

Dear Members of the Bar:

Many of you are aware of a recent series of television and print ads from a group calling itself Citizens for a Pro-Business Delaware purporting to seek legislative changes to increase transparency and accountability in the Court of Chancery. In fact, this group's goal is not to improve our judicial system, but instead, to unfairly malign the Court and, in particular, wage a personal vendetta against Chancellor Andre Bouchard, as a result of an adverse ruling against a party, Philip Shawe, in the *TransPerfect* litigation conducted several years ago.

For those of you not familiar with the underlying facts of the *TransPerfect* matter, it involved a company formed by two parties, Mr. Shawe and Elizabeth Elting, who were at one time engaged, but as their business grew enormously, became extremely hostile to one another. Eventually, Ms. Elting filed suit in the Court of Chancery seeking the appointment of a custodian to sell the company for the benefit of the stockholders, pursuant to the Delaware General Corporation Law and long-standing judicial precedent.

In essence, the parties sought a business divorce. It was a fairly typical case of the type the Court of Chancery is called upon to decide on a regular basis and was decided in a manner entirely consistent with long-standing Delaware law and precedent. What made the case unusual, and for which it gained national notoriety, were the extraordinary and unprecedented tactics employed by Mr. Shawe in engaging in a public campaign designed to intimidate the Chancellor, Ms. Elting and Delaware officials, including an unsuccessful attempt to seek legislative changes during the pendency of the litigation in an effort to affect the outcome of the matter and prevent a judicial sale of the company. Ultimately, the custodian appointed by the Chancellor solicited bids and oversaw a transaction whereby Mr. Shawe bought out Ms. Elting's interest in the company.

The Citizens group, using a high profile public relations firm, has now renewed and ramped up its attacks on the Court, repeatedly calling it "corrupt", as well as personally attacking Chancellor Bouchard and his family. The Chancellor could not respond to the unwarranted personal attacks, then or now, because he, like all Delaware judges, is bound by a Judicial Code of Conduct that forbids such response. On the other hand, we, as a Bar Association, are not bound by such restrictions and the recent renewal of the disrespectful attacks on the Chancellor has reached the point where we can no longer remain silent.

While the Citizens group has most recently tried to legitimize itself by calling for increased diversity on the Supreme Court following the announcement of the impending retirement of Chief Justice Leo Strine, it is clear that this is merely a smokescreen to hide its real mission, one that has been apparent from the outset, of waging a personal vendetta against the Chancellor. As Delaware attorneys, we should not stand for this. The group has also claimed it wishes to

see Delaware law changed because the State's reputation as the preferred place of incorporation and our business climate has suffered as a result of the *TransPerfect* litigation. However, like the rest of its allegations, that is simply not true. (Mr. Shawe moved his company's state of incorporation away from Delaware, so he no longer has any real interest in seeing Delaware law changed.) In fact, just this week, Delaware's lawsuit climate was again ranked first in a national survey released by the U.S. Chamber Institute for Legal Reform (ILR). The press report for the survey can be seen at the following link:

<https://www.instituteforlegalreform.com/resource/delaware-regains-nations-top-lawsuit-climate-rank> and the entire report can be accessed at:

https://www.instituteforlegalreform.com/uploads/pdfs/2019_Harris_Poll_State_Lawsuit_Climate_Ranking_the_States.pdf.

The very nature of our civil adversarial system is that one party, at a minimum, will not be happy with the outcome of a matter. However, that does not give a disgruntled litigant free reign to conduct a false and misleading smear campaign. Despite the Citizens group's claims to the contrary, the manner in which Chancellor Bouchard conducted the *TransPerfect* litigation reflects the Court acting at its very best, deciding a matter solely on the merits in a careful manner and free from outside pressures or influences. We, as a Bar, should be very proud of him and we should not tolerate such attacks on him or the Court. I have no doubt that all of you understand the current campaign lacks any merit, but I urge you, if the topic is raised by family, friends or others who may not be aware of the true facts, to set the record straight and voice our utmost and well-deserved confidence in our courts and judicial officers and our excellent judicial system.