

# Ethically Speaking



By Charles Slanina, Esquire

## Superior Court Ombudsman — Has the Time Finally Come?

**T**he December 2007 “Ethically Speaking” column presented a Christmas wish list for the Professional Responsibility Santa. Included in that list was a request for a Superior Court Ombudsman to parallel the Delaware District Court program. Santa has not made any promises, but our wish may yet come true.

I have long touted the benefits of the Federal District Court Ombudsman Program. In my practice of disciplinary defense and professional responsibility consultation, I have witnessed firsthand how the Ombudsman can broker resolutions of matters that could otherwise result in findings of contempt, disciplinary sanctions or worse. Specifically, I once represented a client who was able to offer an apology to the Court along with a withdrawal of some intemperately worded and hastily filed pleadings. As a result, my client came away from the experience a bit wiser and with all of his professional epidermis intact. I note that other attorneys have not fared as well under similar circumstances in the State Courts without a similar Ombudsman program available for intervention.

For those of you who have not experienced it, or heard of the Ombudsman Program, volunteers act as liaison between the Court and the judiciary and the Bar. Attorneys are able to diplomatically, and sometimes anonymously, bring questions and concerns to the Court and the Court is able to relay its concerns about attorney behavior through the Ombudsman in an informal and confidential manner.

Until fairly recently, Kevin Gross served the Court and the Bar for many

years as the Federal Ombudsman before leaving to become a bankruptcy judge. The Ombudsman position is now held by Kevin Brady of Connolly, Bove, Lodge & Hutz LLP and Theresa Brown-Edwards of Potter Anderson & Corroon LLP.

A committee of the Delaware State Bar Association Litigation Section is attempting to get a similar program started for the Superior Court. Past attempts have sputtered and failed, but this effort seems promising. Catherine Damavandi of the Department of Justice, Thomas Kovach of Parkowski, Guerke & Swayze, and other members of the DSBA Litigation Section with the encouragement of former DSBA President Helen Winslow have joined forces with retired Judge Vincent Bifferato to kick off a program modeled on the Federal Ombudsman. Their stated goal is to improve communications between practitioners in the Superior Court and the judiciary in support of the efficient administration of the court. An exploratory and organizational meeting of the committee is scheduled for May 29, 2008 (which will obviously have occurred before the publication of this column). I plan to attend and a future column will be dedicated to a report on their progress. Until then, I have provided the working draft of their proposal. Hats off to Catherine, Tom, and Judge Bifferato for this effort. “Ethically Speaking” wishes them the best along with any and all support I can muster for this worthwhile program.

### Delaware State Ombudsman Program

#### I. Statement of Purpose

The Delaware Courts shall establish the exploratory positions of State Courts

Ombudspersons (“Ombudspersons”) in each of the three counties to serve as a liaison between the Courts and Delaware legal practitioners. The Ombudspersons shall serve as a point of contact to address issues between practitioners and the Courts, continue the efficacious functioning of the Delaware State legal system, and reinforce the collegiality that is a hallmark of the Delaware State Bar. This program shall be limited to the Courts of Chancery, Superior Courts, and Court of Common Pleas.

At the end of a provisional one-year term, the Ombudspersons shall provide to the Delaware Supreme Court a summary of their activities and their assessments of the program’s effectiveness in their assigned Counties. The Ombudsperson program will then be maintained, discontinued or expanded at the Court’s discretion.

#### II. Overview of the Ombudsman Program

A. The Delaware Courts hereby establishes the Office of the Court Ombudsman.

B. Ombudspersons are appointed by, and serve at the pleasure of the Delaware Courts.

C. The Ombudspersons’ names and contact information shall be published on the Delaware Courts’ website, on the Delaware State Bar Association website, and in *In Re*.


D. The role of the Ombudsman is to improve communications between the Bench and Bar, and promote the efficient administration of the Delaware Courts as outlined generally in the Statement of Purpose.

E. Ombudspersons shall be entrusted by the Courts to resolve concerns of the Delaware legal practitioners regarding issues in the Court of Chancery, Superior Court, and Court of Common Pleas.

F. Ombudspersons shall protect the confidentiality of attorneys seeking resolution of issues in the Delaware State Courts to the greatest extent possible.

G. Ombudspersons will not resolve issues solely between practitioners or matters that should be reported to the Office of Disciplinary Counsel.

H. Ombudspersons appointed by the Courts shall be immune from civil liability which may result from their good faith participation in resolution of such concerns.

*\*“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. Additional information about the author is available at [www.delawgroup.com](http://www.delawgroup.com). *