

# Editor's Perspective



By David W. deBruin, Esquire

Since this is my first column as an editor of *In Re*, I thought I would provide you at the outset with a brief glimpse at the basis of the formation of my perspective. I was fortunate to have had the opportunity to litigate cases in many state and federal courts across Pennsylvania and New Jersey for several years before I became a Delaware attorney.

Prior to coming to Delaware, I think it is fair to say that I was getting somewhat callused to the practice of law. Although it was not my personal style, I quickly discovered that for some opposing counsel in and around the Philadelphia area, “litigation” was cover for literally screaming obscenities and at times speculating upon my family heritage in a less than favorable manner. That was just in the introductory phone call; and in such cases it would sometimes later escalate to the point where I felt that I must surely be in the midst of a Coen brother’s movie. It was an excellent school for learning among other things, the art of self-control. I was able to take some solace in the fact that it obviously wasn’t just me and that this type of attorney usually speaks and acts the same way when they “communicate” with their clients, partners, staff, spouse, children and dog. During and after law school, I had heard stories about how the practice of law in Delaware was vastly different than that to which I had become somewhat accustomed, but stories are just that. I needed to personally look behind the Wizard of DE’s curtain to see for myself. As most former “non-Delaware” attorneys will tell you, I had the proverbial watershed moment when

I was finally involved in litigating a case that was pending in Delaware Superior Court. At that moment, I knew that there was something very different and special about the practice of law in Delaware. Sad to say, but I was somewhat surprised to learn first hand that confrontational and inflammatory language and behavior was not going to be tolerated and that the Judge had read and understood (at least as well as the attorneys, if not better) the underlying issues set forth in the briefs before any argument took place. I was further impressed by the fact that a young associate at a small firm appeared to me to have a level playing field with an older established attorney at oral argument. This was troubling only to the extent that my firm was national counsel and we had retained a large and rather expensive firm as local counsel. I know it may sound simple or just plain corny, and at the risk of over stating my feelings in print forevermore, but I was literally drawn to Delaware during that case. I quickly thereafter set a goal to one day be admitted to the Delaware Bar. (Note to self; next time take the Delaware Bar Exam out of law school and do not take the Delaware Bar Exam after you have been practicing elsewhere for a number of years and especially not when you are married with four young children as it will likely take a few years off the back end of your life.) My comments are not intended to take away from the courts or the practice of law by many fine attorneys in and around the Philadelphia area, I am simply trying to provide a sliver of my background so that those of you that have been practicing for years but have never

really practiced law outside of Delaware can hopefully recon back to the time when you were genuinely appreciative of the opportunity that is presented simply by being admitted to the Delaware Bar.

As a Delaware lawyer a large part of many attorney’s jobs involves working with counsel from outside Delaware. I believe that one of the biggest challenges facing everyone from young associates and solo practitioners to seasoned partners is how and when to reign in outside/national counsel. In this endeavor, it is vitally important to remember that the stakes are never so high and the litigation is never so heated as to allow for a diminution of the level of civility that those attorneys that have gone before us have worked so hard to establish as the norm in Delaware. It is incumbent upon Delaware practitioners to thoroughly review anything and everything that your co-counsel may forward to your office for filing. Out-of-state counsel may tell you that the pleading or motion is in final form and that it only needs a signature. Do not ever allow yourself to sign and file something that could adversely affect your credibility with the Court. This is true even if the document that must be filed comes to you at 10pm on the day it is due. In some cases that means that you have to keep support staff until the wee hours while you rewrite or substantially pare down inflammatory, objectionable or unnecessarily emphasized language at the eleventh hour. Here is a helpful hint if you are pressed for time, look for

*Editor's Perspective* (continued on page 9)

the underlined, bolded and/or italicized print. (My personal favorite example of heavy-handedness is when a word or group of words are underlined, bolded and italicized.) Some attorneys are used to practicing in other jurisdictions where they believe it is helpful to focus the Court on what is really at issue by using a great deal of added emphasis. However, when you file a brief that is overloaded with underlined, bolded and/or italicized print, virtually all emphasis (and credibility to identify what truly is important) is lost. It is akin to the childhood story of the boy that cried wolf. If you do not have time to do a proper job of review and editing for whatever reason, then contact your adversary, explain the circumstances and request an extension. Do not ever sell yourself, your signature, your firm and/or the practice of law here in Delaware short, all are in need of vigilant protection and we all need to remember that fact. ☹