

**Fireside Chat: Professional Responsibility & the Delaware Way**

United States Bankruptcy Court for the District of Delaware  
December 9, 2025

<b>Panel Discussion</b>	<b>5:00 pm – 6:30 pm</b>
<b>Reception</b>	<b>6:30 pm – 8:00 pm</b>

**Panel Discussion Outline**

- **Introduction** (George Williams)
  - Introduce Panelists
    - Hon. Mary F. Walrath
      - is a United States Bankruptcy Judge for the District of Delaware. She was appointed to United States Bankruptcy Court for the District of Delaware in 1998, and served as Chief Bankruptcy Judge from 2003 to 2008. Prior to taking the Bench, Judge Walrath clerked for the Honorable Emil F. Goldhaber, Chief Judge of the U.S. Bankruptcy Court for the E.D.Pa., Thereafter, She spent majority of her seventeen-year legal career as an attorney at the Philadelphia law firm of Clark Ladner Fortenbaugh & Young, concentrating in the areas of debtor/creditor rights and commercial litigation.
      - Judge Walrath is a founding member and co-president of the Delaware Bankruptcy American Inn of Court, a member of the Delaware Chapter of the International Women’s Insolvency and Restructuring Confederation (IWIRC), a member of the American Bankruptcy Institute and a Fellow of the American College of Bankruptcy. And serves as an editor to the Rutter Group Bankruptcy Practice Guide. Judge Walrath is active in the National Conference of Bankruptcy Judges serving in the past on the NCBJ Board of Governors, as Chair of the Education Committee, and as Secretary, President-Elect, and as President and Immediate Past-President.
    - Hon. Kevin Gross (Ret.)
      - Judge Gross began his legal career in 1978 as a clerk for Chancellor William Marvel and Vice Chancellors Grover C. Brown and Maurice A. Hartnett III in the Delaware Court of Chancery. Following his clerkship, Judge Gross joined the Delaware firm Morris & Rosenthal (later Rosenthal, Monhait, Gross & Goddess), with an “interesting practice” consisting of

about half general practice work (e.g., real estate, business incorporation, personal injury) and half securities and corporate litigation, then later bankruptcy. Judge Gross was invested on March 13, 2006. During his tenure he presided over the cross-border chapter 11 case of international telecommunications giant Nortel Networks Inc., as well as the complex, often contentious bankruptcy cases of the Los Angeles Dodgers; Boscovs, Trump Entertainment, Sharper Image.

- Judge Gross served as ombudsman for the U.S. District Court from 1977-2006 and was a member of the Board of Professional Responsibility of the Delaware Supreme Court from 2005-06. He was also the chair of the Advisory Committee for the U.S. District Court of Delaware from 1995-2005.
- **Judge Gross retiring in 2020, after 14 years of service. Subsequently joining Richards, Layton & Finger, where he now practices.**

Did I miss anything?

#### Discussion Topics

- Tonight’s Topic is on the current state of Civility in the Delaware Courts. I’d like to begin by discussing the Delaware Way. For those unfamiliar with the term:
- **The Delaware Way:** This amorphous phrase is often used to describe the tradition of civility, mutual respect, and collegiality among Delaware lawyers. It often represents the microcosm of being the 2<sup>nd</sup> smallest State. In the legal community, the Delaware Way holds attorneys to higher standards of professional courtesy and civility even in the heat of verbal and written battle.

The Delaware State Bar Association and Supreme Court jointly adopted Principles of Professionalism in 2003 to “promote and foster the ideals of professional courtesy, conduct and cooperation,” recognizing these principles as “fundamental to the functioning of our system of justice and public confidence in that system.”<sup>1</sup> Adhering to the Delaware Way is often considered part of ethical professional responsibility, not merely polite behavior.

- What does the Delaware way mean to you?
  - Can you provide any insight into the origins of the Delaware Way—how has it evolved over your career?
  - Why is the Delaware Way still relevant and important in 2025? Is it a mere formality or does it have a real impact on bankruptcy cases and outcomes? What is its purpose?
- **From the Bench**

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<sup>1</sup> [https://courts.delaware.gov/superior/pdf/principles\\_of%20professionalism\\_for\\_lawyers.pdf](https://courts.delaware.gov/superior/pdf/principles_of%20professionalism_for_lawyers.pdf)

- How do you see the Delaware Way manifesting in your courtroom or in bankruptcy proceedings?
- Can you share an example of attorney conduct that exemplified those values – or an example that fell short?
- **Local Counsel vs. Delaware Counsel** In Delaware, we make a point of calling ourselves “Delaware Counsel” when working with co-counsel instead of “local counsel.”
  - What is the distinction?
  - What does the court expect from Delaware counsel?
- **Civility vs. Zealous Advocacy**
  - Do you see civility and strong advocacy as being at odds with each other?
  - How do you balance these goals, particularly in the face of pressure from clients or co-counsel to take an aggressive stance?
  - Is it ever appropriate to be uncivil?
- **Honesty and Respect:** In Delaware, our ethics rules require truthfulness and respect for the rights of others.
  - How should lawyers approach honesty and truthfulness in their dealings with other lawyers? With the court?
  - What should junior practitioners do to avoid violating these ethical rules?
- **Notable Trends:** Vice Chancellor Zurn recently expressed concern about a breakdown of mutual respect in Delaware litigation.
  - Have you observed any similar trends in bankruptcy cases?
  - What common incivility issues (if any) have you seen and how have you addressed them?
- **Judicial Pet Peeves**
  - What types of attorney conduct do you find most disruptive or unprofessional (e.g. personal attacks in briefs, failure to confer on scheduling, etc.)?
  - Conversely, what behaviors by counsel help proceedings run smoother from the court’s perspective?
- **Handling Incivility:**

- When counsel in a case are not getting along or one side is acting with hostility, how should lawyers handle the situation? At what point should issues be raised to the court?
- **Hypotheticals**
  - Hypo 1 – “Take No Prisoners” Negotiator: Leader counsel for the debtor instructs Delaware counsel to ignore an email from a creditors’ committee attorney requesting a routine extension on a filing deadline, saying “We don’t grant extensions – make them sweat.” The committee’s lawyer is a respected member of the Delaware bar who has granted the Delaware attorney extensions before.
    - Do hardball tactics violate the Delaware Way?
    - How might you view this circumstance if the dispute were brought before the court?
    - How should Delaware attorneys advise co-counsel regarding Delaware civility customs while still advocating for clients?
  - Hypo 2 – Inflammatory Brief: Counsel files a motion filled with personal attacks on the debtor’s former CEO and refers to opposing counsel’s legal arguments as “ridiculous” and “disingenuous” in court filings. The CEO is furious and urges Delaware counsel to “hit back just as hard.”
    - How should counsel for the CEO handle this situation in the reply brief and in court?
    - How does the court view aggressive language in court filings? Is this ever an effective strategy?
  - Hypo 3 – Discovery Issues: Opposing counsel is angry that settlement negotiations have stalled and refuses to meet and confer regarding trial exhibits in advance of a contested evidentiary hearing but indicates that they will likely object to the admission of numerous proposed exhibits. Lead counsel suggests waiting until the hearing to raise these issues with the court, commenting that this is opposing counsel’s problem and “we should let them look bad in front of the judge.”
    - How should Delaware counsel advise co-counsel regarding this issue?
    - When and how should this issue be raised with the court?
- **What’s the Future Look Like?**
  - Looking out to the future, what are the biggest challenges for the Delaware bar in the coming years or decades? Do you have any fears or hopes?

- **Advice to New Attorneys:** Many young attorneys or those new to Delaware are in the audience.
  - What advice would you give young attorneys about practicing in Delaware bankruptcy court, especially regarding ethics and professionalism?
  - Any words of wisdom on adopting the Delaware Way?
  - Is there anything you wish you had known as a young attorney?

**Questions from the Audience**