending admission is required. This is an excellent opportunity for the right candidate to join a nationally recognized and growing defense firm. Candidates should have strong work ethic, writing ability, and organizational skills. MG+M offers an excellent benefit package. Please email resumes to wlarson@mgmlaw.com.

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

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It Pays to Be Diverse: The Business Side of Diversity and Inclusion

BY MARK S. VAVALA, ESQUIRE
EXECUTIVE DIRECTOR
DELAWARE STATE BAR ASSOCIATION

The argument for diversity is often made (rightfully so) as a social justice issue, but for the business-minded, there is not much room for inclusive philosophy unless it affects a financial bottom-line. A number of studies in recent years make the argument that diversity makes a company more innovative and more profitable. Here are ten take-aways from those surveys:

1. There is a statistically significant relationship between diversity and innovation. The more diversity and dimensions present, the stronger the innovation performance of the company.

2. Equal pay, diversity in leadership, and open communications practices result in higher innovation rates and result in fresher product lines as well as higher profits.

3. When ethnic and cultural diversity are emphasized in the management and workforce of a company, there is a 35 percent greater likelihood a company will outperform less diverse companies.

4. When gender diversity is emphasized, there is a 21 percent likelihood the company will outperform other companies and a 27 percent likelihood they will create long-term value which will benefit the company over years.

5. Companies who develop an inclusion and diversity strategy more often than not will experience greater profitability in the annual financial figures.

6. Companies in which women hold 25 percent of decision-making roles generate a 4 percent higher cash flow return on investment than the MSCI All Country World Index (ACWI). It goes up to 10 percent when women comprise 50 percent of the senior managers.

7. Companies with boards which are non-diverse were 29 percent less likely to be profitable compared to the profit average in their industry.

8. The Peterson Institute for International Economics conducted a survey of nearly 22,000 public-traded firms in 91 countries and revealed that the gross and net margins of the companies had a strong correlation to the number of women on the boards of those companies.

9. Wall Street Journal analysts have stated: “A diverse team supported by an inclusive environment that values each individual will outperform a homogenous team every time.” Their study showed a direct correlation between overall diversity and profit margins.

10. Diversity in the workforce means having diverse perspectives. In nearly every statistical analysis, having those diverse opinions and views resulted in new ways of thinking which, in turn, resulted in profit for the business entity.

The legal profession is not immune from the need for better profits and innovation. Having the best talent to do the job is often touted as the reason to avoid focusing on diversity. But, in reality, these studies show that diversity increases the pool of the best talent and ultimately improves the financial bottom line.

Notes:

Mark S. Vavala is the Executive Director of the Delaware State Bar Association. He can be reached at mvavala@dsba.org.
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