



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

IN DEPTH

CANNABIS LAW

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

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OF THE DELAWARE STATE BAR ASSOCIATION

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Just a few weeks ago, I had the privilege to take the gavel from my predecessor, Kate Harmon, at the Bench & Bar, and on that day and in the days that followed I have spoken with so many Delaware lawyers who have offered kind words and congratulations.

I am honored to serve as the new President of the Delaware State Bar Association. Just a few weeks ago, I had the privilege to take the gavel from my predecessor, Kate Harmon, at the Bench & Bar, and on that day and in the days that followed I have spoken with so many Delaware lawyers who have offered kind words and congratulations. I appreciate every one of them. I would like to thank President Harmon for her leadership to the Bar, and for her support to me over the past few years as we worked together on the Executive Committee.

Admittedly, this first column has been a challenge to write.¹ I doubt anyone who knows me would call me shy to speak my mind or to share my views, and it is as much a surprise to me as to anyone that this exercise would be such a struggle. With each new task we learn something, and with this new task I have learned that it is much more difficult to write about myself than about anything else.

With that, I'd like to introduce myself.

I am a native Delawarean and a resident of the City of Wilmington where I have lived for more than two decades. I grew up in the suburbs west of Wilmington with my parents and older sister, and was fortunate to live in a close-knit community with a supportive network of neighbors.

I attended Corpus Christi School, St. Mark's High School, and the University of Delaware. During the entirety of my young life, with my family, in school, and then on my own, I was involved in the community through a variety of civic and volunteer organizations and on local political campaigns. As a student at UD, I took a part-time, per diem job as a page in the Delaware State Senate. For most who have worked in Legislative Hall, the experience is unique and stays with you for life. It has for me.

When I graduated from UD I did not have a clear vision for my future. Once the Senate went into its summer recess, I took a seasonal job with the state agency that oversees the State's Summer Youth Employment Program. My assignment covered the non-profits and community-based organizations in the City of Wilmington who provided jobs to the high school students enrolled in the program. One of my assigned agencies was the Latin American Community Center (LACC), led then and now by the fiercest of community advocates, Maria Matos. By the end of that post-grad summer, Maria had offered me a job as a tutor in her evening enrichment program serving school-age youth. Over the next few years my role at the LACC evolved until I became the director of the youth program.

While working at the LACC full time on an afternoon and evening schedule, I held a number of part-time seasonal/casual jobs, most notably for the Delaware Office of Volunteerism and also for Delaware Technical & Community College.

Eventually I left the LACC to return to the Delaware State Senate to be a Legislative Assistant, and within months I decided to take the LSATs and apply to law school. At that time I believed law school was the next logical step to a policy-based job of some kind. But when I started my studies at law school, I realized (albeit accidentally) that I wanted to be a litigator.

The rest of my story you can glean from my bio on my firm's website: I attended Temple Law School, interning with the Third Circuit Court of Appeals during my 1L summer and becoming a summer associate at Young Conaway Stargatt & Taylor for my 2L summer. I started as an associate at Young Conaway after graduation and have worked my entire legal career there.

As a young attorney I joined the Rodney Inn of Court. I also got involved with the DSBA Litigation Section, serving as a member of its Council and eventually as Chair. For many years I was a volunteer attorney for the Office of the Child Advocate. In 2018, I was appointed by Governor Carney to serve

as the Chair of the Child Protection Accountability Commission. I continue to volunteer in local politics.

If you're still reading, I bet you are thinking that for someone who claims it is difficult to write about herself, she sure has a lot to say. And what is her point? There are several. But today I leave you in suspense.

In the coming year, I will have the privilege to reach out to you here. Hopefully, this month's column provides enough information about me to give context for future columns. Stay tuned. ⚖️

Notes:

1. My sincere thanks to Rebecca Baird and the entire editorial staff for their patience with me and their overall excellent work on the *Bar Journal*.

Mary Dugan is a partner at Young Conaway Stargatt & Taylor, LLP. Her practice is focused on complex commercial litigation. Mary lives in Wilmington and is a lifelong Delawarean. She can be reached at mdugan@ycst.com.

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TEN YEARS A LAWYER

I have been reflecting on what it means to approach the ten-year mark as a Delaware attorney.¹

Ten years seems like a long time, then looking back it seems like no time at all has passed. There were many lessons learned and I am sure many still to learn.

Both kind and unkind acts by colleagues, mentors, and clients bookend my spectrum of memories of the last decade practicing law. The most pivotal moments I remember included extreme or audacious behaviors by others who were in positions to lead by example. In either instance, the most resounding takeaway was to believe someone when they show you who they are through their actions and by that same token be cautious with your own actions. There is nothing wrong with taking time to think things through and approaching your response with a measured pace. It took time for me to appreciate this perspective. I was born rushing and things never happen fast enough. Some kind people call it passion, perseverance, drive, or lately “grit” thanks to a novel of the same title. Before these nice ideas came around, I recognized these feelings within myself as impatience and boredom.

At one point, I was given some advice that appearances can be managed, with the underlying message that what is actually true is less important than the appearance to others of what is true. Appearances do matter, but a superficial performance is insufficient and at best a lie when confronted with inconsistent substance.

The last ten years have underscored for me that consistency in what you say and do, which is a complicated way to say being honest, is always the best policy. Honesty to the client, honesty to the court, and always honesty to yourself. I imagine, lawyer or not, if one were constantly preoccupied with a performative existence for fear of the big, bad, scary truth being revealed then one is willfully trapping themselves in a cognitive dissonance loop where the priority is what other people think and not one's own reality. Honesty brings peace.

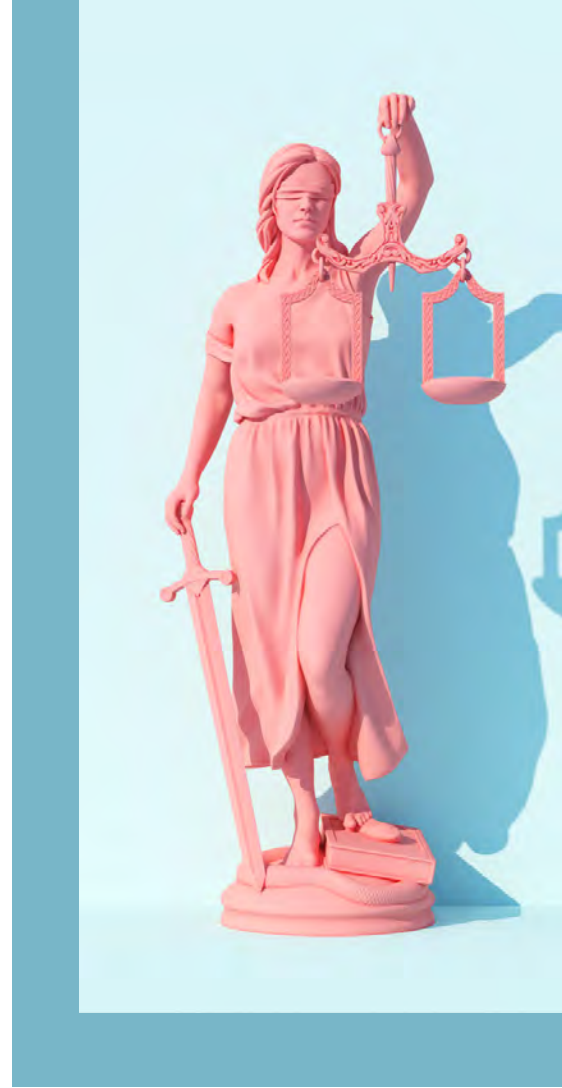
I know I am not alone in holding this profession in high esteem and in turn needing to hold its practitioners in that same regard. The profession is the practitioner. The profession must be honest, and that is down to the practitioners.

Yet only naivete would lead one to believe that everyone takes the same

stance that honesty is the best policy. It is more realistic to accept that many operate with a truth-optional policy. Good trial lawyers appreciate that in the courtroom or leading up to the courtroom sometimes the truth is what you make it, too. This notion, and the notion of form over substance, offer a valuable truth about truth and honesty — that they are sometimes malleable. Not everything is black and white, and many lawyers make a living dwelling in the gray space. Clients rarely have the “textbook case” as a fact pattern ready to pursue or defend.

How do you maintain honesty when truth and honesty are malleable? Just like in court, you build your record. Your actions, deeds, and words feed your character and become your reputation.

Problem solving is what I love most about practicing law. It is rewarding to work towards a solution. As a teenager, I was taught to avoid “what-if” thinking. I teach my teenagers the same





How do you maintain honesty when truth and honesty are malleable? Just like in court, you build your record. Your actions, deeds, and words feed your character and become your reputation.

thing. Ironically, as a lawyer, my day is crowded by what-if scenarios aimed towards preparation. A problem rarely has a single solution, and lawyers must navigate several possible consequences for our clients, meaning what-if reasoning pervades. If this happens, we pivot to this strategy; if that happens, we move to this other strategy. Like truth and honesty, strategy is malleable and requires nimble thinking. Even more so, strategy requires steady focus on the goal and the problem. Yet, there are times when the goal or even the problem changes.

Acknowledging that some problems are unsolvable, or at least unsolvable in the way one desires, may also be a solution. It is disappointing and difficult to convey that perspective to a client but sometimes necessary. This is where the work gets hard, in my opinion. Preparing for depositions, arbitrations, research, writing, arguing, all of it, is less hard than breaking disappointing news to a client. But with time comes experi-

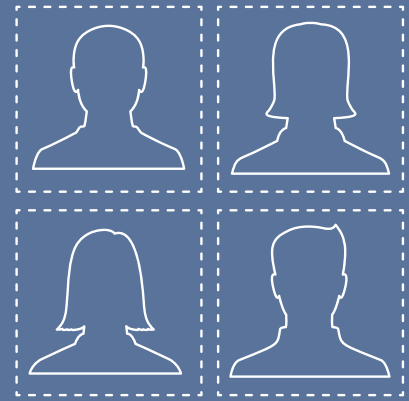
ence. And doing the right thing rarely means doing what is easy, though it is some special sort of kismet when right and easy align.

For me, it was right and easy to decide to pursue a career as a lawyer. It was my childhood dream. That does not mean the last ten years have been easy, but they have certainly, at least after the first several, felt right. Here's hoping the next ten years feel just as right and are maybe a little easier. ⚖️

Notes:

1. The title to this article is somewhat misleading because I will be commemorating ten years as a lawyer in December. But six of one and half dozen the other, as the saying goes.

Bar Journal Editor **Kristen Swift** is a Partner at Kaufman Dolowich and past Chair of the Litigation Section. She can be reached at kristen.swift@kaufmandolowich.com. Her full bio is available at www.kaufmandolowich.com. All opinions expressed are solely her own.



It's time to update your contact information and photo for the DSBA printed Legal Directory and Online Legal Directory.

New contact info?
Let LaTonya Tucker know at ltucker@dsba.org.

New photo?
Send it to Rebecca Baird at rbaird@dsba.org.



SAVE THE DATE

DELAWARE STATE BAR ASSOCIATION
PRESENTS THE

Inaugural
Changemakers
Gala

CELEBRATING ADVOCATES OF SOCIAL PROGRESS



FRIDAY, SEPTEMBER 27, 2024
DEERFIELD COUNTRY CLUB

Invitation to Follow





Multicultural Judges & Lawyers Section Member of the Month



Katelin Morales

Katelin is an associate in the Bankruptcy and Restructuring group at Potter Anderson where she focuses her practice on corporate bankruptcy, representing debtors in possession, official committees of unsecured creditors, and secured lenders. She is the current Chair of the MJL Section and serves on the boards of the International Women's Insolvency & Restructuring Confederation (Wilmington Chapter), Delaware Hispanic Bar Association, Turnaround Management Association (Wilmington/PHL Chapter), and the American Bankruptcy Institute's Emerging Industries & Technology Committee. Katelin is a native New Yorker and can often be found singing along to a Broadway musical, discovering new brunch spots, or watching tv with her two rescue pups, Jax and Midnight.

Supreme Court Review 2024

November 12, 2024



In-person in Wilmington with Remote Broadcast to Seaford, Dover, and Georgetown.

Visit www.dsba.org for more information and to register.



A Bittersweet Farewell

It's impossible to sum up 18 years in a few words. Back in 2006, I had been teaching high school for five years when I learned there was an opening to be the Director of Communications here at DSBA. After meeting then-Executive Director Rina Marks and the rest of the staff, I knew this was an opportunity I couldn't pass up. While I had never put together a publication before, I was eager to learn and ready to start, as the next deadline was approaching (as they always do)! Of course, there were some bumps along the way — deadlines that weren't met, software that crashed, graphics that didn't print correctly, and the occasional typo or error that went to print (those still haunt me). But after being the Publications Editor for 198 issues, I'm only left with a deep sense of pride.



Together with the amazing staff at the DSBA, the Editorial Board, along with the Editorial Advisory Committee, and the many contributors over the years, what started as *IN RE*: a black and white publication that averaged about 32 pages, has grown into the *Bar Journal* — a multi-faceted publication that highlights timely and relevant topics in thematic issues, features members from all segments of the Bar, and gives a platform to share the special collegiality that exists within the DSBA.

Most of my work here at the DSBA is behind the scenes. You've probably seen me at events behind the camera or know me as the person behind this very publication. It's very much outside my comfort zone to be the writer and not the editor. However, I know that this is the most fitting way to say good-bye — right here in the publication that has been my constant for so long. This issue of the *Bar Journal* will be my last, as I will begin a new chapter in my career next month.

If you have ever loved a job, you know that it's often because of the people. I will miss the staff and members of the DSBA and the community that has supported me throughout the years. Thank you for your trust in me, your feedback, and your friendship. And, because I'm terrible at good-byes, I'll instead end with farewell.

– Rebecca Baird 



Condolences to the family of **Louis B. Ferrara, Esquire**, who died on June 2, 2024.



Condolences to the family of former **Chancellor Grover C. Brown** who died on July 1, 2024.

Condolences to **Michael Houghton, Esquire**, on the death of his father, John J. Houghton, who died on July 5, 2024.

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

Open Call for Articles!

Do you have a great idea?



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

Step up to the mic!



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

Workers' Compensation Breakfast Seminar 2024

September 17, 2024 | 8:30 a.m. - 12:00 p.m.

3.3 Hours of CLE In-Person credits
Live at Riverfront Events / Hyatt



Visit www.dsba.org for more information and to register.



The Multicultural Judges & Lawyers Section of the Delaware State Bar Association hosted the Judge Haile L. Alford Memorial Breakfast on May 9, 2024



Congratulations to the 2024 Award Recipients:

Jordan Perry, Esq., Leadership Award
Wilmington Fines and Fees Justice Team,
Community Service Award
Paige Chapman, Esq., Rising Star Award



Congratulations to the 2024 Judge Haile J. Alford Excellence Award Recipients:

Alyssa Jones
Nkemakunam Obata
Queen Nwangwu
Brianna Turner



Thank you to the 2024 Haile L. Alford Memorial Breakfast Planning Committee:

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The Honorable Loren Mitchell and The Honorable Aida Wasserstein

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This committee will provide peer counseling and support to lawyers overburdened by personal or practice related problems as well as alcohol or drug abuse problems, or other mental health issues. It will offer 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 necessary to keep a law practice operating smoothly and to protect the clients and will assist the attorney in seeking any substance abuse counseling, outpatient, or inpatient needs. The Committee is not part of the disciplinary process. Communications with a member of the Committee are protected by attorney/client privilege.

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CALENDAR OF EVENTS

September 2024

Tuesday, September 10, 2024 • 2:00 p.m. – 4:00 p.m.

Redefining Success through the PFA Compliance Calendar

2.0 Hours of CLE In-Person credits

Live Seminar at DSBA* and Live Webcast to Kent and Sussex Counties

Tuesday, September 17, 2024 • 8:30 a.m. – 12:00 p.m.

Worker's Compensation Breakfast

3.3 Hours of CLE In-Person credits

Live Seminar at Riverfront Events, Wilmington, DE

Tuesday, September 24, 2024 • 12:00 p.m. – 1:30 p.m.

Mind Over Matters: Depression and the Legal Profession

1.5 Hours of CLE In-Person credits in Enhanced Ethics

Live Seminar in Wilmington, DE. Other locations TBD.

October 2024

Thursday, October 10, 2024 • Save the Date

Corporate Law Section CLE

Live Seminar in Wilmington, DE. Other locations and Credits TBD.

Tuesday, October 22, 2024 • 8:00 a.m.

2024 Christopher W. White Access to Justice Awards

Riverfront Events / Hyatt, Wilmington, DE

Wednesday, October 30, 2024 • Save the Date

Women and the Law Section CLE

Live Seminar in Wilmington, DE. Other locations and Credits TBD.

November 2024

Friday, November 8, 2024 • Save the Date

ABOTA CLE

Live Seminar in Wilmington, DE. Other locations and Credits TBD.

Tuesday, November 12, 2024 • Save the Date

Supreme Court Review 2024

Live Seminar in Wilmington, DE. Other locations and Credits TBD.

December 2024

Friday, December 13, 2024 • 12:00 p.m.

2024 Awards Luncheon

Riverfront Events / Hyatt, Wilmington, DE

Thursday, December 19, 2024 • Save the Date

Family Law Update 2024

Live Seminar in Wilmington, DE. Other locations and Credits TBD.

***Please Note DSBA's new location at 704 North King Street, Suite 110, Wilmington, DE**

Dates, times, and locations of Events and CLEs may occasionally change. Please consult the DSBA website for the most up-to-date information at www.dsba.org.

SECTION & COMMITTEE MEETINGS

August 2024

Thursday, August 15, 2024 • 12:00 p.m.

Executive Committee Meeting

Delaware State Bar Association, 704 North King Street, Suite 110, Wilmington, DE

September 2024

Thursday, September 5, 2024 • 12:00 p.m.

LGBTQ+ Section Meeting

Location TBD / Zoom option, refer to the Section's webpage for updated information

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

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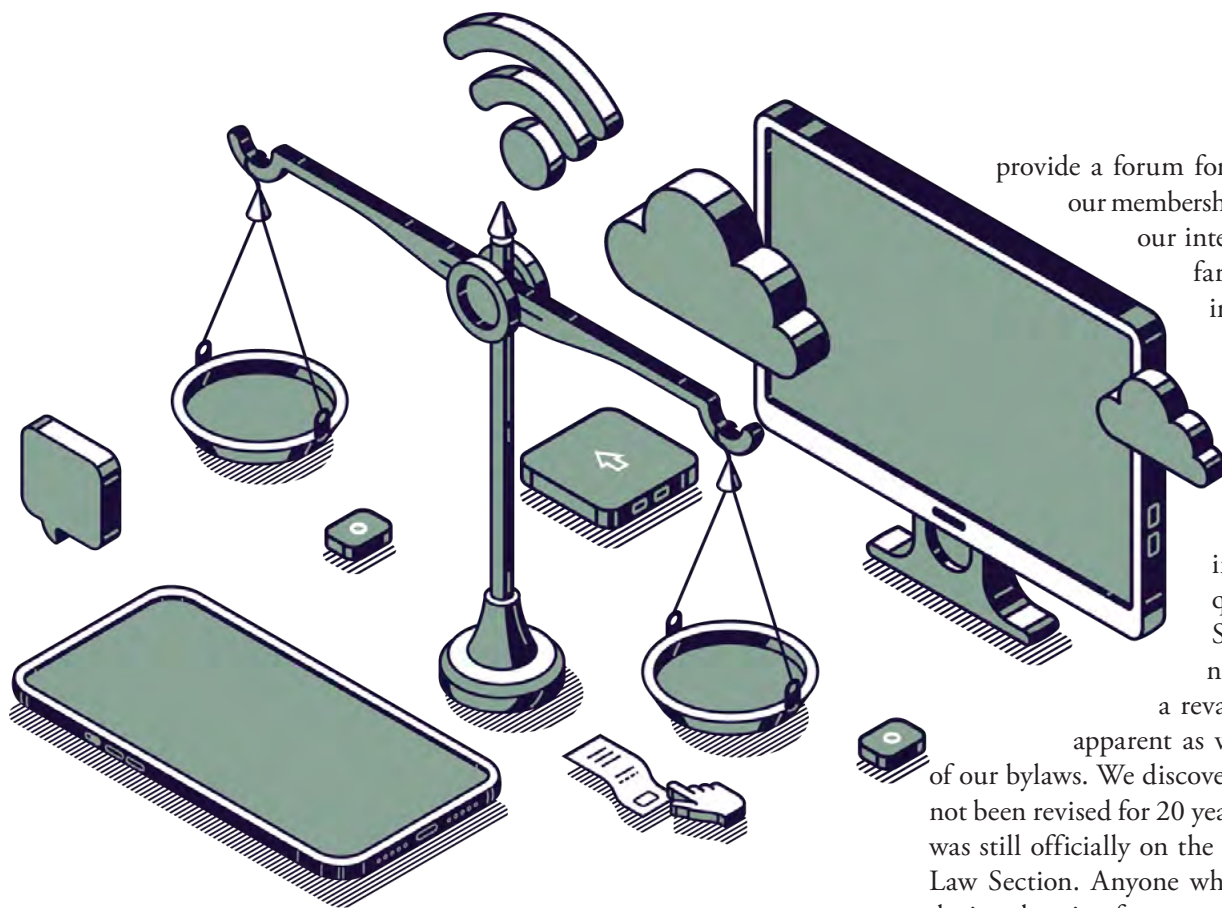
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INTRODUCING THE TECHNOLOGY AND THE LAW SECTION OF THE DSBA

BY SARA BETH A.R. KOHUT, ESQUIRE, GREGORY STRONG, ESQUIRE, AND IAN D. MCCAULEY, ESQUIRE

As we embark on a new year for the Delaware State Bar Association, we hope you'll consider joining the newly rebranded Technology and the Law Section. What Section is that, you may ask? We are the group formerly known as the E-Discovery and Technology Law Section.

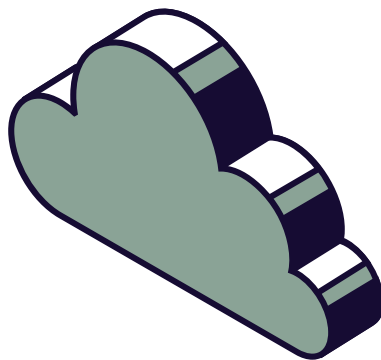
We bet many members of the Bar had no idea this Section existed. We are working to change that with a rebranding of the Section and a call to action to join us as we explore the impact of disruptive technology on legal issues and the practice of law. To be clear, the Section will continue to

provide a forum for eDiscovery issues, but our membership wanted to convey that our interests have been and are far broader than just the impact of technology on discovery. And really, at some point didn't nearly all discovery become eDiscovery?

Our rebranding kicked off with the question of whether the Section's name was too narrow, but the need for a revamp became even more apparent as we dove into an update of our bylaws. We discovered that the bylaws had not been revised for 20 years, and that our Section was still officially on the books as the Computer Law Section. Anyone who's been practicing law during that timeframe can attest to just how much computers have changed and that computers are but one aspect of how technology has affected the practice of law.

Twenty years ago, no one had the equivalent of a personal computer in their pocket at all times. Back then, the usage of laptops was uncommon, with most attorneys still using desktop computers. Fax machines were more common than pdf files. Tablets were yet to come onto the scene; instead, Palm Pilots, Blackberries, and digital cameras were emerging. Dial-up home internet connections (using a land-based telephone line that featured a distinctive sound) were still common and not yet reliable enough to facilitate routine work-from-home arrangements.

Over the past twenty years, we moved from heavy reliance on the use of paper and the postal service to online services. As young lawyers, we faced the daily 4:30 p.m. or midnight deadlines to get our pleadings physically transported to the court clerk's office and time-stamped to be counted among the day's filings. We witnessed the introduction and normalization of electronic court-filing systems. In more recent years, we've witnessed what formerly had been in-person-only hearings in many settings transition to remote or virtual (or



even hybrid) hearings, whether by teleconference or videoconference (or even both).

When the three of us started practicing law, we paid our dues in discovery, which then meant spending days in a conference room with other young lawyers reviewing boxes of paper documents (oh, the relationship bonding that experience generated!). We saw that process transition to electronic discovery as a specialty practice area with the growth of emails, text messages, digital photographs, and so many other forms of electronic communication. A whole new set of processes developed for collecting, culling, searching, sorting, and reviewing (often via out-sourcing to document-review contract attorneys) the massive troves of data implicated in the modern discovery tranches.

The proliferation of electronic communications and the tremendous amounts of data created by that expansion also fueled the rise of privacy, cybersecurity, and other data-protection laws. Whether as a consumer or a person involved in running or advising a business, none of us can escape the reach of this jurisprudence. While the law is historically slow to adapt, there's been a steady influx of activity in this realm, rendering it a constant challenge to keep up with the patchwork landscape of laws and regulations on the local, state, national, and even international levels.

The emergence of blockchain technology and crypto assets has created new systems, markets, and opportunities for trustless peer-to-peer interactions over computer networks. These innovations have presented fascinating legal issues and caused many to consider whether blockchain systems that seek to eliminate intermediaries through technology should be subject to legacy laws and rules that seek to regulate intermediaries, and, if not, how should the use of this new technology be regulated?

Artificial intelligence has been the hot technology topic for the past year, affecting many aspects of society, including the practice of law. Generative and other forms of AI hold much potential to improve access to justice and the legal profession, but, as with any other form of technology, attorneys face ethical duties to educate themselves about AI, the risks and benefits it poses, the costs and efficiencies, and other factors as they incorporate these tools into practice.

Twenty years ago, no one had the equivalent of a personal computer in their pocket at all times. Back then, the usage of laptops was uncommon, with most attorneys still using desktop computers. Fax machines were more common than pdf files. Tablets were yet to come onto the scene; instead, Palm Pilots, Blackberries, and digital cameras were emerging.

These are all areas of interest on which our Section has focused. Some of our members work on these matters in their daily practices, while others are interested in them more as an intellectual pursuit, as part of having a well-rounded foundation of knowledge. These areas of interest are constantly evolving, meaning there is never a shortage of material or a dull moment.

Our predecessors started a custom of members sharing recent legal developments at each Section meeting. As a smaller Section, that routine has been integral to our members getting to know each other well, having a regular forum to hone our presentation skills, and experiencing an environment for continual learning on topics that endure rapid change.

We've found our Section to be a great resource for expanding our subject-matter knowledge, networking with other members of the Bar in diverse practice areas, developing leadership and presentation skills, and gaining a better understanding of the practice of law in Delaware and beyond.

This is a Section that is member-driven, open to all with an interest in technology and how it affects the practice of law. All ideas are welcome, as are attorneys from different practices and backgrounds. Our goal is for the Section to reflect the diverse interests of our members and to serve as an outlet for fostering discussion and education about those interests among the greater Bar Association. We hope you'll come join us as we embark on this new path for this Section! 🌐



The authors are the current Chair, Vice Chair, and Secretary, respectively, of the Technology and the Law Section. **Sara Beth Kohut** is principal attorney at Enduraylant Law, LLC, where she focuses on data protection and business law matters. **Greg Strong** is a partner with Cahill Gordon & Reindel LLP, where he focuses on regulatory advice, enforcement defense, and litigation involving digital assets and other disruptive technologies. **Ian McCauley** is a director with Bayard, where he leads the firm's eDiscovery practice.



Audit Season

It's audit season. The bad news is it's always audit season. Each year, the Lawyers' Fund for Client Protection selects 60 firms for compliance audits. If selected, you will receive a notice from the Fund with a request to schedule an audit — sometimes within days, sometimes at an indefinite date in the future. The auditor will use the Audit Program, which can be found in the Lawyers Fund Rules as well as the Delaware Supreme Court website, to confirm your compliance.

Don't panic. Prepare. The following is a list of the most frequent non-compliance issues noted in these audits. It was prepared based on my experience representing firms in connection with these audits as well as the kind contribution of Patricia Bartley Schwartz, Esquire the Executive Director of the Arms of Court, including the Lawyers' Fund.

1 Mistitled Accounts. There is very little leeway here. Rule 1.15(d) (2) and (3) is explicit. The operating account must be titled, "Attorney Operating (or Business) Account," and the escrow account must be titled "Rule 1.15 Attorney Escrow (or Trust) Account."

2 Omitted Accounts. If you opened or closed an Operating or Trust account or changed banks since your last Certificate of Compliance was filed or you opened any special purpose non-IOLTA accounts, make sure that you amend your last Certification to include these.

3 Failure to include the "refundable if not earned" language. Rule 1.5(f) requires use of this specific phrase in any fee agreement for which a retainer is received or a separate written statement of this information if there isn't a written fee agreement. Again, the auditor is not likely to find any variation of this phrase to be acceptable.

4 Delaware client funds not deposited in the Delaware escrow account. Escrow ac-

counts can only be opened at Delaware "brick and mortar" locations of banks included in the approved list issued by the Fund and all Delaware client funds must be deposited in such accounts.

5 Stale checks. Checks more than six months old need to be cleared. If the client cannot be contacted, a stop-payment should be requested from the bank and the check should be re-issued if necessary. At some point, the funds may need to be escheated to clear the account.



6 Unidentified funds in escrow. Attorneys have a duty pursuant to Rule 1.15 to safeguard client funds. While the unidentified funds may be un-swept attorney fees, they may also be client or third-party funds which should have been disbursed. Careful investigation to identify such funds is required to avoid an audit finding that the account is not properly reconciled; that an accidentally commingling of funds occurred by leaving earned fees in the escrow account; that there was a failure to safeguard claim funds; or all the above, as an audit finding.

7 No cash receipts journal. (Or the total is not reconciled to the bank statement deposit total.) A “Cash Receipts Journal” may not mean what you think it does. As a hint, it does not mean that you or your firm ever receive “cash” payments from clients.

8 Non-Delaware client funds deposited into the Delaware escrow account. Delaware client funds, and only Delaware client funds, can be deposited in the Delaware escrow account. See #4.

9 No bank reconciliation and/or the three-way reconciliation doesn't agree. Merely comparing the bank statement total to the running total of your accounts is sometimes referred to as a “drive by” reconciliation. The client sub-accounts have to be tied in to the account balance before being reconciled to the bank balance and the outstanding checks and un-posted deposits must be included in the reconciliations. It's not enough to show that all of the funds are there. You have to be able to show that all of the clients and third parties have all of the funds in escrow to which they are entitled.

10 The Delaware operating account is not used for the Delaware operating

expenses of the firm. This may be the most controversial non-compliance finding. National and out-of-state firms with Delaware offices seem particularly reluctant to run their Delaware operating expenses through a Delaware operating account. Instead, they want to manage the firm's operating expenses through their CFO, Comptroller, staff accountants, or bookkeepers in their out-of-state Home Office. Although technically not a violation of a Delaware professional conduct rule, the Fund takes the position that the use of a non-Delaware account for these purposes exposes that non-Delaware account to a compliance audit.

To prepare, if you've received notice that you've been selected for an audit or if you want to be prepared should you be selected in the future, I suggest the following:

1. Have a conversation with your CFO, Comptroller, in-house accountant, paralegal, bookkeeper, or whomever you work with to keep your books and records compliant. Review this list of frequent noncompliance items with them and make sure that none of them apply to you.
2. As part of a longer conversation, review the Audit Program to make sure you understand what a Fund Auditor will ask and look for during an audit.
3. Review your firm's previous Certificate of Compliance to ensure accuracy and to determine whether any updated information is required.
4. If you have any doubt after performing the above steps, consider retaining an Independent Accountant drawn from the approved list issued by the Lawyers' Fund. Even if that accountant is not able to give you a pre-certification, the accountant can still educate you and your staff as to how to be and stay compliant. The emphasis here is on the term “independent.” The accountants


on the approved list have received training on the application of the Audit Program and the Rule 1.15 requirements. Your firms' in-house accountant in another state or the accountant who does your taxes may not be qualified to assist you on these compliance issues.

Generally, if noncompliance is noted in an LFCP Audit, the attorney who certified the firm's books and records will be asked by the Fund for an explanation and for the submission of a remedial plan to correct the non-compliance. If the non-compliance issues are numerous and/or serious, the Fund may do a re-audit to confirm the corrections at the firm's expense. However, if the non-compliance issues are serious enough, there is always the possibility (and a considerable history of cases in which the certifying attorney has been disciplined) where the matter is referred to the Office of Disciplinary Counsel.

If that occurs, the certifying attorney always runs the risk of being charged with not just the books and records violations, but also with violating Rule 8.4 for engaging in fraud, deceit, dishonesty and conduct prejudicial to the administration of justice due to what is deemed to be a “false” certification of compliance.

Bonus tip: New firm or office startups are typically “randomly” selected for audit within their first two years of operation.

“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 Ciardi Ciardi & Astin. His practice areas include disciplinary defense and consultations on professional responsibility issues. Additional information about the author is available at www.ciardilaw.com.



Perspectives on Lawyers' Assistance

I have been given the awesome opportunity to take the helm of the Delaware Lawyers' Assistance Program (DE-LAP), having this important office turned over to me by Carol Waldhauser, the very person who began this program in 2006. It is a daunting task because Carol was the quintessential cheerleader for DE-LAP and has an army of followers who respect her and the way she ran her programs.

I am humbled at the DE-LAP Board's trust that they have put in me and pray that the work I do will have value and meaning for the members of this Bar and, naturally, for myself.

I have been married to my amazing wife for 35 years, have 3 wonderful daughters, and am a graduate of Widener Delaware Law School's night program because I needed to work full-time in order to afford law school. I have had three separate careers, having taught English and Journalism, served in many different roles in Superior Court, and in my last eight years, having worked as the Executive Director for the Delaware State Bar Association (DSBA). DSBA has given me outlets to use my creative talents, particularly in the form of unusual emails that people seem to like. But, this new career will hopefully help me focus less on business and more on people.

I tell you all this because you need to know who I am. I carry a story — just like everyone else — that has shaped who I am and the talents I can share. Trauma in my early years changed who I

was dramatically, giving me insecurities and fears that probably would not have developed without that trauma. Yet, it has taken me time to understand that all of this makes me who I am and that I need to be grateful for all of it, not just the fun stuff.

Steven Colbert's father and two brothers died in a plane crash less than a month after I had my left eye removed at age 11. In a recent interview with Anderson Cooper, he indicated that he was grateful for the "worst thing that ever happened to him," because he viewed the tragedy as a doorway that allowed him to walk through and be the changed person he has become.

Now, I say all this because reaching this realization is not something that I obtained by myself. I have been actively seeking therapy since I realized I had depression. I have used three therapists in these past 10 years and ironically, I needed all three of them. The first was an older therapist who just made me feel comfortable with the process. It was the doorway to doing something that I always felt was unnecessary or stigmatiz-

ing. It was embarrassing and something many in my extended family laughed at. After a while, I realized I wasn't really getting the answers that I felt I needed and I switched to a young friendly therapist who helped me acknowledge some of my fears and hang-ups. She gave me insight on several issues. But, after a while I felt that we reached our limit. The growth and understanding started to wane. I needed something more. My new doctor was more of a challenge and less likely to let me manipulate her. To be honest, it was easy to hide things from the first two.

Sharing only what you want can lead to some success in therapy, but being challenged leads to a better acknowledgement of why things are the way they are and why I felt the way I did. Understanding when it is time to leave your therapist is part of the process.

A family court judge once told me, "If you work in family law and you're not in therapy, there is something wrong." But one school of thought is that everyone can benefit from therapy, even those who consider themselves happy.

I carry a story — just like everyone else — that has shaped who I am and the talents I can share.

We seem to be okay with people with PTSD and other major disorders going to therapists to help them through their trauma, but there are benefits for anyone, not just those in crisis.

For example, we all need to know how to cope with things. The strategies to deal with stress or grief, which we all inevitably experience, can be learned as better coping mechanisms than eating a box of Pop-Tarts, or drinking six beers. Our lives are busy, and we often need a moment to articulate what is on our minds.

Finding a neutral party who will be honest with us is often better than burdening your family or friends, who often don't want to say things that might be hard to hear. And many of us are always looking for ways to grow as a person. Therapy can offer ways to understand yourself, your abilities, your fears, and your roadblocks that can be understood to permit growth as a person.

Here is the thing, though, you can't preach someone into therapy, and you can't force them unless you are a judge and they are a defendant. This must be voluntary. I can tell you that it's a great tool for making your life better, but unless you believe it, you won't do it. So, let me at least dispel some of the notions that many have about therapy.

- 1. You can take care of your issues by yourself.** Ask yourself when doing something alone really was better than having someone do it with you. Humans are instinctively social creatures. Engage with another person to help you with your issues, your goals, and even your timeline for improvement.
- 2. You can just use friends or family.** As I said above, friends and family love you. They tell you what you want to hear. An unbiased person will always give you better feedback than a loved one.
- 3. Therapy means I'm hopeless.** Nothing is hopeless. Today is not forever. If everything is good, there will be bad moments. If everything is bad, things change and can get

3 Things With Which Therapy Can Help



1. Coping Mechanisms



2. Time to Talk Honestly



3. Opportunities for Growth

better. A therapist can give you an opportunity to get out of a bad time or prepare for one even when everything is good.

- 4. You don't need therapy if you just use medication.** Medication is effective but is more effective when joined with talking with a professional.
- 5. Your issues aren't that serious to need a therapist.** Anything that prevents you from enjoying your life is serious. Therapy is about change and coping which can be necessary even without trauma or crisis.
- 6. Therapy makes you feel uncomfortable.** Yes. True. But nothing is worth having without effort and a little uncomfortableness. Try it. You'll be shocked at how normal it is to deal with a professional who understands this is a new experience and can make it comfortable for you.
- 7. Therapy costs too much.** Because of a new understanding of mental health, many insurance policies now provide reasonable rates for therapy with lower copays. Moreover, a lot of therapists offer a cheaper option of online therapy which may be effective for you.

- 8. You just don't have the time.** We all know that this is just not true. Count up the hours you spend on your iPhone each week. Your self-care needs to be a priority over Instagram.
- 9. You are afraid people will find out you are seeing a therapist.** Well, unless you tell them or you are an enemy of Richard Nixon. But you'd be surprised... people are way more accepting of the wisdom of using a therapist over shoving it all down deep inside until you explode.
- 10. You already tried it and it didn't work.** First of all, most treatment takes time. You can't base your approval of therapy on one or two visits. But, don't forget that your therapist must be a match for you. If you find one that doesn't fit your style or personality, find another one. There are tons of them.

And that's my story. I wanted to write my first column about the single biggest principle that DE-LAP is built upon ... we all need help and therapy is a viable and excellent source of that help. 🧠

Mark S. Vavala is the current Executive Director of the Delaware Lawyers' Assistance Program. He has spent over 35 years working with the Superior Court and as the Executive Director of DSBA. He can be reached at mvavala@de-lap.org.



DELAWARE STATE BAR ASSOCIATION BENCH AND BAR CONFERENCE 2024

THURSDAY, JUNE 6, 2024 | CHASE CENTER ON THE RIVERFRONT | WILMINGTON, DELAWARE

The 2024 Bench and Bar Conference on June 6 brought together more than 400 members of the DSBA at the Chase Center on the Riverfront. This year's event focused on being EPIC: Embracing Progress, Inspiring Change.

The day started off with an Opening Session that included a Welcome Address from outgoing DSBA President, Kate Harmon, Esquire, and the State of the Judiciary Address by The Honorable Collins J. Seitz, Jr., Chief Justice of the Supreme Court of Delaware.

The morning CLE Session featured Keynote Speaker Suzanne Spaulding, Senior Advisor, Homeland Security, International Security Program, CSIS. The title of Ms. Spaulding's address was "Information Threats to Democracy and the Rule of Law."

In between the two CLE segments was the DSBA Annual Meeting, in which Kate Harmon, Esquire, gave her final remarks as outgoing President of DSBA and passed the gavel to Mary Frances Dugan, Esquire. The Secretary Report of the Nominating Committee was read by Francis J. Murphy, Jr., Esquire, Past DSBA Secretary.

During the Annual Meeting, outgoing Executive Director Mark S. Vavala, Esquire was presented with a Proclamation issued by the General Assembly for his service to the Courts and the DSBA. In addition, Mark received a plaque that will become part of the Legacy Wall that is featured at the DSBA.

Also at the Annual Meeting, DSBA honored several of the attorneys who had passed their 50 year mark as members of the Bar. In addition, the prestigious First State Distinguished Service Award was presented to The Honorable Jane R. Roth by The Honorable Thomas L. Ambro.

Following the Annual Meeting, attendees gathered for a Lunch Reception where they could catch up with colleagues and friends and take the opportunity to visit the Exhibitors and Sponsors of the event (please see page 22 for a list).

For the afternoon CLE Session, attendees heard from the second Keynote Speaker of the day, Haley Moss, Law-



Attendees at the 2024 Bench and Bar Conference.



State of the Judiciary Address by The Honorable Collins J. Seitz, Jr., Chief Justice of the Supreme Court of Delaware.

yer, Neurodiversity Expert, Disability Inclusion Advocate, and Author. Ms. Moss' keynote was title "Redefining Neurodiversity in the Legal Profession."

The day's events concluded with a Dessert Reception where the prize raffles were announced and attendees could socialize. It was truly an EPIC event! 🍷



Kate Harmon, Esquire, addressing the attendees of the Annual Meeting.



Outgoing President Kate Harmon, Esquire, passing the gavel to incoming President Mary Frances Dugan, Esquire.



First State Distinguished Service Award recipient The Honorable Jane R. Roth with Kate Harmon, Esquire.



Kate Harmon, Esquire, presenting Outgoing Executive Director Mark S. Vavala, Esquire with the Legacy Wall plaque.



Awardees for 50 Years in Practice. Front Row (L to R): Norris P. Wright, Esquire; F. Michael Parkowski, Esquire; George E. Evans, Esquire; Joyce Koria Hayes, Esquire; Michael Weiss, Esquire; The Honorable Richard Cooch; John A. Elzufon, Esquire; and William Annos, Esquire. Back Row (L to R): Carl B. Everett, Esquire; Frederick W. Iobst, Esquire; N. Richard Powers, Esquire; John X. Denney, Esquire; The Honorable Henry duPont Ridgely; Edward T. Cicone, Esquire; James W. Semple, Esquire; and J. Dallas Winslow, Esquire.

See page 22 for a full list of the 50 year Awardees.



Morning CLE Keynote Speaker Suzanne Spaulding, Senior Advisor, Homeland Security, International Security Program, CSIS.



Afternoon CLE Keynote Speaker Haley Moss, Lawyer, Neurodiversity Expert, Disability Inclusion Advocate, and Author.

50 YEAR DELAWARE BAR MEMBERS

Richard D. Allen	I. Barry Guerke	Stephen D. M. Robinson
William Annos*	Eugene M. Hall	Walter S. Rowland
Roger W. Arrington	Richard P. S. Hannum	Steven Schwartz
Francis S. Babiarz	James F. Harker	James W. Semple*
Eugene H. Bayard	Joyce Koria Hayes*	Peter M. Siegel
Alan T. Boyd	George B. Heckler	John H. Small
David E. Brand	James L. Holzman	Charles Snyderman
Donald L. Bruton	Frederick W. Iobst*	A. Gilchrist Sparks
E. Stephen Callaway	Robert C. Lefton	Morris L. Stoltz
Kenneth F. Carmine	Edmund D. Lyons	Harry K. F. Terry
Edward T. Ciconte*	Joseph Whitmore Maybee	Martin P. Tully
James P. Collins	Roderick R. McKelvie	James B. Tyler
Richard R. Cooch*	Richard J. McMahan	E. Alan Uebler
Thomas W. D'Alonzo	Mark A. McNulty	H. Stewart Van Scoyoc
H. Clay Davis	Michael A. Meehan	Ralston B. Vanzant
James P. Day	Geoffrey E. Meyer	Michael Weiss*
John X. Denney*	Kenneth M. Millman	Donald R. Williams
Harold E. Dukes	Catherine S. Mulholland	Gregg E. Wilson
John A. Elzufon*	Regina M. Mullen	A. Gary Wilson
David H. Erisman	Thomas S. Neuberger	J. Dallas Winslow*
George E. Evans*	F. Michael Parkowski*	Robert C. Wolhar
Carl B. Everett*	Michael A. Paul	Norris P. Wright*
David D. Finocchiaro	Robert K. Pearce	L. Kent Wyatt
James A. Fuqua	James Wright Peterson	Richard A. Zappa
Bernard J. Gartland	John C. Phillips	Lawrence I. Zutz
Robert D. Goldberg	N. Richard Powers*	
Perry F. Goldlust	Harry H. Rhodes	
Robert D. Graham	Henry duPont Ridgely*	

**Pictured on the previous page*

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DSBA HAPPENINGS

The Small Firms and ADR Conference

On Friday, May 17, 2024, the Solo/Small Firms and ADR Sections joined together for an engaging and informative conference day at the Daniel S. Frawley Stadium. The day was full of panel discussions, business vendors, networking opportunities, refreshments, complimentary Wilmington Blue Rocks hats and swag bags, and several giveaways/prizes drawings.

When the attendees arrived at the “Let’s Play Ball” themed conference, they were met with smiles and a “Line Up” registration/continental breakfast. The first panel started with an insightful “Triple Play” session called “The Law Office, ADR and Related Ethical Issues,” which touched upon current topics in law office practices and ethical issues of AI use, contract attorneys, and incorporating ADR provisions into fee agreements in a law office practice.

This was followed by a “Staying in the Game” Lunch & Learn panel titled “A Solo/Small Firm’s Guide to AI Powered Efficiency and Automation” presented by Kate Bell of CLIO – Cloud Based Legal Technology, a DSBA member benefit. It provided an interactive discussion and key considerations for automating laborious tasks with the power of AI.

In the afternoon “Hitting the Curved Balls” session, the “Understanding the Mediator’s Toolbox and Using it to Resolve Your Tough Case” panel focused on how attorneys use tools and techniques in the mediation arena to improve chances for a successful settlement. The “Coaches’ Corner” panel called “New Norms for Today’s Lawyer,” was presented by the chairs of the two sections, Jimmy C. Chong, Esquire, David Thomas Crumplar, Esquire, and Bernard G. Conaway, Esquire. Their discussion explored the “new normal” attorneys in small or large firms are facing while practicing law post-pandemic in today’s complex landscape.

Following the “seventh inning” afternoon break, the informative “Play by the Book” panel called “Don’t Forget About the Corporate Transparency Act Requirements!” was presented by Adam Hiller, Esquire. He explained who is required to report under the 2021 signed law and the steps to be compliant as it relates to for-profit corporations, LLCs, and similar legal structures.

As the last “Swing Batter, Batter” session of the conference, the “Crafting Ironclad Arbitration Awards: Strategies to Prevent Vacatur and Ensure Enforcement” panel featured an engaging discussion on drafting arbitration awards while applying the law appropriately and containing sufficient clarity within for enforcement.

The conference ended with a presentation of the Kimmel-Thyng Award, followed by a sponsored happy hour. Also, attendees of the conference had the option of staying later to see DSBA members, David A. White, Esquire (ODC), Bernard G. Conaway, Esquire (ADR), and Mark S. Vavala, Esquire (DSBA), throw the first pitch before the



Adam Hiller, Esquire, presented in the afternoon session.



Kate Bell of Clío shared key considerations during a lunch and learn session.

start of the Blue Rocks v. Aberdeen game, enjoy a picnic buffet in a reserved area for our members, and watch the fireworks show.

The Solo/Small Firms and ADR sections kindly thank all the sponsors — Browning ADR, CLIO, USI Affinity, Excelsia Injury Care, Legal Injury Firm, DLS Discovery, and William Johnston, Esquire of YCST — for supporting this year’s conference. In addition, we are truly grateful for all the presenters who had a hand in making the conference a huge success.

If you missed this informative and fun conference, we encourage you to purchase the video on the DSBA website at www.dsba.org under the CLE tab. We look forward to seeing you at next year’s conference and your continuous support throughout the year! 🎧



Thank you to the staff and crew of the Wilmington Blue Rocks! The Daniel S. Frawley stadium provided a unique and fun venue to host our conference.



In the morning Triple Play session, "The Law Office, ADR and Related Ethical Issues," panelists Bayard J. Snyder, Esquire, Bernard G. Conaway, Esquire, David A. White, Esquire, and Jessica L. Tyler, Esquire, referenced current topics and practices.



Following our conference, the ADR Section presented the Kimmel-Thynge Award to Kathryn J. Laffey, Esquire, and to the late Judge Vincent A. Bifferato, Sr.



The Blue Rocks stadium let us pick three people to throw out the "first pitch." The Sections chose Bernard G. Conaway, Esquire, David A. White, Esquire, and Mark S. Vavala, Esquire. Fun fact: These three worked together back in the day as Commissioners in the NCC Superior Court and have remained close friends. If you see them, ask for one of their custom baseball cards!



"Who let the dogs out?" It's none other than our own, Richard A. DiLiberto, Jr., Esquire, at the hotdog stand.



Rocky Bluewinkle fans, Lauren P. DeLuca, Esquire, and her family, stayed for the Blue Rocks' game after the conference.

The 2024 Delaware State and National High School Mock Trial Competitions

The 2024 Delaware High School Mock Trial Competition was held at the Leonard L. Williams Justice Center in Wilmington on February 23-24, 2024. Twenty-two teams from across the state competed in this year's competition, with more than 250 students and teacher-coaches from around Delaware participating. DELREC introduced the chance for the high school novice teams to be paired with one another in the first round of the competition, which brought in eight novice teams. The Charter School of Wilmington won the state competition for the second year in a row and represented Delaware at the National High School Mock Trial Championship in May. Delaware's second place team, Newark Charter School, also participated in the National event (when there are an uneven number of teams, the host state gets to submit a second team to the competition).

For the first time since 2008, Delaware had the pleasure of hosting the National High School Mock Trial Championship this year! Daniel M. Attaway, Esquire, of Womble Bond Dickinson (US) LLP, was the event host, with DELREC co-hosting. More than 450 high school students from across the country, and teams from South Korea, Guam, and the Northern Mariana Islands, competed in the National High School Mock Trial Cham-

pionship in Wilmington on May 3-4, 2024. Forty-eight teams competed in the 40th anniversary of the competition, which also included competitions for best courtroom sketch artist and best courtroom journalist. After four rounds of competition at the Leonard L. Williams Justice Center over two days, the team from Abington Heights High School in Clarks Summit, Pennsylvania faced off against Booker T. Washington High School for the Performing Arts in Dallas, Texas in the fifth and final round. The final round was presided over by Delaware Supreme Court Chief Justice Collins J. Seitz, Jr., Justice Abigail LeGrow, and Justice N. Christopher Griffiths. The team from Abington Heights High School in Pennsylvania won the national title and were guests of President Biden over Memorial Day weekend for a special White House breakfast in their honor.

As part of the National Championship, DELREC hosted a Pin Exchange at the Delaware Children's Museum, a Judge's Reception at the Queen, and held their very first Diversity, Equity, and Inclusion event at the Delaware Contemporary. There were over 1,200 people in Wilmington for nearly a week, selling out most of the rooms in the hotels at the Riverfront and downtown. The attendees unanimously remarked on their satisfaction with the people, resources, and restaurants in Delaware. 🌟



Justice. Inclusion. Leadership. with Future Generations.

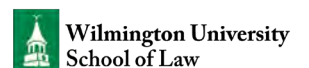




1. The final awards celebration was held for over 1,200 people, maxing out capacity in the Chase Center's Wilmington Hall. 2. Justice N. Christopher Griffiths at the Diversity, Equity & Inclusion event at the Delaware Contemporary. 3. DELREC Executive Director Betsy Renzo with event sponsor Wilmington University School of Law's mascot, Wiley D. Wildcat. 4. Two students from Massachusetts at the Nationals Pin Exchange at the Delaware Children's Museum. 5. Nationals Courtroom Artist Winning Submission. 6. Allison Munson of Newark Charter School also competed in Nationals for winning the Best Courtroom Artist in our state (submission pictured).



THANK YOU TO THE SPONSORS OF THE 2024 DELAWARE STATE AND NATIONAL HIGH SCHOOL MOCK TRIAL COMPETITIONS



The Delaware Law Related Education Center (“DELREC”) thanks Margie Touchton for her role as Judge Coordinator for the state and national competition, Sean O’Sullivan for his role as Administrative Office of the Courts liaison for the state and national competition, and Judy Nazarewycz for her role as Paralegal Coordinator for the state competition.

DELREC would also like to thank the City of Wilmington, Delaware Superior Court staff and bailiffs, Capitol and Wilmington police, Downtown Visions, the Greater Wilmington Convention & Visitors Bureau, law students at the Widener University Delaware Law School and Wilmington University School of Law, paralegals, and volunteers for their time spent supporting high school mock trial, as well as the following individuals who served as judges during the competitions:

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MARIJUANA'S ETHICAL DILEMMAS FOR DELAWARE LAWYERS

BY ADRIA B. MARTINELLI, ESQUIRE



Despite the fact that Delaware has legalized marijuana, it remains an illegal drug under federal law (and will remain so even if it is reclassified as a lower-tier drug as anticipated). This conflict creates a number of thorny legal issues, and ethical rules for attorneys are among them. If you intend to advise clients in the marijuana business, or even enjoy marijuana yourself, you should be cognizant of these ethical rules. This article does not intend to speak for the Office of Disciplinary Counsel or predict how they might respond to complaints in this area, but only to present what may technically be considered violations under the rules as they currently read, provided marijuana remains illegal under federal law.

Delaware Rule of Professional Conduct 1.2(d): Scope of Representation

A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal . . . but a lawyer may discuss the consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Marijuana is currently a Schedule 1 controlled substance — that means under the Controlled Substance Act it is unlawful to manufacture, distribute, or dispense marijuana. Therefore, if you are advising clients who are engaged in manufacturing, distributing, or dispensing marijuana, you are assisting clients in conduct you know is criminal under federal law. Many states have acted to alleviate this ethical conundrum by amending their version of Rule 1.2 or adding comments to Rule 1.2, to permit attorneys to advise, counsel, and/or as-

In the course of counseling a cannabis client, what might be considered “assisting with criminal conduct” is a gray area. In general, the more hands-on the attorney’s involvement is, the more risk they have.

sist a client “regarding” or “complying with” or “in conduct” permitted by state law, expressly mentioning cannabis or marijuana.

Other states have included comments that address the conflict in laws, without specifically referencing marijuana. California, for instance, notes that “lawyer may advise a client regarding the validity, scope, and meaning of California laws that might conflict with federal or tribal law” and makes clear that a lawyer may advise on these issues, even if client’s action might violate federal law, provided the lawyer advises regarding conflict.

Other states have issued advisory opinions for clarity in this area. Still others have publicly stated they will not prosecute lawyers solely for providing advice to cannabis-related clients. A few jurisdictions have even legislated that attorneys shall not be disciplined for advising and assisting clients on state marijuana laws.

Delaware has made no such amendments to its rule or otherwise taken a public position on the matter. Where

does that leave a Delaware lawyer practicing in this area? How can you mitigate the risk of an ethical violation? At a minimum, under the rule’s requirements that you “discuss the consequences of any proposed course of conduct” and assist them in making a “good faith effort to determine the validity, scope, meaning or application of the law” — you should absolutely discuss with your client the fact that their business is still illegal under federal law, and make sure they understand the risks associated with that.

But under the rule, you may not “assist with criminal conduct.” In the course of counseling a cannabis client, what might be considered “assisting with criminal conduct” is a gray area. In general, the more hands-on the attorney’s involvement is, the more risk they have. Taking equity in your client’s enterprise would most likely cross this line. Pure legal advice is probably safe, but assisting with documents that help form a cannabis business is a closer call.

Delaware Rule of Professional Conduct 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Comment [1] to this rule adds “in many instances, the required proficiency is that of a general practitioner. Expertise in a particular field may be required in some circumstances.

Many attorneys now hold themselves out as “Cannabis Lawyers.” Advising cannabis business can include a wide range of practice areas: intellectual property, securities offerings, licensing/regulatory, corporate formation, tax,

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MARIJUANA'S ETHICAL DILEMMAS FOR DELAWARE LAWYERS

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environmental, and employment issues, just to name a few. Many in the cannabis industry are new to business and may expect their lawyer to handle every legal issue that may arise. The Office of Disciplinary Counsel may view at least some of these areas as requiring expertise beyond that of a general practitioner — so know the limits of your expertise and restrict your counsel accordingly. When in doubt, refer out to an attorney with specialized knowledge.

Delaware Rule of Professional Conduct 8.4: Misconduct

It is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

Comment [2] states that “many kinds of illegal conduct reflect adversely on fitness to practice law... traditionally, the distinction was drawn in terms of offenses involving ‘moral turpitude.’”

In past ODC decisions, this is the rule often referenced in the context of attorney drug use, however those decisions were issued when such consumption was illegal under state law. This author was unable to locate an ODC decision in this area since the consumption of marijuana was legalized in Delaware.

A review of the current Questionnaire for Candidates for Judicial Office in Delaware shows that it includes the question: “Are you currently using illegal drugs, or to you habitually use illegal drugs on a recreational basis or otherwise?” and if the answer is “yes,”

“please provide a complete explanation, including the nature, history, and treatment of any such behavior.”

Many states have addressed attorney (including judicial) use of marijuana in their rules or decisions with various approaches: Alaska and Colorado, for instance, have stated that consumption is not misconduct, except if you are a judge. Mississippi and North Dakota have said consumption for any attorney is a violation of the rules. New Jersey amended its rules to make clear that attorneys may both consume cannabis and invest in cannabis businesses without violating Rule 8.4.

Delaware Rule of Professional Conduct 1.7 – 1.9: Conflicts of Interest

One last word of caution as it pertains to potential conflicts of interest for current and former clients. Delaware will begin accepting license applications on September 1, 2024. There is a finite pie, with the number of licenses for each category specified by statute. Be careful who you are “representing” in the licensing process and mindful that such representation may limit your representation of other businesses into the future. Use waivers where appropriate! ⚖️



Adria B. Martinelli currently serves as a Deputy Attorney General in the Delaware Department of Justice advising the newly created Office of Marijuana Commissioner. She served as a member of the *Bar Journal* Editorial Advisory Committee for several years prior to becoming an editor. She can be reached at adria.martinelli@delaware.gov.



2024

CHRISTOPHER W. WHITE ACCESS TO JUSTICE AWARDS BREAKFAST

NOMINATE DSBA MEMBERS FOR THIS YEAR'S AWARDS

The DSBA and the Awards Committee are seeking nominations for the 2024 Christopher W. White Access to Justice Awards formerly known as the Distinguished *Pro Bono* Service Awards.

THERE ARE FIVE CATEGORIES FOR WHICH INDIVIDUALS, FIRMS, OR ORGANIZATIONS MAY BE NOMINATED.

THE LEADERSHIP AWARD

This award is presented to a legal organization (legal department or law office) that has demonstrated outstanding leadership in the field of *pro bono* service to Delaware's indigent population based on the following criterion including, but not limited to:

- The number of *pro bono* hours the organization contributes to the direct representation of indigent clients.
- The number of cases the organization accepts for *pro bono* representation.
- Flexibility and accessibility in accepting cases.
- The organization's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.
- Financial support to agencies providing legal services to Delaware's indigent population.
- The percentage of attorneys in the organization who accept *pro bono* cases.
- Fostering a culture, which recognizes the value of *pro bono* service.

THE COMMITMENT AWARD

This award is presented to a member of the Bar who has demonstrated a sterling commitment to *pro bono* work throughout his or her career by dedicating time and energy to the support and provision of legal services. The criterion includes, but is not limited to:

- The number of *pro bono* hours devoted to legal representation of indigent clients over the lawyer's career.
- The number of cases accepted for *pro bono* representation over the lawyer's career.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need over the lawyer's career.

THE ACHIEVEMENT AWARD

This award is presented to a member of the Bar who has shown an exemplary recent contribution to *pro bono* services (generally in the past one to three years) and stands as a role model to other attorneys. The criterion includes, but is not limited to:

- The number of *pro bono* hours recently devoted to legal representation of indigent clients.
- The number of cases accepted for *pro bono* representation.
- Consistency, flexibility, and accessibility in accepting cases.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.

SERVICE TO CHILDREN AWARD

Awarded to an individual lawyer, legal professional, or organization principally including lawyers, which demonstrates outstanding commitment to, and work for, children in the provision of legal or community services. It may be given to volunteers or those employed in the provision of legal services for children. This award is given as warranted, not necessarily annually.

LEGAL PROFESSIONAL PRO BONO SERVICE AWARD

Awarded to a person, qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity, who performs *pro bono* legal work in the pursuit of Access to Justice. This is a newly-created award that is given as warranted, not necessarily annually.

THE DEADLINE FOR NOMINATIONS IS AUGUST 15, 2024. Nominations should be submitted to Deirdre Sadler-Crew at dsadlercrew@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.

DEA'S PROPOSED RULE TO RESCHEDULE MARIJUANA: IMPLICATIONS AND IMPACT

BY MOLLY DIBIANCA, ESQUIRE

On April 30, 2024, the U.S. Drug Enforcement Administration (DEA) announced a proposed rule to reclassify marijuana from Schedule I to Schedule III under the Controlled Substances Act (CSA). This potential reclassification marks a significant change in federal marijuana policy.

The History of Marijuana Classification

Marijuana has been classified as a Schedule I drug since Congress enacted the CSA in 1970. Schedule I is the most restrictive category, reserved for substances considered to have no medical use and a high potential for abuse. This classification placed marijuana alongside substances such as heroin and LSD. Unauthorized activities involving

Schedule I substances are federal crimes with severe penalties.

States' treatment of marijuana continues to evolve. Beginning with California in 1996, states began to pass laws legalizing cannabis for medical use. Today, 38 states, 3 territories, and the District of Columbia have medical-marijuana programs. The legalization trend expanded to adult recreational use in 2012 with Colorado and Washington. Today, 24 states, including Delaware, have legalized adult recreational use of marijuana.

Despite the increasing societal acceptance of cannabis use, the federal government has been largely resistant to efforts to reschedule or deschedule cannabis. To reconcile the conflict between federal and state law, in 2013, the U.S. Department of Justice (DOJ)

announced that it would limit its enforcement efforts to activities that it considered to interfere with certain, specific federal priorities. In 2014, the DOJ extended that policy to its investigations and prosecutions involving cannabis-related banking services.

In 2016, the DEA denied petitions to reschedule cannabis, citing a lack of consensus on the medical effects, but did ease some research restrictions. In 2018, the DOJ rescinded its 2013 and 2014 policy positions, indicating a potential change in the federal government's enforcement priorities.

But, also in 2018, low-THC hemp was removed from the CSA,¹ and the Food and Drug Administration (FDA) approved an epilepsy drug, Epidiolex, containing cannabidiol (CBD). The DEA then rescheduled the drug's for-



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Despite the increasing societal acceptance of cannabis use, the federal government has been largely resistant to efforts to reschedule or deschedule cannabis.

ter, the DEA, in conjunction with other agencies like the FDA, will complete its review and make a final decision. If approved, marijuana would be rescheduled as Schedule III drug, along with ketamine, anabolic steroids, and Tylenol with codeine.

Implications of Rescheduling Marijuana

The rescheduling of marijuana to Schedule III would not legalize recreational use or align state-legal marijuana industries with federal law, but it would have significant impacts.

An immediate and important impact would be that marijuana would no longer be subject to Internal Revenue Code 208E. IRC 208E, which applies to Schedule I and II substances but not to Schedule III, prohibits the deduction of ordinary business expenses on federal taxes. If marijuana is rescheduled, cannabis businesses would, for the first time, be able to deduct business expenses, potentially resulting in a significant improvement to the financial health of the cannabis industry.

Rescheduling also would open doors for marijuana research, eliminating many of the bureaucratic obstacles that prevent medical research of Schedule I substances. Expanded research access would enable the study of marijuana's therapeutic properties and potential applications in medical science.

If rescheduled to Schedule III, marijuana would be subject to FDA oversight. The FDA would be expected to develop a regulatory framework for cannabis products, which would stan-

dardize production, labeling, and potency. In short, FDA regulation would ensure that marijuana products are safe for consumer use.

Rescheduling will not eliminate the banking issues faced by cannabis businesses. Because cannabis remains illegal under federal law, growers and sellers would continue to be denied access to basic banking services like deposit accounts and credit-card transactions. The largely “cash-only” nature of state-legal marijuana business is likely to be unchanged by the proposed rescheduling.

Conclusion

The proposed rescheduling of marijuana to Schedule III represents a significant change in federal cannabis policy. It recognizes the medical value of marijuana and integrates it into the broader healthcare system, facilitating research, enhancing consumer safety, and providing a framework for federal regulation. This change will have impacts on the cannabis industry, some of which we can predict but many of which are yet unknown. 🧘

Notes:

1. The CSA defines hemp as the cannabis plant or any part of it with a delta-9 THC concentration of no more than 0.3 percent.



Molly DiBianca is the Managing Member of the Wilmington, Delaware office of Clark Hill, PLC. Clark Hill's Cannabis Industry Group was awarded 2023 Best Cannabis Law Firm by *Benzinga*. She can be reached at mdibianca@clarkhill.com.

mulation from Schedule I to Schedule V and, in 2020, descheduled it entirely.

In 2022, President Biden pardoned federal convictions for simple marijuana possession. The same year, President Biden issued an executive order directing the Attorney General and the Secretary of Health and Human Services (HHS) to conduct a scientific and medical review of marijuana's scheduling under federal law. In August 2023, HHS formally recommended that the DEA reclassify marijuana to Schedule III, acknowledging its medical use and lower potential for abuse compared to Schedule I substances.

The DEA followed the recommendation and, in April 2024, issued its proposed rule to reschedule marijuana. The proposed rule is open for public comments until July 22, 2024. Thereaf-

MARIJUANA AND BANKING:

A BUDDING RESOLUTION OR A CONTINUING CANNABIS CASH CONUNDRUM?

BY EDWARD J. KOSMOWSKI, ESQUIRE

With legal cannabis sales reaching around \$29 billion in 2023 and expected to rise to \$37 billion by 2027,¹ one may say the legal marijuana industry is an area of high finance. However, a divergence between federal and state laws regarding marijuana puts cannabis-related businesses (CRBs), including state-authorized cannabis dispensaries and other companies that provide services and sell products to those businesses, in a particularly dubious position when it comes to banking and leaves a haze in the air for financial institutions considering whether to provide CRBs with banking services and lending resources.

Federal Banking Barriers (This Bud is Not for You)

Although 24 states,² including Delaware,³ have legalized the sale of recreational use marijuana and many enacted bills⁴ to protect financial institutions from state financial regulators and other forms of state-wide enforcement regarding cannabis banking, federally, cannabis remains an illegal substance.⁵ Financial institutions providing loans or core banking services, such as checking and savings accounts, processing checks, issuing credit and debit cards, and authorizing electronic transfers to CRBs, could find themselves subject to criminal and civil liability under the Controlled Substances Act (CSA) and other federal statutes.⁶ These risks have significantly hampered the ability and willingness of financial institutions to provide loans and banking services to CRBs and while some local banks and credit unions have cautiously entered parts of this market space, national banks have been hesitant to do so, leaving CRBs in the weeds when it comes to having access to the full array of banking services and lending options.

Whereas 63 percent of nationwide retail sales dollars are derived from credit and debit card transactions,⁷ CRBs are unable to take advantage of these types of transactions, because the big four credit card processors (Visa, Mastercard, Discover, and American Express) do not permit the use of their networks to purchase illegal services or substances. And although some CRBs have attempted to use the “cashless ATM”⁸ approach, there has been a crackdown by the card processors to end this practice. As noted by Rob Coupe, Delaware’s Marijuana Commissioner, “[t]he inability to access traditional banking services presents a serious challenge for Delaware’s marijuana businesses” and “[c]ash-intensive operations leave the[se] businesses vul-

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nerable to theft and other crimes, and present additional obstacles in their efforts to comply with tax laws.”⁹ Ultimately, to remove these obstacles, the federal government will need to provide protections for CRBs as well as financial institutions wishing to safely enter the marijuana banking market.

Is Federal Help on the Way? (Is There a Potential for a Bud- tiful Ending?)

Reclassification of Marijuana to Schedule III of the CSA.¹⁰ On May 21, 2024, the Drug Enforcement Administration published a Notice of Proposed Rulemaking in the Federal Register that would move marijuana from Schedule I to Schedule III of the CSA. This publication kicks off a 62-day comment period on the proposed Rule. However, even if this Rule is published in the Federal Register and marijuana is reassigned to Schedule III of the CSA, without further action by Congress, this is unlikely to create a pathway to federal compliance for state-legal marijuana businesses and financial institutions. Nonetheless, as a result of this reclassification, CRBs will enjoy a much lower effective tax rate. Currently, under the IRS Code (26 U.S.C. § 280E), a business engaged in the prohibited trafficking of Schedule I or II substances may not take any normal business deductions on its federal tax return. Changing cannabis to a Schedule III substance would mean cannabis companies could take deductions on their federal tax returns, a move that would lower taxes, drive up profits, and likely attract investment. To resolve the banking issues, however, Congress will need to legislate protections for CRBs and financial institutions.

SAFE and SAFER Banking Acts. For several years now, Congress has attempted to address the marijuana banking issue and advanced a nar-

row solution through the Secure and Fair Enforcement Banking Act (SAFE Banking Act), and although this Act, in its various iterations, has passed the House of Representatives seven times, it has never been taken up in the Senate and appears to have gone up in smoke. However, in September of last year, the Senate Banking Committee favorably reported Senate Bill 2860 (the Secure and Fair Enforcement Regulation Banking Act of 2023 (SAFER Banking Act)). Though marijuana will remain illegal under the SAFER Banking Act, the law would resolve the tension between federal and state law with respect to banking, lending to, and insuring state-legal cannabis businesses. Key provisions of the SAFER Banking Act would provide “safe harbor” protections to financial institutions, lenders, mortgage companies, insurers, and service providers working with state-sanctioned marijuana businesses from certain criminal, civil, and administrative penalties that may otherwise result due to the illegal status of marijuana under federal law. The enactment of the SAFER Banking Act would also permit financial institutions to process, clear, bill, transfer, deposit, transmit, collect, and effectuate or facilitate the payment of funds transferred by any means, including credit cards, debit cards, other payment cards, other access devices, and electronic funds transfers. This relief is critical to normalizing financial transactions for the cannabis industry, and enacting this legislation would unlock additional capitalization opportunities for CRBs.

So, even though states are rolling out legislation and blazing a trail by dispensing insulation for financial institutions providing banking services to CRBs, with the big four credit card processors not being best buds with CRBs and financial institutions reluctant to offer lending or core banking services, it is high time Congress and the federal

government provide joint assistance to resolve this banking quandary; otherwise, the cannabis cash conundrum continues. 🌿

Notes:

1. See, *Multiple States Across The Country See Record-Breaking Marijuana Sales To Close Out 2023*, Ben Adlin, Jan. 25, 2024, <https://www.marijuanamoment.net/multiple-states-across-the-country-see-record-breaking-marijuana-sales-to-close-out-2023/>.
2. *Maps show states where weed is legal for recreational, medical use in 2024*, Kerry Breen, Updated May 17, 2024, <https://www.cbsnews.com/news/legal-weed-map-states/>.
3. Delaware’s adult-use cannabis law (4 Del. C. ch. 13) imposes a, Delaware first, retail tax of 15% applied to sales of recreational use marijuana. See, 4 Del. C. § 1382(b).
4. On March 21, 2024, Delaware House Bill 355 was introduced. This Bill provides legal protections for financial institutions and other entities that provide financial or accounting services to cannabis-related businesses licensed under Delaware law. Notably, this Bill does not provide protections to attorneys providing legal services to CRBs.
5. Under federal law, marijuana is an illegal substance, currently classified, along with heroin, LSD, and ecstasy, as a Schedule I substance under the Controlled Substances Act (21 U.S.C. § 812).
6. See, *inter alia*, anti-money laundering laws (i.e., 18 U.S.C. §§ 1956, 1957) and the Bank Secrecy Act (31 U.S.C. § 5311, et seq.).
7. *Cash vs Credit Card Spending Statistics*, Capital One Shopping, Last Updated: June 9, 2024, <https://capitaloneshopping.com/research/cash-vs-credit-card-spending-statistics/>.
8. A common workaround has been accepting payments using a debit card by the “cashless ATM” method. The customer uses their debit-card and the payment is accepted; however, on the back end, the dispensary is essentially using an augmented ATM system – the dispensary withdraws funds on behalf of the customer from the customer’s bank account, and then disburses cash (out of their cash register) to the customer, minus the cost of the purchase. See, *What Are Cashless ATMs?*, Host Merchant Services, <https://www.hostmerchantservices.com/articles/what-are-cashless-atms/>.
9. See, *Bill Introduced to Protect Entities Serving the Legal Marijuana Industry*, Colleen C. Davis, March 21, 2024, <https://news.delaware.gov/2024/03/21/hb355/>.
10. Substances currently listed on Schedule III include ketamine, anabolic steroids, and codeine mixed with aspirin or acetaminophen.



Edward J. Kosmowski is a Deputy Attorney General with the Delaware Department of Justice and General Counsel to the Delaware Department of Finance. While he does roll a joint every so often, unfortunately, it’s always his ankle. Ed can be reached at Edward.Kosmowski@Delaware.gov.com.

Q & A

CANDID CONVERSATIONS ABOUT CANNABIS WITH WEED CZAR ROBERT COUPE

INTERVIEW BY ADRIA B. MARTINELLI, ESQUIRE



Robert Coupe and Adria Martinelli

On March 28, 2023 the Delaware Marijuana Control Act became effective, legalizing marijuana use for those 21 and older and creating the position of Marijuana Commissioner to establish rules and regulations to implement the law and stand up the new recreational marijuana sales market. On June 19, 2023, Robert Coupe was confirmed by the Senate to fulfil the new position.

Previously, Coupe had worked in the Delaware State Police, namely commanding the criminal investigative unit for the agency's operations in New Castle County. In 2009, he was appointed superintendent of the agency, overseeing 676 troopers and 270 civilian employees. After retiring from the state police, Coupe served in several high-level positions in state government, including commissioner of the Department of Corrections, Secretary of the Department of Safety & Homeland Security, Chief of Staff to Attorney General Kathy Jennings, and Chief of Staff in the Department of Technology and Information.

Q Do you prefer to be addressed as Weed Czar or Commissioner?

A Just “Coupe” is my preference. But I’m fine with creative names. Colonel Cannabis is another good one. My wife got a card from a friend that read: “Happy Birthday to the First Lady of Weed.” Folks are having fun with that.

Q What made you interested in accepting this role?

A The Governor’s persuasive argument. “I really need you to do this.” He pushed all my trooper buttons about serving and helping the State. I am focused on the mission. I am not passionate about either side.

Q What was the most common reaction when you told people your new role?

A All different kinds of reactions. Lots of people were very excited — some older folks whose frame of reference dates back to Woodstock. Many were excited for me and excited for Delaware. Some of my law enforcement friends were shocked that I would accept the position. They expressed concerns about legalization and the industry. Other folks were more comfortable and want to see a healthy, regulated industry.

Q What has surprised you about this role?

A The passion on both sides of the arguments. Some still very strongly against it and others passionate about legalization. I have to find a middle ground to keep the mission moving forward while managing passionate viewpoints. I mistakenly thought everyone would be content once the legalization fight was over. But the people who were opposed to legalization are still fighting

that fight on different fronts. On the other side, the cannabis advocates have now moved from legalization to great interest in setting policy for the state about how to implement it.

Q What has been your greatest challenge in this role?

A Balancing different interests, working with the General Assembly, and navigating this landscape with a Governor who is still against the legalization of marijuana. Normally in this position, there would be some guidance or direction from the Governor’s office. In my case, he has instructed me on priorities: focus on public safety, health & safety, and do not over-regulate. Other than that, he has trusted me and has confidence I can do the job and fulfill the mission, but I don’t receive the closer attention and support that some other cabinet members or commissioners receive.

Q What do you think it’s important for the public to understand about legalized marijuana??

A If we have a successful and robust legal market, the expectation is the illegal market will fade away. The benefits of a regulated market is that all the products are tested, so they provided increase safety for consumer. In addition, products are packaged in a safe fashion to protect children. Also hopefully through a regulated market, we remove the drug sales from the street into retail establishments, and that helps increase community safety.

Q How do you feel about counties and municipalities taking action to prevent or severely curtail the business of recreational marijuana in their areas?

A In some situations, it seems more an argument on principle instead of evaluating the reality of the situation. By that, I mean that most of the folks who react strongly — they did not want to see it legalized. I try to convey that by blocking out the regulated market, the only market that will operate is the illegal market that is there today.

Others are concerned the state is not giving them a fair share of the market profits, and I understand that concern. When I’m out speaking with them, I become the face of the State, and folks will share that frustration with me — they are looking for some financial benefit from this industry. The State and the licensed establishments are making money, but the towns are not.

Q What are the public’s greatest misconceptions about legalized marijuana?

A A lot of folks still imagine street dealers, clandestine grow labs, or large fields filled with marijuana. They are not aware of the level of science and controls that the industry had placed on themselves and have been placed on them by regulation — to ensure safety of the product, community, and consumers.

Also, a lot of people view marijuana only as a recreational drug and do not have awareness of the documented medicinal benefits.

Q What has your office learned from other states that have legalized sales of marijuana?

A Visiting with neighbors in New Jersey and Maryland, and also speaking to peers at the CANNRA¹ conference, there are some things we learned about early on, such as: (1) the licensing process (challenges of competitive scoring)

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solution with many states deciding on a lottery for licenses due to legal challenges; (2) managing advertising issues with many in the industry challenging the limits; and (3) insights about regulatory process and enforcement strategies. I'm not sure whether to say it's been reassuring or unsettling to learn that some of the states who have been at it for several years are still dealing with the issues we are as a new market.

For instance, many states are still trying to implement a successful social equity program. Other states are changing regulations and testing requirements to be more similar to those we are implementing. Colorado, for instance, has made changes consistent with ours — many states were allowing the industry to police itself with testing. Some states (including Delaware) are now taking a more active role in validating test results.

Q How will the legal market in Delaware be different from other states?

A Size plays to our advantage from a regulatory standpoint. We can visit all the establishments in person, more regularly. We will know the owners of the establishments as the industry grows together. We will be able to have more direct influence on the marijuana establishments to make sure they are following the regulations — not just through enforcement, but through counseling and corrective action.

“The Delaware Way” also is helpful, and it's hard for some industry people from other states to appreciate. At some point you have to trust me, because that's how it works in Delaware. “The Delaware Way” to me means cooperation, communication, and building relationships. We can disagree on a topic but not lose our relationship.

Try to learn as much as you can about marijuana to understand not just the legal issues, but the human issues.

This is my 40th year of state service. I learned early on as a state trooper the more positive relationships you can build, the more successful you will be.

Q A lot of people complain about the smell of marijuana and believe it is more prevalent than it used to be — how do you respond to those concerns?

A Yes, this comes up frequently. Marijuana, up to the personal consumption amount, is legal in Delaware now. That has certainly led to a proliferation of the smell. While it is still illegal to consume “in public,” law enforcement is understandably reluctant to enforce such infractions. I also remind people that the marijuana they're smelling now is not from the regulated industry. Because retail sales of recreational marijuana are not available yet, the industry thriving now is the illegal industry.

Q What do you think members of the Bar should know about legal marijuana in Delaware?


A Try to learn as much as you can about marijuana to understand not just the legal issues, but the human issues: how marijuana affects our bod-

ies, how it can be abused, how can it help. Just like alcohol — there are peers who may use it responsibly, and others who may need help.

Q We've used Cannabis and Marijuana interchangeably in this conversation. Is there a difference?

A Both terms refer to the same drug and are interchangeable. Delaware's statute, the Marijuana Control Act, and the criminal code both use the term “marijuana,” and I am the “Marijuana Commissioner,” so we've tried to be consistent by using marijuana primarily. As more states legalize the drug, proponents of reform have begun to favor the term “cannabis,” arguing that “marijuana” has been tainted and may dampen public support for legalization.

Q I've seen what appears to be a proliferation of vape shops in the last few years. What is going on? Are they selling marijuana? Are they preparing to?

A Yes, we are seeing more of these shops. Some are selling marijuana products illegally. DATE (the Division of Alcohol and Tobacco Enforcement) which is handling enforcement under the Marijuana Control Act has a new tool — the LightLab — which allows them to field test products on sight for THC. DATE is working with local law enforcement to utilize this new tool. We are also working with DOJ (they have an assigned criminal DAG) to focus on this and develop subject matter experts. The Consumer Protection Unit is also involved, as there may be times when that approach is more effective than bringing a criminal case. 

Notes:

1. CANNRA is the Cannabis Regulatory Association, a nationwide association of government agencies involved in Cannabis regulation.

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Legislative Hall, Dover, Delaware

SOCIAL EQUITY IN DELAWARE'S CANNABIS INDUSTRY

BY THOMAS D. DONOVAN, ESQUIRE

In 2023, Delaware became the 23rd state to pass legislation legalizing the manufacture, sale and use of cannabis for adults 21 and older. Now nestled in Title 4 of the Delaware Code, the Delaware Marijuana Control Act (DMCA) outlines the framework for a legal cannabis industry including the creation of the Office of the Marijuana Commissioner (OMC) that is tasked with ensuring regulations are written and licenses are issued by late 2024. The new law also mandates that OMC ensure a certain number of licenses be issued to “social equity applicants” and that the General Assembly appropriate a portion of a newly created cannabis sales tax for the administration of a “justice reinvestment fund.” What does all this mean for Delaware’s new marijuana market?

Social Equity, in its broadest sense, is the equal sharing of opportunities and benefits across all communities and among all people. Some may refer to “social equity” as “social justice” or



Legislative Hall, Dover, 2023

“cannabis justice” as it relates to the legal cannabis industry. Specifically, social equity under the DMCA refers to 1) “social equity applicants” and 2) the “justice reinvestment fund.” Both social equity measures are for the benefit of certain individuals and are tied to certain communities, in particular poor rural and urban neighborhoods, that have been devastated by decades of failed drug war policies and practices and is referred to in the Code as “disproportionately-impacted areas.”

A “social equity applicant” refers to an individual, spouse of an individual, and/or child of an individual who has been convicted of low-level felony or misdemeanor cannabis-related offense (with exceptions) or resides in a “disproportionately-impacted area” (with conditions). Social equity applicants are eligible for exclusive licenses, as opposed to open licenses, in cultivation, manufacturing, testing, and retail sales with reduced application fees, technical assistance through the application pro-

cess, and assistance obtaining financial resources to enter the emerging cannabis industry. Essentially, the law seeks to remove traditional barriers to entry into legitimate business opportunities by leveling the socio-economic playing field for disadvantaged individuals from underserved communities. In addition to the start-up assistance, 47 of the initial 125 licenses to be issued by OMC are exclusively reserved for social equity applicants.

The “justice reinvestment fund” refers to a fixed percentage of the collected tax (7 percent of gross) on legal cannabis sales that will be exclusively used for the benefit of “economically-disadvantaged persons in disproportionately-impacted areas.” The collected taxes will be designated by the General Assembly and appropriated to the Criminal Justice Council (CJC) for reinvestment into communities via grants, contracts, services, and other restorative justice initiatives such as reducing drug arrests, prison populations, jail diversion,

industry-specific workforce development and job training, as well as expungements and restoration of other civil rights. OMC projects legal sales in Delaware to reach \$281 million in 2025, leading to approximately \$20 million annually to sustain the justice reinvestment fund.

Why is social equity so important?

The history of cannabis prohibition is complicated, to say the least, but can be fairly traced back to the post-Civil War era of Reconstruction in the United States. A convergence of new policies, including the temperance movement and racial segregation, began to form the backdrop of what we know as modern drug war policies.

By the 1930s, federal law enforcement officials had declared cannabis public enemy number one, and since then marijuana has been characterized as a dangerous drug with high prob-

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SOCIAL EQUITY IN DELAWARE'S CANNABIS INDUSTRY

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ability for abuse and no medical value. The era of reefer madness had begun.

During the 1970s, the United States entered the era of “just say no” to drugs and “just say yes” to militarized policing and racial profiling in historically poor and black and brown communities. Alongside minimum mandatory jail sentences, Americans, in particular poor Americans, were feeling the impact of living in the world’s most incarcerated country.

Historically, marijuana-related offenses comprised a majority of drug arrests and are considered “low hanging fruit” for its socially accepted use and prevalence among all people from all backgrounds. For context, more than 20 percent of today’s population has consumed cannabis during the past year, and

about half of all people will try marijuana at some point during their lifetime.

For nearly 50 years, there has been a sustained movement by consumer-focused grassroots activists to end cannabis prohibition. Many lawmakers and elected officials have shifted away from criminalizing marijuana sales and consumption in light of a long human history with the plant for medicinal, spiritual, and social uses. In the 1970s, some states began decriminalizing possession; California became the first state to legalize medical marijuana in 1996; in 2012, Colorado and Washington became the first states to legalize adult use possession and created the first legal cannabis marketplace.

It is not surprising, therefore, that support for cannabis legalization is currently at an all-time high in Delaware,

and across the country; nearly 70 percent of the population supports legalizing marijuana for adult use.

However, while public support remains high for cannabis legalization, history tells us that racial, social, and economic disparities in arrests for low-level marijuana offenses persist.

The ACLU’s *The War on Marijuana in Black and White* (2013) reports that prior to decriminalization in 2015, Black people in Delaware were three times more likely than white people to be arrested for cannabis possession. The ACLU’s follow-up report, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform* (2020), revealed that racial disparities in arrests actually increased post-decriminalization; police arrested four to five times more Black

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people than white people in Delaware for carrying small amounts of pot.

In Delaware, about 80 percent of the those involved in the criminal justice system are indigent and cannot afford an attorney. Most criminal justice involved individuals are not only living in poverty, but are still subject to social stigma and legal discrimination, as well as the collateral consequences of having a lifelong criminal record.

An arrest and conviction for possessing cannabis impacts an individual's life in many ways — it can affect parental rights, employment, housing, and eligibility for education loans. Add to it the cost of an attorney, personal property seized by police, court fines and personnel costs, drug treatment, probation fees, and the constant threat of jail for

violating court orders, and you've got an expensive price tag on a system plagued with disparate results.

Social equity is a first step in acknowledging historical punishments under policies of prohibition never fit the underlying crime. Through social equity initiatives, innovative entrepreneurs and productive workers from underserved communities will finally have a ground floor opportunity to share in the growth and success of the lucrative market on the horizon.

The war on drugs has undoubtedly had a negative generational impact on those living in disproportionately-impacted areas. It is not enough to simply decriminalize buying and selling marijuana — poor, Black people are still paying the price by being pulled over,

searched and arrested for the same non-violent acts as their rich, white counterparts who now own medical cannabis dispensaries. Social equity requires this economic boon be directed to everyone, especially in the communities that have been negatively impacted, in order to achieve fairness and justice for all. 🗳️



Tom Donovan is a Delaware attorney with more than 20 years of experience in indigent criminal defense. In 2014, Tom joined other volunteer citizen-lobbyists working to end marijuana prohibition in Delaware. In 2017, he was appointed by Governor John Carney to sit on the Adult Use Cannabis Task Force to review and discuss proposed legislation to legalize cannabis in Delaware. Donovan can be reached at thomas.donovan@delaware.gov.

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HIGH & DRY:

DELTA-8 PUTS CONSUMERS AT RISK

BY MARION MAXWELL QUIRK, ESQUIRE, AND RHYNN EVANS

What is Delta-8?

Delta-8 is a form of THC, the main psychoactive ingredient in marijuana and hemp.¹ Delta-8 poses specific problems for consumers: the risks aren't well understood, synthesizing it is potentially harmful, and the packaging is often misleading. The consumer landscape of delta-8 is one of deception, misrepresentation, unfairness, and concealment.

While delta-8 occurs naturally at low concentrations, consumers should be wary of misleading claims that it's less intoxicating: delta-8 is synthesized to produce much higher concentrations of THC,² and manufacturers don't always disclose how much THC is in delta-8 products. The FDA warns that delta-8 is sometimes labeled as "hemp product," or marketed with unsubstantiated claims of medical or therapeutic uses, which misleads consumers into thinking the product is not psychoactive.³ Consumers may be exposed to much higher levels of THC than they expect with delta-8, which can lead to adverse effects including vomiting, hallucinations, trouble standing, loss of consciousness, and hospitalization. The FDA has not evaluated delta-8 for safe use.

What's more, consumers aren't being told about harmful additives in unregulated delta-8 products. Delta-8 products are synthesized using potentially harmful solvents and acids, such as butane, acetone, and ethanol. According to the FDA, those contaminants can end up in the final product at unsafe levels. Regulated THC products must meet thresholds not only for additives and solvents, but for other contaminants such as heavy metals and pesticides. Surreptitious delta-8 producers aren't testing product or minimizing the risk of harmful additives necessary to create delta-8.

Of particular concern are pediatric and unintentional exposure cases. Unregulated manufacturers and sellers use unfair tactics and omit material information to entice consumers into buying delta-8 products. Illegal copycat food products can be easily mistaken for widely-available brands of snack foods such as chips, cookies, and candy,⁴ and are available at gas stations and convenience stores. Attendants may not even fully understand what it is,⁵ and age-verification to purchase is often non-existent. Poor disclosures, misleading packaging, and undisclosed concentrations lead underage users to mistake delta-8 products for

non-intoxicating hemp products or lead them to ingest far more intoxicants than they intended.

What is Consumer Fraud?

State UDAP (Unfair, Deceptive, and Abusive Practices) laws protect consumers from unfair or deceptive acts or practices. State attorneys general investigate and prosecute violations of the UDAP laws. Generally, state attorneys general do not have to establish consumer harm or consumer reliance in order to prove a UDAP violation. In addition, states have a wide range of remedies available to address the harm — restitution, injunctive relief, disgorgement, attorneys' fees and civil penalties (to name a few). Individuals who participated in the unfair or deceptive practices may have liability without a need to pierce the corporate veil.

What are Other States Doing?

In 2022, Colorado passed a bill limiting the sale of delta-8 and created a task force to study intoxicating hemp products.⁶ Like many states, Colorado has rigorous standards for licensed sellers that protect consumers. They limit not only heavy metals and solvents, but to test for contaminants like bacteria,

fungus, and mycotoxins⁷ — a requirement that unlicensed delta-8 producers evade, despite risks to consumers. Notably, Colorado also allocated over half a million dollars to focus on delta-8 and consumer protection, a focus that many states share. Recently, the Colorado Attorney General filed a complaint against a company for deceptively marketing its products as federally legal industrial hemp despite the fact that the products sold contained THC levels 35 times higher than allowed by law.⁸

Connecticut has recently achieved victories in the delta-8 space, having filed over a dozen complaints against those who have skirted state consumer protection laws;⁹ in some cases, Connecticut secured stipulated judgments with injunctive and monetary relief.¹⁰ Delta-8 is regulated by Connecticut’s Department of Consumer Protection under the Responsible and Equitable Regulation of Adult-Use Cannabis Act (“RERACA”). Sellers require a license to sell under RERACA, and are held to rigorous testing and safety standards. Importantly, RERACA packaging requirements ensure consumers are informed — among other things, sellers must indicate the product is not FDA-approved, the package must be continuously child-resistant, uniformly white (unlike illegal look-alike products that mislead consumers), and indicate a standardized serving size with regulated levels of THC.

The Consumer Protection Unit (the “CPU”) in the Fraud and Consumer Protection Division at the Delaware Department of Justice is charged with enforcing the Consumer Fraud Act, 6 *Del. C.* § 2513, *et seq.* (the “CFA”). The purpose of the CFA is “to protect consumers ... from unfair or deceptive merchandising practices in the conduct of any trade or commerce in part or wholly within this State. It is the intent of the General Assembly that such practices be swiftly stopped” 6 *Del. C.* § 2512. “Merchandise” is broadly defined as “any objects, wares, goods, commodities, in-

tangibles, real estate or services.” 6 *Del. C.* § 2511(6). In the event that delta-8 is sold in Delaware using deception, fraud, false pretenses, false promises, misrepresentations, or unfair practices in connection with its sale or advertisement then CPU can investigate those activities and enforce any violations of the CFA. When it comes to delta-8, an ounce of prevention is worth a pound of cure: an important part of CPU’s efforts involve educating businesses on the CFA, and informing consumers of what to watch out for in the marketplace.

Consumer Tips

Consumers should be wary of:

- Buying from unlicensed sellers; the only products the State of Delaware recognizes as safe are those purchased in licensed retail centers;¹¹
- Unclear labeling about what a product is and whether it is intoxicating;
- Lack of disclosure about dosing and quantity of THC;¹²
- Packaging in that resembles, but is not identical, to common snack brands;
- Packaging that is not child-resistant;
- Products that are marketed as “diet weed,” “light cannabis,” “delta-8 hemp,” “delta-8 CBD,” or something that gives a “legal high”;¹³ and
- Sellers who are unwilling or unable to produce Certificates of Analysis or other verification of the product.

Conclusion

As discussed above, delta-8 poses significant risks for consumers. It is important to raise awareness of these risks. Currently, state UDAP laws are an important tool used to combat consumer fraud related to delta-8. ⚖️

Notes:

1. Ferguson, Sian. “What Is Delta-9?” Healthline. February 14, 2024. <https://www.healthline.com/health/what-is-delta-9>.
2. “Delta-8 Information.” Cannabis Regulatory Agency. Accessed June 11, 2024. <https://www.michigan.gov/cra/resources/consumer-connection/delta-8-information>.
3. FDA. “5 Things to Know About Delta-8 Tetrahydrocannabinol: Delta-8 THC.” NIH National Library of Medicine. January 2022. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9312454/>.
4. “FDA, FTC Warn Six Companies for Illegally Selling Copycat Food Products Containing Delta-8 THC.” FDA News Release. July 5, 2023. <https://www.fda.gov/news-events/press-announcements/fda-ftc-warn-six-companies-illegally-selling-copycat-food-products-containing-delta-8-thc>.
5. Bradshaw, Helen. “Teens are using an unregulated form of THC. Here’s what we know.” ScienceNews. April 10, 2024. <https://www.sciencenews.org/article/teens-using-unregulated-delta-8-thc>.
6. Sabaghi, Dario. “Colorado To Create A Task Force To Study Cannabis Delta-8 THC Products.” Forbes. May 19, 2022. <https://www.forbes.com/sites/dariosabaghi/2022/05/19/colorado-to-create-a-task-force-to-study-cannabis-delta-8-thc-products/?sh=6b759b0e2011>.
7. Colorado Marijuana Rules (1 CCR 212-3). <https://www.coloradosos.gov/CCR/GenerateRulePdf.do?ruleVersionId=11261&fileName=1%20CCR%20212-3>.
8. “Colorado Attorney General’s Office sues Colorado cannabis business for falsely marketing marijuana products as legal industrial hemp.” June 18, 2024. <https://co.ag.gov/press-releases/6-18/24>.
9. “Attorney General Tong Announces Crackdown on Illegal Sale of Delta-8 THC.” February 9, 2023. <https://portal.ct.gov/ag/press-releases/2023-press-releases/attorney-general-tong-announces-crackdown-on-illegal-sale-of-delta8-thc>.
10. *State v. Al Abdi, Naji*, HHD-CV23-6167743-S (Conn. Super. Ct.); *State v. NSEA, LLC*, HHD-CV23-6166857-S (Conn. Super. Ct.).
11. “Frequently Asked Questions.” State of Delaware Office of the Marijuana Commissioner. Accessed June 11, 2024. <https://omc.delaware.gov/index.shtml?dc=faq#safety>.
12. “Increases in Availability of Cannabis Products Containing Delta-8 THC and Reported Cases of Adverse Events.” CDC Health Alert Network. September 14, 2021. https://emergency.cdc.gov/han/2021/pdf/CDC_HAN_451.pdf.
13. Rae, Adie. “What is Delta-8 THC, and Is It Safe?” GoodRx Health. May 3, 2024. <https://www.goodrx.com/well-being/substance-use/is-delta-8-thc-safe>.



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CHALLENGES AWAIT DELAWARE MARIJUANA LOTTERY WINNERS

BY PETER S. MURPHY, ESQUIRE

Congratulations! After spending months preparing and submitting your marijuana license application, you have been selected by the Delaware Office of Marijuana Commissioner (OMC) to receive a coveted adult-use marijuana license — now the real work starts.

Over the last eight years, I have helped individuals and companies obtain, and more importantly, maintain, cannabis licenses across several states, including Delaware. I've learned during that time that those new to the industry quickly confront a sharp and formidable learning curve for which they are unprepared. After all, this is a highly regulated business, subject to the whims of markets, and the caprice of capitalism. Meticulous plans, colorful charts, and fashionable swag adorned with bespoke logos can all end up in the woodchipper of reality before your first harvest or sale. Your lone objective is to open your doors on time and on budget (more on that later).

Operational Clock

Eighteen months or 548 days. Remember those numbers. This is the length of time each successful Delaware applicant is given to find suitable (and eligible) property, complete construction and/or remodeling, pass inspections, and start operations under the proposed OMC regulations published July 1, 2024. This leaves no time to dawdle.

Within the first 30 days, all lottery winners must complete and submit a supplemental license application and pay applicable licensing fees. So, if you don't already have your licensing fees in an account ready to send to OMC on the day lottery winners are announced, you are already behind the ball. The supplemental application includes an investigation of each owner's criminal history, financial background and tax status. Only upon approval of the supplemental license application and payment of all fees will OMC issue a conditional license. We are down to 518 days, if you are keeping count.

The Search for Eligible, Available and Desirable Property

Unlike cannabis license applications in many states, Delaware does not require applicants to identify a specific property or demonstrate site control as part of their initial application. Securing qualifying property is typically one of the most time consuming and expensive parts of the licensing process. Omitting this requirement is a blessing to applicants and is sure to increase the overall number of applications received by OMC. This decision, however, only delays the inevitable by shifting the mad scramble for property from the application phase to the conditional licensing phase.

Under the Delaware Marijuana Control Act (the Act), a municipality may prohibit the operation of marijuana

businesses. Several Delaware towns have already banned operations within their borders. As of this writing, the popular coastal towns of Rehoboth Beach, Dewey Beach, Fenwick Island, and Bethany Beach have passed ordinances that prohibit cannabis sales and manufacturing.

Does this mean cannabis will be unavailable to the millions of tourists who flock to Delaware's beaches from June to September? Of course not, it just means they will need to stock up on their way south from Pennsylvania, New Jersey or New York — or east from Baltimore and Washington, D.C. Competition for retail locations along these travel corridors will be fierce. The same factors that drive the placement of the next Wawa or Royal Farms will shape the cannabis retail landscape.

Even in Delaware cities or towns where cannabis operations are welcome, conditional licensees must navigate state and local restrictions to identify viable locations. Under the Act, the OMC may refuse to grant a retail cannabis license to an establishment located in the vicinity of a church, school, college, or substance abuse treatment facility. Couple this with the requirement that all retail cannabis stores must be at least 1,200 feet apart by accessible public road in incorporated cities and towns; and, at least one mile apart in any unincorporated or rural area, and the inventory of viable properties starts to dwindle.

Finally, the nature of the licensed activity (i.e., retail, manufacturing, cultivation) narrows the universe of potential sites. Indoor cultivation and manufacturing facilities require access to utilities (water and power) that can accommodate the anticipated demand and future growth, which are rarely found outside industrial zones. Retail stores will necessarily seek to be near population centers and easily accessible. When properties are filtered through these combined lenses of eligibility,

availability, and desirability, it becomes a race to secure a limited number of sites in the shortest amount of time. Meanwhile, the operational clock continues to tick.

Feel The Burn Rate

For the conditional licensees fortunate enough to have identified an eligible property within six months of licensure, it's time to get out your checkbook.

Whether you are building from the ground up, or remodeling a standing structure for cannabis use, Hofstadter's Law still applies: "everything takes longer (and costs more) than you expected." This is especially true in the cannabis industry, known for its "Green Tax" — i.e., inflated prices vendors impose on cannabis businesses for both legitimate and spurious reasons.

All conditional licensees will face compliance costs that rival those found in the gaming, pharmaceutical, and financial services industries. Even simple retail locations are subject to enhanced design, security, surveillance and inventory requirements that add to buildout costs and operational expenses. Cultivation and manufacturing licensees will face substantial upfront capital expenditures, such as extraction equipment (mechanical or chemical), cultivation lighting, climate control systems, and sanitary food-grade kitchens for those manufacturing edible products.

In an industry where access to capital remains scarce and expensive, being realistic in planning and adaptable in execution can make all the difference. Today, individuals looking to invest in the cannabis space have a range of investment options that did not exist 10 years ago. Investors can purchase cannabis stocks and exchange-traded funds (ETFs) and spread their risk across the emerging industry without having to place their bets on a single license

in an untested market. The forthcoming federal rescheduling of cannabis to Schedule III under the Controlled Substances Act is likely to draw new investors, but the conflict between state and federal cannabis policies and potential for greater federal oversight is likely to keep many would-be investors on the sidelines for the near term.

Those looking to debt to finance their operations will be equally frustrated. While cannabis loans do exist, there is still no regulatory framework for banks when it comes to lending to state-legal cannabis companies. There is no standard credit score for cannabis companies and no accepted underwriting model, making it difficult for financial institutions to evaluate risk.

All the above makes it critical for conditional licensees to budget conservatively and be miserly when it comes to any expense that does not directly advance the goal of becoming operational by the 18-month OMC deadline.

Conclusion

The combination of high startup costs, limited real estate, and lack of capital make launching and operating a cannabis business uniquely challenging. The euphoria of being selected in the lottery will fade and it is critical you enter the next phase of licensing with eyes wide open. 🧐



Peter Murphy, partner at Saul Ewing advises cannabis industry clients on regulatory compliance, state and local licensing,

and creating strategic relationships to support the launch and growth of their businesses. This includes helping clients navigate evolving cannabis regulations and develop multistate licensing, operations and branding strategies. He can be reached at peter.murphy@saul.com.



The Long And Continuing History of Copyright



Who Owns This Sentence?: A History of Copyrights and Wrongs

By David Bellos and Alexandre Montagu
W. W. Norton & Company
2024

Even as I write this sentence, I “own” it. And even though you are reading this sentence (and, hopefully, this entire book review) you “own” neither the sentence nor the review. In fact, you don’t “own” any of the columns or articles appearing in this issue of the *Bar Journal*. But what does it mean to say an author “owns” their written work? If you can read this article, and, indeed, this entire issue of the *Bar Journal*, what difference does it make if you “own” the content or not? And, perhaps just as interestingly, how did “ownership” of written words, and paintings, and speeches, and performances, and photographs even come to be? And should we care?

In *Who Owns This Sentence?: A History of Copyrights and Wrongs*, professor David Bellos and attorney Alexandre Montagu take the reader on an extended tour of the history of copyright, from its humble (and limited) beginnings to the multi-billion dollar juggernaut that it is today. They not only provide history and context, but they ask policy questions and they speculate at the possible outcomes of roads not taken.

Although we take copyright law in its modern form for granted, copyright has followed a long and winding road. It wasn’t until Gutenberg’s printing press innovations (movable type) that any sort of “copyright” protection was even needed, and, initially, it was the state’s licensing of printers and approval of printed works that was, for all intents and purposes, the start of modern copyright law. Shakespeare and his heirs didn’t profit from the publication of his plays, but his printer (who had the monopoly on printed editions of them) did. A rival publisher couldn’t just print copies of other works, thereby undercutting the original printer. Gradually, the position of authors (and, more slowly, composers and artists) came to be strengthened.

But what about similar works? What about parodies? What about translations into other languages? What about “fair use?” What about adapting a written story into a play? Today, these questions have been long-resolved; but, in their day, they were cutting edge and often not resolved for decades or more, as the law (like any area of the law) grappled with new questions and evolved to address previously unconsidered issues.

Circus posters, of all things, were the catalyst for a major expansion of copyright protection. Travelling circuses were a major form of entertainment in America for many years. They crisscrossed the country, setting up their big tops and putting on performances before moving on to the next city or county. Posters would be put up in towns weeks and days before the circus arrived so the local populace would be ready. And thousands upon thousands of posters were printed every year. When the Wallace Circus ran out of posters, it ordered new posters from a

Although we take copyright law in its modern form for granted, copyright has followed a long and winding road.

different printer, much to the chagrin of the original printer who had designed the poster. The original printer sued for copyright infringement. Two questions were presented. First, could a company, as compared to an individual, hold a copyright? Second, were “mere” circus posters entitled to copyright protection? The Supreme Court answered “yes” to both questions in 1903.

As to the first question, the Court held that companies could own a copyright in work created by their employees. The justices did not engage at length on that question. With its answer to the second question, the Court greatly expanded the field of work eligible for protection. Previously, for copyright protection to apply, the work must be judged not only original, but also as “promot[ing] the useful arts.” Justice Oliver Wendell Holmes, in another pithy opinion, though, rejected reference to the “useful arts” test, explaining that:

[i]t would be a dangerous undertaking for persons trained only in the law to constitute themselves the judges of the worth of pictorial illustration . . . If they command the interest of any public . . . it would be bold to say that they have not an aesthetic and educational value — and the taste of the public is not to be treated with contempt.

CONTINUED >

Provide, Provide

Robert Frost: Sixteen Poems To Learn By Heart

By Jay Parini


Lib. of Amer., 2024

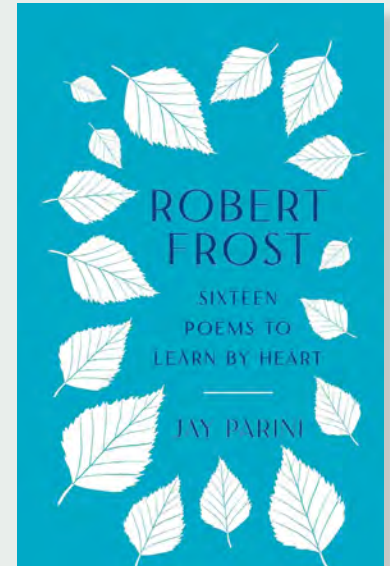
Even if you’ve never read a Robert Frost poem, you’ve heard at least some lines from a Robert Frost poem. “The woods are lovely, dark, and deep / but I have promises to keep, / and miles to go before I sleep, / and miles to go before I sleep.” “Good fences make good neighbors.” “Better to go down dignified / with boughten friendship at one’s side / than none at all. Provide, provide!” “Home is the place where, when you have to go there / They have to take you in.”

Founded in 1979, the Library of America is a non-profit foundation dedicated to the preservation and publication of great American authors and their works. It has published nearly 400 collections, all in extremely high-quality editions, meant to last for generations. Earlier this year, the LOA published Robert Frost, *Sixteen Poems To Learn By Heart*, selected by, and with commentary by, Professor and Frost biographer Jay Parini.

This short work (only 16 poems) is obviously not meant to be an exhaustive edition of Robert Frost’s canon (separately, the LOA has printed a complete anthology). Rather, this short work, published on the 150th anniversary of Frost’s birth, is meant as something of a “pick me up.” Something to help a reader slow down, unwind, enjoy, and contemplate the deeper meaning of poetry. The collection (and short accompanying essays — one for each poem) can be read in one sitting, but individual poems can be returned to again and again. Professor Parini does tout the benefits of memorization, although he concedes that in a busy world, it may not be entirely possible to memorize all 16 poems — yet even if you can’t memorize every poem, some lines will always stay with you.

Two roads diverged in a wood, and I –
I took the one less traveled by,
And that has made all the difference.

Whatever road you take, it’s not a bad idea to take along at least some poetry with you. It may very well make all the difference. 



United State companies receive more money from copyrighted products than any other industry, including agriculture, computers, defense, and medical/pharmaceutical.

Initially, copyright terms were fairly limited in duration (at least as compared to today’s term). When Walt Disney released the first Mickey Mouse cartoon in 1928 (*Steamboat Willie*), the copyright term was 28 years, plus another 28 years upon-registration in the final year of the first term. Thus, *Steamboat Willie* was poised to fall into the “public domain” (meaning anybody could make copies, distribute them, etc.) in 1984. In the 1976 Copyright Reform Act, though, Congress granted corporations holding copyrights a second term of 47 years, thereby extending the total copyright period to 75 years (meaning *Steamboat Willie* would become part of the public domain in 2003). Then, with the Sono Bono Act, adopted in 1998 and sometimes called the “Mickey Mouse Protection Act,” Congress further extended the length of corporate copyrights to 95 years. However, as

of 2024, *Steamboat Willie*, entered the public domain, along with the version of Mickey Mouse as he appeared in that original 1928 cartoon (Minnie Mouse, who appeared in another cartoon in 1928 as Mickey’s girlfriend, has also entered the public domain). For now, no more extensions, retroactive or otherwise, appear on the horizon.

Mozart was never a rich man, and his family and heirs did not enjoy riches following his death; but, Bruce Springsteen was recently able to sell his music catalogue for a reported \$550 million. Sixteen of the world’s richest fifty people owe their fortunes in whole or in part to copyright. United State companies receive more money from copyrighted products than any other industry, including agriculture, computers, defense, and medical/pharmaceutical. Even one hundred years ago, such profits and income would

have seemed unimaginable. It remains to be seen where copyright will take the country and the world in the decades and centuries ahead, but take us it will. Knowing how copyright started and how it evolved is one way to be ready for the changes to come.

Reviewer’s Postscript: Even though I may “own” this sentence and this book review, I hereby give you permission to copy it in whole or in part; I only ask that you give me and the DSBA attribution when doing so. 📄

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

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Nominations Sought for 2024 Awards



The Delaware State Bar Association and the Awards Committee are seeking nominations for the following awards:

Daniel L. Herrmann Professional Conduct Award
Outstanding Service to the Courts and Bar Award
Distinguished Mentoring Award
Government Service Award

AWARDS DESCRIPTION

Daniel L. Herrmann Professional Conduct Award

Awarded to a member of the Delaware Bar who, over the course of time, has demonstrated those qualities of courtesy and civility which, together with high ability and distinguished service, exemplifies the Delaware lawyer.

Outstanding Service to the Courts and Bar Award

Awarded to a Delaware lawyer or judge who, by exemplary service to the Delaware Courts and the Delaware Bar, has substantially assisted the courts and the Bar and has strengthened public trust and confidence in the courts in the state of Delaware and the Administration of Justice.

Distinguished Mentoring Award

Awarded to a Delaware lawyer or judge who, by distinguished mentoring of other Delaware lawyers (or future lawyers) over a period of many years, has served as an inspiration to and a model for those lawyers in striving for and maintaining the highest standards in their professional careers and in their community involvement.

Government Service Award

Awarded to a full-time government service employee in recognition of dedicated and distinguished contribution to the Administration of Justice.

These are not necessarily annual awards. All or some of these awards will be presented only upon the recommendation of the Awards Committee and approval by the Executive Committee of the DSBA. Please note that previous nominations must be renewed to be considered. These awards will be presented in a special Awards Luncheon in December 2024.

Delaware State Bar Association Awards Nomination Form

Name of Candidate: _____

Title/Occupation of Candidate: _____

Award: _____

Date: _____

Nominator: _____

Phone: _____ Fax: _____ E-Mail: _____

Firm: _____

Address: _____

Brief statement of reasons that candidate is deserving of Award (see above Award criteria). Please attach sheet if necessary.

Nominations should be submitted by **September 6, 2024** to Karl G. Randall, Executive Director at krandall@dsba.org.



Celebrating Peach Fuzz

The Color of the Year

This summer's recipe pays tribute to the Pantone Color of the Year — Peach Fuzz. From textiles to paint to cosmetics, Pantone color systems standardize colors for those looking to design and create. In 1999, Pantone initiated its Color of the Year Program with Cerulean Blue. Now, 25 years later, Pantone celebrates Peach Fuzz, "a velvety gentle peach tone whose all-embracing spirit enriches mind, body, and soul...a shade that resonates with compassion, offers a tactile embrace, and effortlessly bridges the youthful with the timeless." (<https://www.pantone.com/color-of-the-year/2024>)

For me, Peach Fuzz resonates with ripe, juicy Jersey peaches, peach pie, and peach cobbler. So, this edition's recipe is one I adapted from a traditional Apple Tarte Tatin. Back in the 90s, my Aunt Sue self-published a cookbook called *Susan's Recipes and Collections*. Aunt Sue was a true gourmande. Her repertoire ranged from a traditional Italian red sauce to seared foie gras and Champagne. A registered nurse by profession, Aunt Sue served in the European Theatre during WWII where she started collecting recipes. In retirement, she gathered them into an over 300-recipe collection, from lasagna to Beef Wellington. The cookbook is a treasure to those fortunate enough to have one. Her Tarte Tatin recipe inspired this one, mainly for its thin crispy crust, which really lets the fruit shine. Tarte Tatin — a timeless dessert to enjoy summer peach season and, of course, to celebrate the year of Peach Fuzz. 🍑



Susan E. Poppiti is the owner of Susan Poppiti Math Tutoring LLC. Susan holds a WSET (Wine and Spirit Education Trust) Level 3 Award in Wines with Merit. You can contact Susan at spoppiti@hotmail.com and find a searchable collection of her "Judicial Palate" articles at www.cucinadipopppiti.com.

Peach Tarte Tatin

Ingredients

- 1 c. flour
- 8 peaches
- ¼ tsp. salt
- 1½ c. sugar
- 11 tbs. butter

Combine the flour and salt in a mixing bowl. Cut six tablespoons of the butter into small cubes and add to the dry ingredients. Rub the butter and dry ingredients together with your fingers until the butter is broken into tiny pieces. The pieces should be no larger than peas. Spoon four or five tablespoons of cold water, one at a time, into the dry ingredients and mix with a fork and then with your hands to create a cohesive ball. Flatten with the palm of your hand, cover with plastic wrap, and refrigerate for 30 minutes.

Peel, halve, and pit the peaches. In a large non-stick pan, add the remaining butter and the sugar. Cook over medium heat until the butter starts to melt and caramelize. Then add the peaches, stirring occasionally to coat them with the caramel. Cook for about 20 minutes or until the peaches soften.

Preheat the oven to 425 degrees and remove the dough from the refrigerator. Butter a 9-inch pie plate. Arrange the peaches, round side down, and pour the caramel over them. Depending on how much your butter and sugar cook down, I recommend reserving some of the caramel for an ice cream topping. You will want enough caramel to coat the peaches nicely but not result in a dessert drowning in liquid — we're not making Île Flottante. Also, in my opinion, the round side down makes for a more attractive presentation when the dessert is inverted.

Roll out the dough large enough to cover the peaches and reach the plate rim. Cover the peaches with the dough and tuck in any excess. Bake for 20 minutes, or until the dough is light golden brown. The caramel should be bubbling. Let it cool before inverting onto a large serving plate. Serve on its own or with vanilla ice cream and a sprig of fresh mint.



The Delaware State Bar Association has moved!! Please be advised that the DSBA has relocated to a new office building.

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Go to www.dsba.org for directions to the new office.



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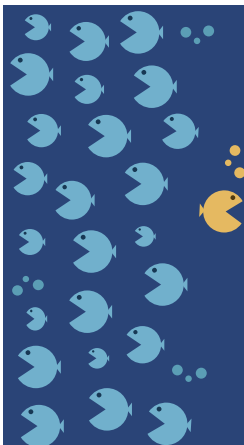


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WIDENER UNIVERSITY is currently seeking an Assistant Dean for Career Development at the Delaware Law School. Reporting to the Dean of the Law School, the Assistant Dean for Career Development is an integral member of the senior administration. The Assistant Dean is responsible for developing and executing a comprehensive strategy to support law students’ and alumni career and professional development goals. Apply at <https://www.widener.edu/employment>.

MARKS, O’NEILL, O’BRIEN, DOHERTY & KELLY, P.C., a regional insurance defense firm, is looking for smart, hardworking Delaware attorneys of all experience levels who: 1) want to have the opportunity to work directly with clients; 2) are interested in taking depositions, arguing motions and defending clients at trial; and 3) believe they have the ability to handle matters independently either now or in the future. Candidates do not need to bring clients with them or develop clients (although those efforts have firm support). What are you waiting for? Get started on your next career move. We have a hybrid home/office work culture, competitive salary and benefits. Candidates should email: ddoherty@moodklaw.com. We are an Equal Opportunity Employer.

BOVE & HEDRICK, ATTORNEYS AT LAW seeks an associate to handle plaintiffs’ personal injury and workers’ compensation cases in our New Castle County Office. Must have at least 5-10 years experience in handling litigation cases. We offer a competitive salary and benefits commensurate with experience and the firm will pay 1/3 of business generated. Email resume to Beverly Bove at bbove@bevbovelaw.com.


CLASI IS HIRING ATTORNEYS including a Managing Attorney for our Disabilities Law Program. Please check our website for details about all the available positions. <http://www.declasi.org/employment/>.

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HISTORIC GEORGETOWN OFFICE BUILDING FOR SALE: The Paynter House, located on the Circle in Georgetown adjacent to Family Court and less than a block from all courts and the Sussex County Offices, is for sale. Occupied by a law office for decades, the restored Paynter House was built in 1890. This focal point of the Georgetown Circle with ample parking is ideal for a firm to establish a prestigious footprint in the County seat. For more information go to: <https://reporting.loopnet.com/report/bca26477-03c4-40d2-82a1-3b34fcc79b74>.

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LOST WILL

LOST WILL: Frank J. Tolomeo, Jr., Newark, DE. Died 11/7/2023. Looking for original or copy of a Will or Codicil. Please contact Denise D. Nordheimer at (302) 622-4268 or dnordheimer@foxrothschild.com. 

DISCIPLINARY ACTIONS

INTERIM SUSPENSION

In the Matter of Ryan P. Connell, No. 219, 2024 Effective Date: June 3, 2024

By Order dated June 3, 2024, the Delaware Supreme Court suspended Ryan P. Connell, Esquire, immediately from the practice of law in Delaware pursuant to Rule 16(a) of the Delaware Lawyers' Rules of Disciplinary Procedure, pending the disposition of this matter under the Disciplinary Procedure Rules.

The Court ordered that during the period of interim suspension, Connell shall:

- (a) not practice law in Delaware directly or indirectly, nor shall he provide any law-related services unless he is directly supervised by a Delaware lawyer;
- (b) not have any contact, direct or indirect, with clients, prospective clients, witnesses, or prospective witnesses for purposes of the practice of law or the provision of law-related services;
- (c) not attend any court proceeding or ancillary court proceeding on behalf of a client, address a court on behalf of a client, or make any legal argument on behalf of a client;
- (d) not advertise any law or law-related services;
- (e) not independently, or with another lawyer, own, operate, serve as an officer or director of, or share


any interest whatsoever, in any law firm, association, corporation, or other business entity, the purpose of which is, in whole or in part, the practice of law;

(f) not display to the public any indicia that he is a member of a law firm or available to take clients, including any signage, letterhead, or other written forms, websites, social media accounts or other internet web-based pages.

(g) provide a copy of the Interim Suspension Order to all employers, whose purpose is, in whole or in part, the practice of law, regardless of whether he is a W-2 employee or a 1099 independent contractor;

(h) fully cooperate with ODC in any efforts to monitor his compliance with the Interim Suspension Order and these conditions;

(i) report any change in employment (including the name of his employer and job responsibilities) to ODC within ten calendar days of his date of hire; and

(j) not share in any legal fees arising from clients or cases referred by him during the period of suspension to any other lawyer or in any legal fees earned for services by others during such period of suspension. 



BULLETIN BOARD ADVERTISING INFORMATION

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

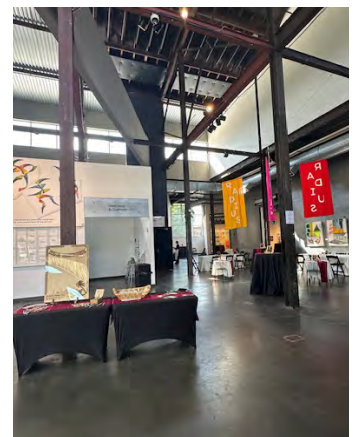
All Bulletin Board ads must be received electronically and prepayment is required. Submit the text of the Bulletin Board ad and payment to rbaird@dsba.org. For more information, contact Rebecca Baird at (302) 658-5279.



Retirement Celebration of Mark S. Vavala, Esquire

Thursday, June 27, 2024

On June 27, the members and staff of the Delaware State Bar Association, family, and friends gathered at The Delaware Contemporary to honor and celebrate Mark S. Vavala, Esquire, as he retires as Executive Director after eight years of service. The evening started with a cocktail hour where guests surprised (mostly!) the guest of honor upon his arrival. The program included remarks from David A. White, Esquire, who served as Master of Ceremonies; Outgoing President Kate Harmon, Esquire; Edward M. McNally, Esquire; and The Honorable Collins J. Seitz, Jr. After the remarks, Jennifer Ying, Esquire, presented Mark with various gifts, including a lawyer-themed paint by number to acknowledge Mark's artistic side. The staff presented Mark with a personalized caricature to hang in his new DE-LAP office. Many members of the Bar submitted short videos where they shared memories of Mark and these clips were compiled into a commemorative video that was shown. The event closed with remarks from Mark, who tearfully expressed his gratitude and appreciation for his time at the DSBA. 🎧



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The Delaware State Bar Association Insurance Program, advised and administered by USI Affinity, offers a proprietary, comprehensive Lawyers' Professional Liability program. Along with other business insurances to attorneys and law firms in Delaware.

As a leading insurance broker for Lawyers' Professional Liability, USI Affinity has been protecting Lawyers for over 50 years. We understand the business and the risks that attorneys and law firms face every day.



Lawyers Professional Liability

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