



THE NEWSLETTER OF THE
WESTMORELAND BAR ASSOCIATION
VOLUME XV, NUMBER 6
NOVEMBER–DECEMBER 2003

*In keeping
with the
spirit of
the season ...*



**BEST FRONT PAGE
DECEMBER 2000**



**SPECIAL
HOLIDAY ISSUE—
THE BEST OF
THE SIDEBAR**



*... the
WBA
wishes you
and yours
the very best.*



**IN
THIS
ISSUE**

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Prestigious
Award*

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President's Message

Your President for Life

by Gary A. Falatovich, Esq.

The Best of the Best

To celebrate *the sidebar's* 15th anniversary, this issue brings together “the best of the best”—as chosen by the Editorial Staff. We recognize this as an opportunity to let you enjoy again your favorites from past issues while at the same time relieving us of the bother of having to do yet another damn issue from scratch.

We hope you enjoy our lack of effort, and if you don't, well, it still saved us a ton of work, so we don't really care.

This issue begins with what is without a doubt the most popular cover we have ever run—ever—ever! Bob Johnston will be remembered for this photo long after his legal career is forgotten.

We extend our best wishes to all of you for the holidays, and our sincerest hope that in the coming year your journeys will be peaceful, wondrous and fulfilling.

The reason this President's Message is so good is that Gary didn't write it. It was the President's Message we put in the April Fool's issue of 1998. It was entirely fictitious, although reports got back to us that Gary actually thought it was a good idea. —Ed.

As my term of office winds down, I have had some difficult decisions to make, not the least of which regards my desire to continue in office. I have enjoyed being your President and I find it hard to give it up. Before I assumed the office, I had no idea what it was like to be treated with respect. Now, after serving in this position for the last year, I have come to realize that I like it.

Since there is no way I can go back to being just another “schlub,”

I have decided to remain in office indefinitely. Now I know that some of you will regard this decision with some disdain, but I ask that you take just a moment and seriously consider the arguments in favor of it.

Number one, since my private practice has never been that good anyway, I won't have much in the way of other professional obligations to distract me from serving you.

Number two, I make you this campaign promise—as your president “ad perpetuosity,” I will arrange for every one of you who sign up for one hour a year of Ethics CLE to get credit without actually attending



**BEST PRESIDENT'S MESSAGE
APRIL 1998**

the course. Here's my plan—I will go in your stead. I have the time and I am willing to serve you, the members, in this way.

Third, who else looks better in a three-piece suit than I do, huh?

Oh, I know this is supposed to be a one-year term and that there are some constitutional infirmities to my plan, but to paraphrase from one of my all-time favorite movies, “Constitution? I don't need no stinkin' constitution.”

On a more humorous note, I need to report that all of you who thought you had medical insurance through our bar should think again. The problem came to light when old Bill Shaw, one of our members, suffered a massive coronary and was life-flighted to Pittsburgh for emergency treatment. The hospital

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Reg Belden Receives First WBA Professionalism Award

The creation and first presentation of the WBA Professionalism Award was a singular event in the history of our bar, and its recipient a singular lawyer. —Ed.

by Rebecca K. Fenoglietto, Esq.

It came as no surprise to anyone except Reg Belden that he was honored with the WBA's first President's Award for Professionalism.

"I didn't have a clue that this was going to happen," he admits.

Reg received the award at the annual WBA meeting this past April. Criteria examined were: ethics and integrity; competence and dedication to the practice of law; civility; service to the Bar and its members; and dedication to the improvement of the practice of law.

Because it was the first such award, there was no nominating committee. But, says WBA President Dan Joseph, the Board of Directors was unanimous in its decision to present the award to Reg.

"There could be no other person," he says. "It was so obvious, no one could think of anyone more deserving."

Dan explains that the impetus for the new award was the American Bar Association's increased emphasis on professionalism within the practice. National and state-wide surveys revealed an erosion of civility between attorneys and an increase in adversarial stance, and the ABA has been addressing this disappointing



**MOST PRESTIGIOUS AWARD
JUNE 1998**



▲ *Reg Belden (far right) accepts the first President's Award for Professionalism at the 1998 WBA Annual Meeting. Also shown are (from left to right) Richard Flickinger, Gary Falatovich, Dan Joseph, Tim Geary and Milt Munk.*

trend in a number of ways. Locally, enhancing professionalism among attorneys always has been a priority.

"We've always focused on professionalism through many programs at the WBA," Dan says.

He includes the Inns of Court and WBA programs like ethics speakers and the judges' lunch-and-learn programs.

"We wanted to follow up on what the ABA is emphasizing and what we've been

doing all along. Part of that follow-up is the Professionalism Award. This award lets people know we just don't talk about professionalism. We recognize it, too." Reg agrees that professionalism should be emphasized among attorneys.

"We have an obligation to present ourselves properly to the court, to opposing counsel and parties, as well as to our own clients," he says. "Professionalism means acting in a manner one would expect lawyers to act in respect to other lawyers and the court. If we don't behave in a professional way, we do a disservice to our clients, and to the administration of justice."

In recognizing Reg, Dan notes that Reg has faithfully served the Bar—locally, state-wide and nationally. In addition, "Reg is always there for any young lawyer who needs help; to anyone who needs to talk about a problem. He's always willing to chair a committee. You name it, he's there."

"Plus, there's his bow tie."

My Anecdote

Let the Punishment Fit the Crime

by H. Reginald Belden, Sr., Esq.

When Reg Belden, Sr. died, he left behind a wonderful collection of anecdotes that he had written down about his career. This was the first one we published. —Ed.



H. Reginald Belden, Sr.

especially when he was campaigning for re-election. He drank only at

When I was admitted to practice, our President Judge was a huge man—about six feet two, weighing about two hundred sixty pounds. It was well-known by the members of the Bar that he was a very heavy drinker,

night, however, and did not let it interfere with his performance in Court. He would drink with his constituents until the early hours of the morning when he was campaigning, but would appear on the Bench at 9:00 o'clock the next morning, looking chipper and wearing a rose in his lapel. I cannot vouch for the veracity of this story which was told about him, but the lawyer who told it to me said it was true.

At breakfast one morning, after the Judge had campaigned into the wee small hours the night before, his wife told him that she had seen what looked like dried vomit on the sleeve of the suit he had worn. He told her

that in Court the previous day a defendant, charged with drunk and disorderly conduct, came into Court intoxicated, and while he was on the witness stand, he threw up, and some of it got on the Judge's sleeve. "But," said the Judge, "I'm going to take care of him this morning; he's coming up for sentencing, and I'm going to give him six months in jail." His wife was satisfied with this explanation, and the Judge left for Court.

After he had been on the Bench for a short time, his tipstaff came to the Bench and said, "Judge, your wife wants you on the phone." The Judge left the bench and went to his Chambers. This conversation ensued:

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**BEST ANECDOTE
JUNE 1995**

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A View From The Bench

Knowing Your Way Around the Courtroom

When this piece first appeared, it received only a lukewarm reception. It's astonishing to us how popular it has become since its author became president judge. —Ed.

by Judge Daniel J. Ackerman

You have heard it said, and I am sure it's true, clients want an attorney who knows his or her way around the courtroom. This article is directed to the new practitioner whose physical presence in the court still generates a stomach full of butterflies. More seasoned lawyers may wish to stop here and do something more important, like pondering just when, if ever, to answer those interrogatories that were served on them back in June, but they too are welcome to read along and some may even recognize themselves, for better or worse, in the examples that follow.



**BEST ADVICE
OCTOBER 1989**

It is the day of the trial. We can assume that your mind is prepared and that you have looked up whatever law there is to look up. But nobody has told you how to

move about the courtroom with that measured amount of authority and grace that will make you look like you know what you are doing. To paraphrase Ecclesiastes, there is a time to sit and a time to stand, a time to speak and a time to keep silent, a time to approach and a time to retire. In short, what I want to talk about are some very basic questions concerning your movements, your voice, and your presence in the courtroom.

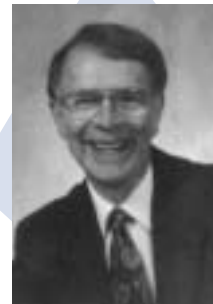
WHERE DO I SIT?

Well you didn't spend all those years in law school just to take one of those cheap seats in the back so you are entitled to a place at counsel table, but where? At least once a year I find lawyers seated in the wrong place (well, to be honest, once every three years, this isn't that hard). Custom has it that if your side has the burden of proof you will occupy the seat closest to the jury box. So if your briefcase seems exceptionally burdensome this morning because you are lugging in, among other things, this burden of proof, grab the seat closest to the jury rail and guard it for all you are worth.

NOW THAT I HAVE A SEAT, WHEN DO I STAND UP?

The answer to that is simple, whenever you can. Lawyers who remain seated throughout a trial look either lazy or as if they are trying to hide. You should stand when you are

addressing the court and when examining a witness unless you anticipate that the witness will go on for hours. When lawyers have something to say, they draw more attention to their statements if they are standing, and in addition, are generally easier to hear, which brings me to my next point. The most commonly voiced complaint among jurors and court reporters is "tell your lawyer to speak up, I can't hear him." If jurors can't hear you, or for that matter your witness, your preparation may be in vain. Keep your voice up and speak with sufficient volume so that the jurors will hear you, and not so fast that the court reporter will have difficulty making a record. If you have a soft spoken witness, feel free to step further back into the courtroom and conduct your questioning from a distance so that the witness will have to raise his voice to answer you. And while I am on the subject, the single most common mistake made in



▲
The Hon. Daniel J. Ackerman

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Knowing Your Way Around the Courtroom

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the courtroom occurs when the lawyer and the witness speak at the same time, an impossible situation for the court reporter and a frustrating one for the judge and the jury. The

witness probably doesn't know any better but you should. There is no rush, let the witness complete his answer

before you ask the next question.

WHEN SHOULD I KEEP QUIET?

Certainly during the administration of the oath; the taking of an oath is a solemn thing and any movement or talking while the oath is being said will likely be regarded as disrespectful.

You should also be quiet during your opponents' arguments to the jury and during the judge's charge, or for

that matter, any time a judge is speaking. A judge's lines are so few that a judge may tend to get upset if you don't give him or her your rapt and undivided attention.

WHAT DO I DO WITH THIS THING THAT I WANT THE JURY TO SEE?

That is what we call an exhibit and if you take the following steps, the jury will get to see it. First, present it to the minute clerk, not the court reporter, who will put a numbered identification sticker on it if you have the burden of proof, or a lettered sticker if you don't. Second, show the exhibit to the opposing counsel. If you omit this second step, you will hear a wail of anguish from opposing counsel followed by a great deal of pouting. When you do give him the exhibit, even though he has seen it a dozen times, he will gaze at it and squint at

it and marvel at it as if he had never seen the likes of it before and then thrust it back at you with a hint of disdain as if it were covered with spiders. You then show the exhibit to the witness and ask him what it is. Once he says what it is you may then move for its admission into evidence and then show it to the jury which, of course, has been looking at nothing else for the past two minutes, so that they can see what they saw is exactly what the witness said it was.

When showing an exhibit to a witness, some lawyers ask permission from the judge to approach the witness stand but that isn't necessary. If you only have one or two exhibits, you may think that it adds a nice touch to say, "May I approach the witness?" and for the judge to say back, "Yes, you may."

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OCTOBER 1989**



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To-Wit: Waiting for Groundhog Day

This is pretty much a true story, and although a painful memory, it remains one of my favorites. —Ed.

by S. Sponte, Esq.

As the end of yet another year speeds itself away from me like a galaxy in flight from the center of the cosmos, my thoughts turn to rodents. Not just any rodent, mind you, but one rodent in particular, and no, this is not another piece designed to get even with some colleague.

I've always been a big movie fan, and today I'm thinking about one of my favorites. It's "Groundhog Day," the movie in which Bill Murray portrays an ego-centric, slovenly, crude weatherman from Pittsburgh

begrudgingly on his way to Punxsutawney for the umpteenth time to pay homage to a groundhog. There he gets trapped in a time warp and is obliged to relive the same day over and over and over until he finally figures out how to treat other people with courtesy and respect.



**BEST SPONTE
FEBRUARY 1998**

While trapped in time, he also learns how to play the piano and administer the Heimlich maneuver, although not simultaneously, he saves a homeless man from freezing to death, and he eventually receives the love of all the townspeople in return for his many acts of kindness. Only then does he get to move on to the next day of his life, taking all of his newly acquired skills with him.



Strangely though, throughout the whole movie, Bill Murray wants nothing more than to get out of his predicament. Oh, those show folk! It never occurs to him that he's been presented with a chance that most people, and me in particular, would kill for—the chance to halt Time's constant dance of subtraction long enough to learn all the tools of the trade. That, to me, is the point of the movie, and for those of us who practice law, it's a pretty poignant one at that.

Just think of it. I mean, how many times in your career have you thought, "Ooooh, can I have a do-over?" With another chance, you might have

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To-Wit: Waiting for Groundhog Day

continued from page 7

remembered the applicable statute of limitations before it expired on you, you might not have snickered out loud when the three-hundred-pound alcoholic client asks you why in the world his wife would leave him.

Well, forget it. There are no do-overs in law. There are only malpractice suits.

Oh, but if we each had our own Groundhog Day, every mistake would carry with it a concomitant opportunity to do it over again until it's done correctly, no harm done, and I bet every one of us has at least one Groundhog Day moment that we'd like another shot at, don't we?

It was maybe in my third year of practice when I got a call from the President Judge. In those days, appointments to juvenile matters were one of the things that the P.J. passed out to the young lawyers to help them pay the rent, and I had exactly the

requisite qualities for such an appointment. I was young and I had rent to pay. I had no experience in juvenile matters, but, hey, these were young kids whose lives were probably already in the toilet. What better learning opportunities for young lawyers, huh?

The kid's name was Dennis. His parents had abandoned him years ago so they could finish puberty unencumbered, and he had been left to the care of his elderly grandmother. She could never figure out why the kid was so angry and she eventually gave up, leaving him to carom from one foster home to another.

By the time I was appointed to represent him, he was about fifteen and had already picked up enough kinetic anger to power up Seattle for a month. It was a difficult case. I had to convince the Judge that a kid who cut his foster mother with a six-inch switchblade was merely deprived, not

delinquent. When the hearing was over, Dennis was declared deprived and thus eligible for continued placement in a foster care facility rather than in juvenile detention. What a wonderful break for the kid, you betcha'. Even the Judge commended me on my effort, and as Dennis was taken away, I handed him my card.

"Call me if you need me," I told him. He stuck the card in his wallet and was gone.

Maybe two years later, I got a call from Juvenile. Dennis had done the knife thing again and he had been taken back into detention. I got the assault charges dropped, but could not avoid the delinquency label. He was sent to a state facility for juvenile offenders, and as he left, I again handed him my card.

"Call me if you need me, Dennis," I told him as he was led away.

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Best Photo Captions

As a lawyer I have always wanted to put words in my colleagues' mouths. Now I can. Here are some of our favorites. —Ed.



BEST PHOTO CAPTIONS



July 1999

▲ *"You're right, I can hear the ocean."*



June 2001

◀ *"Hmmm," said Judge Ober in a moment of studied introspection, "have I swallowed my gum again?"*

▶ *David Millstein reveals why he is generally regarded as the most feared lawyer in the county.*



August 1996

continued on page 10

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Best Photo Captions *continued from page 9*



december 1999

▲
"I hate football, I hate bus rides, I hate lawyers, but it sure beats staying at home."



december 2002

▲
"You know, I used to have throngs."



august 2000

◀ "You know, you don't look so tough without your robes on, pal."



december 2000

▶ "Oh my God, oh my God! The crab puffs look just like Reg!"

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If you look carefully, you will notice that Judge Loughran is looking younger while the portrait is already beginning to age ...



June 2002



BEST PHOTO CAPTIONS

June 2002

▲
"So this is the Courthouse, huh?"



April 2003

▲
"Yes, it is a quarter, and yes, I did take it out of your ear, but now it's mine and I'm keeping it."

▶
"Did I offer an opinion about the law? Ohmigod, I am so sorry."



August 2001

continued on page 12



June 2001

▲
"Holiday Inn, Room 610."



April 2003

▲
"Glad you like them. For Passover, I'm gonna wear matzoh."

Happy Holidays

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Best Photo Captions *continued from page 11*



april 2001

▲
"And so, the burly woodman said, 'Hey, little girl, want to come home with me?'"



august 2001

▲
Maureen always felt more comfortable with someone around to catch spittle.



october 2001

◀ "Hey," said Duke, "get a picture of me and these three bald guys!"



BEST PHOTO CAPTIONS



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And the Winner Is ... Les Mlakar!

This one is just for me. I don't care that a lot of you didn't get it. I don't care if some of you didn't think the thought of winning a cow for a day was funny. I don't care if you didn't see the humor in Les with bovine. I loved it, I thought it was great, and I'm running it again. —Ed.



◀ Les gets to know his cow a little better.

We know that you have been waiting with bated breath to find out if we have a winner in the “Oh, You Beautiful Judge” contest, and who it might be. Well, you can now relax, for indeed we do, and it is none other than Les Mlakar. You know, if you had asked us at the outset



**BEST CONTEST PRIZE
FEBRUARY 2001**

to guess who the winner might be, even before we knew who, if anyone, would enter, we would have said “Les Mlakar.” Why? Because we know him, that’s why.

Out of all the several entrants, Les is the only one to get all the judges correctly matched up with their baby pictures. Oh, there was one entrant

who claimed that they were all babies, every one of them, but we were obliged to exclude the entry from consideration because it wasn’t properly notarized. Otherwise we might have had a tie.

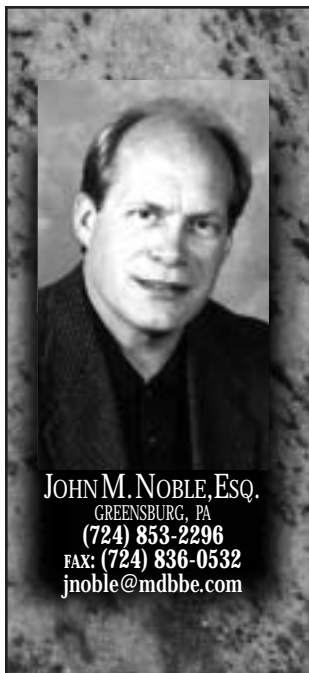
And what has Les won? Well, as we promised, we had some wonderful prizes to award. First, and most exciting, Les wins an all expenses paid “Cow for a Day.” Yes, a cow of his very own for a whole day. Can’t you just hear the gnashing of teeth from those who now wish they had entered the contest?

Second, Les has won a gift certificate from the Court of Common Pleas of Westmoreland County that may be redeemed for one summary judgment on any case of Les’ choosing.*

“I’m just thrilled,” said Les when informed of his winnings. “I cannot tell you how much I have longed for a cow. It’s like a dream come true for me.”

As for the gift certificate, Les was somewhat nonplussed. “Huh,” said Les, “what’s a summary judgment?”

** Excluding any case in which liability is based on a theory of res ipsa loquitor or any case of quo warranto in which the right of any Westmoreland County jurist to hold office is challenged. Not valid outside Westmoreland County.*



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▲ Les receives his gift certificate from the Honorable Gary Caruso.

Knowing Your Way Around the Courtroom *continued from page 6*

You may also ask to approach the bench for a side bar conference, but this is usually overdone. You should ask to approach the bench only when there is a need to discuss something that would prejudice the outcome of the trial if heard by the jury. It seems to me that about half the side bar conferences are unnecessary, they interrupt the flow of the trial, and if repeated often enough give the impression that the lawyer seeking the side bar doesn't know how to try his case.

lawyers feel the need to use notes, which is also fine. If you use notes, don't apologize, everyone will understand that you are simply trying to be conscientious. I suggest that you stand back several feet from the jury rail when addressing a jury. I served on a jury once and was seated in the middle of the front row. Both lawyers gave their closing arguments pressed against the jury rail and I felt that they were too close, and I had

to continually look up at them which, after a while, became rather uncomfortable. Several years back we had a member of the bar who delivered his summation while seated in his chair in front of the jury rail, but that never caught on. However, within limits, you should stand or sit

in the courtroom in any manner or place that makes you feel at ease.

Finally, remember that the jury has twenty-four ears with which to hear you so that it is only necessary for you to say what you have to say once. I have heard many a good twenty-minute closing and thought to myself, "Good, now sit down," only to hear the lawyer recap by going through his points again, for another twenty minutes, so as to ruin what was an otherwise decent argument.

Well, my young friends, I hope that the tone of this article hasn't been too flippant and that I have provided you nonetheless with a thing or two to think about. I am sure that if you take this valuable advice and conscientiously apply it in your next trial that after the verdict is returned, there will only be one thing remaining for you to do. Appeal.



**BEST ADVICE
OCTOBER 1989**

WHAT ABOUT ADDRESSING THE JURY?

Well, here we are back to the burden of proof again. The party with the burden opens first and closes last. In addressing a jury some lawyers do it without notes, which is fine, other



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Your President for Life

continued from page 2

there ran his medical insurance numbers through the computer and found out that his coverage had expired due to nonpayment. Thus, without prompt treatment, so did old Bill.

Seems like one of our secretaries had forgotten to send in the quarterly payment, and our entire group coverage was terminated. That's sure a big oops there, huh? Well, we are really sorry about that, and our condolences too, to old Bill's family. In the meantime, while we try to get replacement coverage, do us all a big fat favor and don't get sick. That goes for your kids, too, ha, ha.

Well, that's it for this month. I'll look forward to being in touch with you next month and for many, many months to come.

Your President for Life,

Gary "Papa Doc" Falatovich

Let the Punishment Fit the Crime

continued from page 4

Judge: "Yes, dear."

Wife: "Charlie, have you sentenced that fellow yet?"

Judge: "No, but his case is coming up shortly."

Wife: "You better give him a year in jail instead of six months."

Judge: "Why?"

Wife: "He shit your pants, too!"

To-Wit: Waiting for Groundhog Day

continued from page 8

Again, about two years later, I got a call. Now an adult, he had moved on to adult crimes, had been arrested, and called me from the jail. I have never done criminal law, so I told him to call the Public Defender and wished him well.

Two days later, a jailer found him hanging from his belt in his cell. He was wearing only blue jeans, and the only thing in the pocket of his blue jeans was my card. He was eighteen. I read about it in the local paper.

That was maybe twenty-five years ago, but I still think about it from time to time. Boy, that's one *diem* I would sure love to *carpe* again, and in Punxsutawney I could. Oh, I know what you're thinking. You're thinking that this kind of happy ending stuff only happens in the movies, and you're probably right. But I'm a sucker for happy endings, however improbable. Otherwise, how the hell could anyone practice law?

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Parting Shots

Well, those are some of the things we've liked best in *the sidebar* over the years. As another year has ended with the staff and management of *the sidebar* miraculously still in place, this might be the perfect opportunity to thank you for reading.

Don't tell anyone, promise, but we (I) would pay for the privilege of doing this publication. I love doing it, and I hope that's reflected in the material and your enjoyment of it. I wish you all the best for a healthy, happy, prosperous New Year.

—DJM



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CALENDAR of Events

JANUARY

- 1 Courthouse closed in observance of New Year's Day
- 5 Bankruptcy, Noon
- 8 Law Library, 3 p.m., *Law Library Meeting Room*
- 14 Membership, Noon
- 19 Courthouse closed in observance of Martin Luther King, Jr., Day
- 20 Family Law, Noon
Board Meeting, 4 p.m.

FEBRUARY

- 11 Membership, Noon
- 16 Courthouse closed in observance of Presidents Day
- 17 Family Law, Noon
Board Meeting, 4 p.m.
- 19 Elder Law and Orphans' Court, Noon

TOP TEN

Top Ten Lawyer Bumper Stickers

1. Why Wait 'Til Death Do You Part?
2. Where There's A Will, There's A Way To Break It.
3. No Pain, No Gain.
4. I Brake For Ambulances.
5. Lawyers Do It In Briefs.
6. Suing Is Fundamental.
7. If You're Close Enough To Read This, That's Good.
8. I Can Non-Suit Your Honor Student's Lawyers.
9. Have A Nice Verdict.
10. Honk If You Love Contingency Fees.



**BEST TOP TEN
JUNE 1998**



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