



# Raising the Bar

The newsletter of the  
Young Lawyers Committee

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## Feature Article

## DRI Young Lawyers to Attend Supreme Court Swearing-In Ceremony

By Steven Scoggan



The United States Supreme Court Swearing-In Subcommittee coordinates the application and admission of members of DRI's Young Lawyers Committee to the United States Supreme Court. This year, several members of the Young Lawyers Committee will gather for a group dinner in Washington, D.C., on March 30, 2020. The next morning, these attorneys will be sworn into the Bar of the United States Supreme Court:

- Emily Motto, Baylor Evnen, LLP, Lincoln, Nebraska;
- Jazz Hampton, Foley & Mansfield, Minneapolis, Minnesota;
- Steven Schildt, Post & Schell, P.C., Philadelphia, Pennsylvania;
- Madeline Dennis, Tucker Ellis LLP, Cleveland, Ohio;
- Joseph C. Megariotis, Connell Foley LLP, Newark, New Jersey;
- Logan Matthews, Lightfoot, Franklin & White, LLC, Birmingham, Alabama;
- Steven Scoggan, Ellis & Winters LLP, Greensboro, North Carolina.

Jeanmarie Tankersley of Clawson and Staubes LLC in Greenville, South Carolina, will move for the admission of the attorneys before the Court. After the attorneys are admitted to the Court's Bar, they will have the opportunity to hear that morning's oral arguments. Although the Court has not yet announced the cases that will be argued, the newly admitted attorneys will get to watch the Supreme Court address cases

that likely involve issues of national importance and observe top notch appellate oral advocacy.

Approximately 4,000 attorneys each year are admitted to the Bar of the United States Supreme Court. Admission to the Court's Bar has several benefits. Subject to a few exceptions, only members of the Court's Bar can sign documents such as petitions or briefs. Admission therefore increases the likelihood of participating in a matter that one's firm may have before the Court. Supreme Court admission also increases the odds of hearing oral arguments for the high-profile cases that the Court regularly hears, as members of the Court's Bar need not wait in the line for the general public. Members of the Court's Bar also typically receive more favorable seating closer to the Justices once inside the courtroom.

If you are interested in being admitted before the United States Supreme Court in 2021 with fellow members of DRI's Young Lawyers Committee, please contact Swearing-In Subcommittee Chair Jeanmarie Tankersley of Clawson at [jtankersley@clawsonandstaubes.com](mailto:jtankersley@clawsonandstaubes.com), Vice Chair Emily Motto at [EMotto@baylorevnen.com](mailto:EMotto@baylorevnen.com), or Vice Chair Steven Scoggan at [steven.scoggan@elliswinters.com](mailto:steven.scoggan@elliswinters.com).

*Steven Scoggan is an attorney with Ellis & Winters LLP in Greensboro, North Carolina. Steven focuses his practice on complex commercial litigation, appeals, and products-liability cases. Steven can be reached at [steven.scoggan@elliswinters.com](mailto:steven.scoggan@elliswinters.com).*



## Article of Note

# The Millennial Lawyer's Duty to Maintain (and Promote) Technological Competence

By Nicole E. O'Toole



At twenty-five years old, I spent the first year of my practice as the youngest attorney at my firm. While this was often met with jokes as to my “millennial perspective,” it also, apparently, prompted an older member of opposing counsel to ask if I could help him convert a word document into a PDF. It is no secret that much of society still needs to catch up with the times, and this need has only been accelerated by the constant changes in technology. As young lawyers, we have a duty to ourselves, our clients, and to the profession to promote and ensure compliance with the ethical obligation of technological competence.

Whether an attorney's practice leads her to litigate in a courtroom, advise in a boardroom, or serve on a bench, her ethical duties to the practice of law are of the utmost importance. The Model Rules of Professional Conduct, adopted in whole or in part by forty-nine states, require that lawyers provide to their clients “the legal knowledge, skill, thoroughness and preparation reasonably necessary” for representation. See MRPC 1.1. Comment 8 to this Rule includes a lawyer's duty to keep abreast of changes in the law, including the benefits and risks associated with relevant technology. Thus, an attorney's commitment to the ethical practice of law also includes a commitment to keep up with technology in the law. Thirty-seven state bar associations have now adopted this ethical duty of technological competence, the most recent being Michigan as of January 1, 2020. While it is likely the other twelve states will soon follow suit, even if a state bar has not adopted the duty of technological competence, it still serves as persuasive authority. For example, the only state not to adopt the MRPC, California, issued Formal Opinion 2015-93, which states that technological competence is an *expectation* in the practice of law.

The duty of technological competence is not news to those admitted to practice law after the year 2013, because that was the first year the Multistate Professional Responsibility Exam covered this duty. However, for today's many practicing attorneys admitted prior to 2013, they may not even be aware this new obligation.

## A Duty to Ourselves

Even the smartest attorneys can appreciate the fear of a legal malpractice claim. So how does the duty of technological competence affect an attorney's malpractice liability? Whether in regard to cybersecurity, ESI, or simply being mindful of the “Reply All” button, courts expect attorneys to be diligent and attentive in their use of technology. For instance, a Florida court held that lawyers have become expected to use computer-assisted legal research, such as Westlaw and Lexis, to ensure that their research is “complete and up-to-date.” *Hagopian v. Justice Admin. Comm'n*, 18 So. 3d 625, 642 (Fla. Dist. Ct. App. 2009). Eleven years later, most young lawyers can attest they know of older attorneys who are still not entirely proficient in their use of Westlaw or Lexis.

## A Duty to Our Clients

Malpractice liability aside, to represent clients competently, lawyers have a duty to learn and use new and available technology properly. The Northern District of Illinois, for example, denied a plaintiff's motion for extension of time to file a notice of appeal, despite plaintiff's counsel's position that he was computer-illiterate and thus incapable of learning how to e-file. *Arrington v. La Rabida Children's Hosp.*, No. 06 C 5129, 2009 WL 928922, at \*3 (N.D. Ill. Apr. 3, 2009). The court held it would not exempt plaintiff's counsel from the e-filing requirement because it expects that all counsel appearing before the court “will either learn to e-file or arrange for someone to do so for them.” *Id.* at \*4. Thus, not utilizing the newest forms of technology can cause counsel to miss filing deadlines, which could end up costing them the case.

Further, the Model Rules impose on lawyers the duty to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or access to, attorney-client privileged information. See MRPC 1.6(c). Comment 19 to this Rule states that when transmitting a communication that includes information relating to the representation of a client, lawyers must take “reasonable precautions” to prevent the information from coming into the hands of unintended recipients. The Model Rules' non-exhaustive

list factors used in determining “reasonableness” include: the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients. While technology may change over time, we must always keep in mind our oath to the honest and ethical practice of law.

### A Duty to Third Parties

Finally, lawyers also owe their duty of technological competence to third parties. MRPC 4.4(b) states that a lawyer who receives a document or ESI (including metadata) and knows it was inadvertently sent shall promptly notify the sender. This duty is often overlooked because while it may be easier to simply delete the email, we must also remember our duty to notify the sender of our receipt.

### So... What Can We Do About It?

Due to the ever-changing nature of technology, it is critical that all attorneys stay as current as possible. Failure to do

so could be detrimental to both an attorney’s ability to practice law, as well as her reputation. While not necessarily imposed on us by law or by our state bar, young lawyers should take on the additional responsibility of promoting technological advancements with others. Specifically, we need to share our advanced knowledge of technology with senior attorneys at our firms. What does this mean? Don’t be shy to correct a senior partner’s use of email. Suggest your firm host a CLE presentation led by younger attorneys on the new technology available for trial software apps. Forward emails to your colleagues from local bar associations that are hosting events regarding the use of technology in the law. We may have a few more years of retrieving PDFs for senior partners ahead of us, but if you stay on top of your knowledge of legal technology and do your best to share it with others, everyone will benefit.

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*Nicole E. O’Toole is an associate attorney at Swanson Martin & Bell LLP in Chicago. She practices in general civil litigation with a focus on commercial litigation and business disputes, as well as product liability and entertainment law. Nicole can be reached at [notoole@smbtrials.com](mailto:notoole@smbtrials.com).*

### Leadership Note

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## The Chair’s Corner

# What Is Teamwork, Really?

By Catherine Ava Kopiec



We’ve all been part of a team at some point in life. Whether it was little league, cheerleading squad, Girl/Boy Scouts, or debate team, we all got a taste of what it means to be on a team pretty young. All throughout college and law school, you were also on teams such as Greek organizations, intramural/collegiate sport teams, mock trial, and law reviews.

Now, you’re probably on a team at work—your department and your firm/company are both teams that you work *on*, and work *with* toward a common goal. Your family unit (in my case, my fiancé and dog) is also a team, working to achieve life goals and handle tasks. You may also be part of a team that serves your community, such as a rotary club, a

community board, or philanthropic organization. I’m a part of the Junior League of Columbia, for example. My league is a team of a few thousand, and is part of an even bigger team that is made up of all the Junior Leagues in America.

I was at a presentation recently put on by my league, and the topic was (you guessed it) what it means to be on a team. We have been part of many teams during our young lives, but have we really been a part of all of them in the truest sense of what a “team” is? It was an eye-opening presentation, and I’d like to share some of what I learned.

For example, people on a team focus on their own goals. A quarterback on a football team might work toward breaking a pass completion record. Whether you’re an associate or partner, you also have things you want to



accomplish. These can be hitting a certain number of billables, meeting a business development goal by bringing a certain number of new clients to your firm, or gaining experience in a specific area of law. Your own goals are important. However, being part of a *real* team also means focusing on team goals first. All of the things you want to do personally are a benefit to your team. When you bring in a new client and exceed your billables, your department and your firm thrive.

Your team goals should complement and fit in with your personal goals. One should not be stunted because of the other. The great part about working toward team goals is that by doing so, others on the team are helping you achieve your goals as well. A great example of this element of a real team is a firm and its experienced attorneys investing in their associates' business development by encouraging involvement in organizations like DRI. The associate gets an opportunity to pursue her personal business development goals, and the firm benefits from that associate building a valuable network and bringing business to the firm.

My firm has been extraordinarily supportive of my involvement in DRI, and the scenario above actually played out for me a few months ago. I received a referral from a DRI colleague within Young Lawyers. However, the referral was not for a matter that falls within any of my practice areas. I contacted another associate at my firm who practices in that area, and he was eager to assist. My DRI colleague looked great to his partner when he was able to secure local counsel quickly and efficiently through his network, and my firm got the benefit of a new case and the start of a good relationship with the referring firm and client. Even though the referral did not ultimately go to me, my team benefitted, as did my colleague's team.

Second, individuals who are on a team commit to improving themselves and their skills. If you're on a *real* team, you also keep in mind that you're committed to improving each other and the team as a whole. This brings to mind another team—you and your clients. You are teamed up with your client for a common goal—resolving a matter with the best possible outcome for that client. Sure, you want to look good, win all your motions, hopefully get the case dismissed or win on summary judgment and get more practice honing your deposition skills. But it is important to keep in mind that you have a commitment to your teammate (the client). Working as a team toward that common goal makes for a more genuine relationship, and showing your client that you view them as a teammate and not just a source of business goes a long way toward

building trust and respect. Listen to what the client wants and make sure you are both on the same page by involving them in your game plan and letting them know their goals are your goals as well.

People who are part of a team often think about how the team can serve their needs, wants, and desires. But the more important question is how can you serve your team? A *real* team consists of individuals who are “servant leaders”—they want to lead but for their own agenda, but to move the team forward to a goal. We all want recognition for a job well done, but a team won't work if its members are in it for the glory. Everyone wants to be rewarded for hard work, whether it is with an award, a promotion, or a leadership position. But keeping your eyes on the prize should mean doing what is best for the success of the team and not just your own.

Finally, let's not forget that you are part of a team of many thousands right now—DRI. DRI is your team, as well as the many smaller teams within DRI: the Young Lawyers Committee (YLC), your subcommittees within YLC, and any Substantive Law Committees where you might have involvement. We all have individual goals within DRI. We want to develop relationships, build business, make connections, and take on leadership roles. We also should strive to keep in mind how these goals also benefit our teams within DRI.

The new year is when people often set goals for themselves. This year, I would encourage you to think not only about your personal goals, but goals for your teams. Try adopting a “real team” mindset. Whether that's work, your family, or any other organization where you are a member, shape your goals while remembering that when the team thrives, everyone benefits.

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*Catherine Ava Kopiec is an attorney with Rogers, Townsend & Thomas, LLC in its Columbia, SC office. She practices primarily in the areas of products liability, construction defect litigation, and insurance defense. Catherine also serves as the Second Vice-Chair of Young Lawyers, the Young Lawyers Marketing Liaison for the Products Liability Committee, and the State Membership Chair for South Carolina. Catherine can be reached at [Catherine.kopiec@rogerstownsend.com](mailto:Catherine.kopiec@rogerstownsend.com)*

## DRI Young Lawyers Member Profile

## Brandon Reedy

**How and why did you first get involved with DRI?**

I first got involved in DRI based on the recommendations of several attorneys at my firm who are also involved in DRI and our state level defense organization. My continued involvement in DRI is driven by the wealth of resources offered and networking opportunities.

**What DRI committees (other than Young Lawyers) are you most interested in, and why?**

The Insurance Law Committee because that is the focus of my practice. I am also interested in the Appellate Advocacy Committee given my experience as a law clerk for an appellate court judge, and my desire to expand my appellate practice.

**What is your favorite part about being a lawyer?**

Problem solving.

**When you are not practicing law, what do you enjoy doing?**

I enjoy spending time with my wife and two children. I also enjoy anything outside, am an avid hockey fan, and enjoy coaching a local high school hockey team. I am also learning to play the banjo.

**What has been your biggest success in your legal career thus far?**

There are a handful of judgments or verdicts that I can think of, but the most memorable is a defense verdict I received in my first jury trial just three months after I started practicing law.

**What is the most important piece of advice you have been given related to practicing law?**

The most important advice I've been given was a take on the famous John Wooden quote: "Be more concerned with your character than your reputation, because your character is what you really are, while your reputation is merely what others think you are."

**What is the greatest sporting event you've ever been to?**

The AFC Wild Card playoff game between the Tennessee Titans and the Buffalo Bills on January 8, 2000, when the Titans pulled off what is now known as the "Music City Miracle," returning a kickoff 75 yards to score the winning touchdown as time expired.

**What was your very first job?**

My first job was at Finish Line in a local mall where I sold shoes and later became the stock room manager.

**If someone is visiting your city, where is it essential that they go to eat?**

ComeUnity Cafe

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*Brandon Reedy is an Associate with Rainey, Kizer, Reviere & Bell, PLC, and joined the Firm in 2013 after serving for two years as a law clerk to Judge David R. Farmer of the Tennessee Court of Appeals, Western Section. Brandon practices in the area of general litigation, focusing primarily on tort and insurance defense, and employment law. He is a member of the Firm's Tort and Insurance Practice Group and Employment Law Group. Brandon can be reached at [breedy@raineykizer.com](mailto:breedy@raineykizer.com).*

## Membership Minute

# DRI Love Is in the Air

By Wendy M. Merritt



Happy Valentine's Day! As we all feel the love from the special people in our lives and enjoy all the chocolate, consider dropping a note to your DRI friends! Keeping in regular contact with all of the fabulous connections you make at DRI conferences is one of the best ways to stay engaged in the community and get the most out of your membership. Make plans to meet for coffee or cocktails at the next conference, and brainstorm more ways to get involved and recruit new members. Maybe they have the answer to a burning question you have and maybe you know how they can help another DRI friend!

This is also a great time to reconnect with law school classmates and attorneys from your state and local defense organizations. Send a note sharing your love for DRI and all of the friendships it has fostered. You + new members = more DRI friends! Take a moment to think of three people you would like to reconnect with who would enjoy and benefit from joining DRI. Picture the amazing time you will have with them laughing and learning at the next conference. Then, picture what you will buy with the extra \$100 you saved with your new member recruitment CLE credit! Just remember to tell your new members to designate you, on behalf of the Young Lawyers Committee, on their application to get your CLE credit, or better yet, make it easy by sending an application form pre-populated with your name and our committee.

If you have any questions about other ways to connect and get plugged into the community, feel free to reach out to your friendly Young Lawyers Membership subcommittee! We are always happy to answer questions and make suggestions, or to meet for the above-mentioned coffee or cocktails. Also, be sure to get social with us on Facebook, Instagram, LinkedIn, and Twitter, and follow #driylbenefits to join the conversation on how to share the DRI love. Connecting with your DRI friends on social media is also a great way to stay in touch between conferences and get up-to-the minute information on upcoming events.

Have fun making those connections, and we hope to connect with all of you soon!

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*Wendy M. Merritt is an attorney at Larson • King, LLP in Saint Paul, Minnesota. Wendy devotes her practice to commercial litigation, primarily in the areas of medical liability, insurance and reinsurance disputes, and employment law. Wendy holds leadership roles in the Minnesota Defense Lawyers Association on the New Lawyers Committee and Women in the Law Committee. A Twin Cities native, Wendy earned her J.D. from William Mitchell College of Law and her B.S. in Genetics from the University of Minnesota. Her favorite candy heart saying is "TEXT ME." Wendy can be reached at [wmerritt@larsonking.com](mailto:wmerritt@larsonking.com).*

## Timeout for Wellness

# Maintaining Your Health and Sanity Throughout Your Practice in the New Year

By Amber Eklof



With the start of each New Year, work inevitably picks up as people start to filter back into the office from holiday vacations and staycations. As others start to scroll through emails and check items off their to-do lists, yours may get bigger and bigger. For the same reasons some of us try

to make New Year's resolutions or goals, *i.e.*, starting off the year on a positive note, it is important to make sure we continue through the holidays and tackle the New Year with a positive approach to our mental health.

I recently attended a “Competence” MCLE that focused exclusively on mental health in the legal profession, and was shocked by prevalence of mental health and substance abuse issues attorneys had self-reported. A major source for the presentation was a recent study published in 2016, which was the first *national* study on attorney substance use and mental health concerns. The study, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, (the “Krill Study”) by Patrick R. Krill, JD, LL.M., Ryan Johnson, MA, and Linda Albert, MSSW, reviewed self-reported results from nearly 13,000 licensed attorneys and judges, and found that 23 percent of participants reported problematic use of alcohol at some point in their lives, 63 percent reported anxiety and 46 percent reported depression. Notably for young lawyers, the study found that for participants reporting problems with alcohol 44 percent started within the first 15 years of law school.

Walking back into an increasingly more stressful environment with a seemingly never-ending to-do list can be daunting, but there are steps we can take to combat anxiety, depression, and other problems at the outset to keep the year moving in a positive direction. Here are a few:

## 1. Self Help

While it can be easy to get caught up in the chaos of the New Year, make sure to take time to focus on yourself so that you can be present, prepared, and productive in your work. Be cognizant of what you are eating and how it affects your mood. Move your body and exercise, whether walking, running, strength training or simply stretching. Meditate—force yourself to be still, quiet and take a moment to breathe. (“Headpace,” “Calm,” “Aura” and “Stop, Breath & Think” are all meditation apps offered on Android and IOS.) Be sure to keep or calendar social events outside of work so “the law” is not your only life activity.

## 2. Start Building a Supportive Environment at Work

The American Bar Association launched an initiative to raise awareness, improve well-being, and reduce substance abuse and mental health distress for lawyers. If your firm does not already have a program in place, talk to HR about setting up a framework to assist its lawyers by making a pledge to protect their health. See American Bar Association, “ABA launches pledge campaign to improve mental health and well-being of lawyers, American Bar Association (Sept. 10, 2018), available at <https://www.americanbar.org/news/abanews/aba-news-archives/2018/09/aba-launches-pledge-campaign-to-improve-mental-health-and-well-b/>.

## 3. Talk to Others

Find your local lawyer assistance hotline, program, or center and reach out whenever you need. For example, the California Legislature created a Lawyer Assistance Program ([www.calbar.ca.gov/LAP](http://www.calbar.ca.gov/LAP)) to help attorneys identify and address substance and mental health disorders affecting competency, with confidentiality protected by statute. Cal. Bus. & Prof. Code §6234.

Lawyers serve in a unique role that often requires long hours, high pressure responsibilities, and potentially compromising dilemmas and conflict, all in a naturally competitive work environment. Recognizing this, don’t forget to take steps to make your mental, physical, and emotional health a priority.

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*Amber Eklof is senior counsel in the San Francisco office of Gordon & Rees and is a member of the Employment Practice Group. Ms. Eklof’s practice includes defending employers in all phases of employment litigation including discrimination, harassment, wrongful termination, retaliation and whistleblower claims, and alleged wage and hour violations. She handles matters in state and federal courts, as well claims before administrative agencies such as the Equal Employment Opportunity Commission, Department of Fair Employment and Housing, and the Department of Labor Standards Enforcement.*



## Seminar Spotlight

## The DRI Insurance Coverage and Practice Symposium 2019

By Ashlyn M. Capote



A better subtitle for this article would probably be “An Early Holiday in New York City” because that is always one of the benefits of attending this annual conference hosted by the Insurance Law Committee. Attending the conference is a great mix of substantive insurance law updates and networking opportunities and a chance to explore New York City in wintertime. A major benefit of the conference is its great location in the heart of Times Square, and many attendees spend the weekend in the City after the conference wraps up on Friday.

This year, I hosted the Young Lawyer dinner on the Wednesday evening of the conference, which was at Fogo de Chao, and it was an amazing dinner experience. It was also nice to spend some time with other Young Lawyers who attended the conference and network with peers from across the country. The conference itself had various CLEs that provided a lot of useful information for my day-to-day insurance coverage practice, and I attended the various cocktail hours at the conference, where I was able to catch up with DRI members I have met at past conferences and also many I was meeting for the first time.

Undoubtedly, the location of the conference is amazing. The weather is not a respite for me as a Michigan-native and now-Buffalonian, but many conference attendees commented that they felt it was a nice change of pace

weather-wise. A couple days of winter weather can add to one’s feeling of holiday spirit. If Home Alone holds a special place in your heart as it does mine, then the giant Christmas tree in Rockefeller Center must be checked out at least once. The tree is also near the wintertime ice skating rink, and all of this is within walking distance of the hotel where the conference is located. Of course, Times Square is also nearby. One of my favorite holiday-time destinations has come to be Bryant Park. I always manage to pick up a couple unique gifts at the Holiday Market, and you can grab lunch while watching the ice skaters.

The conference was a great opportunity, and I look forward to attending in 2020—hope to see you there!

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*Ashlyn M. Capote is an attorney at Goldberg Segalla in Buffalo, New York and a member of the firm’s Global Insurance Services Group. She handles insurance coverage litigation throughout New York State and advises insurers on complex coverage matters nationwide, including the specific priority of coverage issues discussed in this article. She is active in DRI’s Insurance Law Committee and the Young Lawyers Committee.*

## News &amp; Announcements

## Have Good News to Share?

Have you or one of your fellow young lawyers recently received an honor, a promotion, or a defense win? Do you have any announcements for DRI Young Lawyers? Please contact the Editors, **Darin M. Williams** ([dwilliams@lanermuchin.com](mailto:dwilliams@lanermuchin.com)), **Natalie Baker** ([nbaker@mrchouston.com](mailto:nbaker@mrchouston.com)), **Ashlyn Capote** ([acapote@goldbergsegalla.com](mailto:acapote@goldbergsegalla.com)), **Carmen Weite** ([cweite@friedman-lawyers.com](mailto:cweite@friedman-lawyers.com))!