



# Raising the Bar

The newsletter of the  
Young Lawyers Committee

11/20/2020

Volume 16, Issue 11

## Committee Leadership



**Chair**  
**[Stephanie M. Wurdock](#)**  
Sturgill Turner Barker & Moloney  
Lexington, KY



**First Vice Chair**  
**[Catherine Ava Kopiec](#)**  
Rogers Townsend & Thomas PC  
Columbia, SC



**Second Vice Chair**  
**[Brett A. Tarver](#)**  
Troutman Sanders LLP  
Atlanta, GA



**Raising The Bar – Editor**  
**[Carmen Weite](#)**  
Friedman Dazzio Zulanas & Bowling PC  
Birmingham, AL



**Raising The Bar – Co-Editor**  
**[Ebony S. Morris](#)**  
Garrison Yount Forte & Mulcahy LLC  
New Orleans, LA



**Raising The Bar – Co-Editor**  
**[Evan M. Norris](#)**  
Lewis and Wilkins LLP  
Indianapolis, IN

[Click here to view entire Leadership](#)

## In This Issue

### Feature Article

Important Tips for Protecting Your Clients’  
Interests – Virtually..... 2  
By Brandon M. Pellegrino, Sara C. Schiavone, and  
Taryn W. Harper

### Article of Note

Baseball Arbitration: An Alternative Mechanism to Resolve  
Civil Matters During the COVID-19 Health Crisis..... 4  
By Joseph C. Megariotis

### Leadership Note

The Chair’s Corner..... 5  
By Catherine Ava Kopiec

### DRI Young Lawyers Member Spotlight

Rachel H. Cobble ..... 7

### Membership Minute

Full Steam Ahead to 2021..... 8  
By Thomas H. Wyatt

### News & Announcements

Have Other Good News to Share? ..... 9

**After 50 years,  
can we keep  
our edge?**

**Piece of cake.**

**ANNIVERSARY  
1970 – 2020**

**Know.**

**ENGINEERING, INVESTIGATION  
AND ANALYSIS SINCE 1970.**

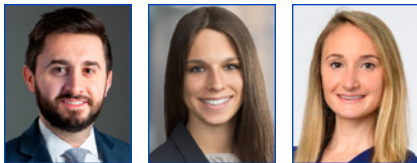
**DRI Members  
recieve a 0.25%  
rate discount**

**laurel road  
student loan**

## Feature Article

# Important Tips for Protecting Your Clients' Interests – Virtually

By Brandon M. Pellegrino, Sara C. Schiavone, and Taryn W. Harper



We can all agree that these are strange and unprecedented times. We are appearing before federal judges

from our home offices and taking depositions in our sweat-pants. No one could have anticipated the challenges the COVID-19 pandemic would impose on the practice of law, but we as lawyers are adapting and learning, and are doing surprising well—though, of course, not without some blunders along the way.

Perhaps the most commonly used litigation tool to be affected by the pandemic – depositions – are now frequently being conducted virtually via Zoom and other platforms. With proper preparation, virtual depositions can be efficient and effective, and their convenience may lead to more widespread use even after the pandemic. Some key considerations for virtual depositions include the following:

- **Platform** (Zoom or other). This is typically selected by the court reporter. Attorneys should request a training and a demo session so they can learn and practice logging in, turning the microphone and camera on or off, marking and using exhibits, and other functionalities.
- **Location**. Your physical location, whether home or in office, and the location of the witness (if it is your client or witness) should be determined in advance. Consider whether there is good WIFI, lighting, any background noise, and the visible background of the selected location.
- **Technology**. Ensure that you have a camera, computer or laptop, and good internet and power connections. You should have a test-run to confirm your technology is working, and that you know how to use it.
- **Exhibits**. Prepare your exhibits in advance of the deposition. Some platforms allow you to upload your electronic exhibits to the platform prior to the deposition, while others require you to upload and mark each exhibit in real time using the chat function. Beyond electronic exhibits, consider whether it would be helpful to send the witness or other counsel hardcopies of the exhibits, perhaps with a note that they are not to be opened until

the time of the deposition and on camera. It is important to discuss this option with your client, as exhibits were not typically provided to the opposition prior to a deposition pre-COVID-19.

As with depositions, hearings have been handled virtually since March 2020. All of the preparation is the same, with an emphasis on professionalism. It is important to conduct yourself as if you were attending the hearing in person—deference to the court and ensuring you present yourself as if you were addressing the court in-person. You do not want to be the attorney who makes headlines for being admonished by a court for appearing at a hearing from your bed or poolside. One unique consideration is whether you think it would be beneficial to send the court any hard copies of PowerPoint presentation slides or other materials prior to the hearing. Of course, it is vital to contact the judge and get approval before any materials are sent to avoid any issues related to ex parte communications.

Mediations have also been conducted virtually, and it is important to ensure there is agreement between the parties and the mediator as to the logistics of the session. Ensure that the mediator is capable of having two separate rooms (and computers), or virtual breakout rooms, to keep the parties from disclosing confidential information and discussions that are intended to remain between you, your client, and the mediator.

Undoubtedly the most difficult piece of litigation to execute virtually are trials. As we all know, trials are hard and stressful enough under normal circumstances, let alone in the middle of a global health pandemic. But, in recent weeks, courts have increasingly realized that the show must go on, and they cannot indefinitely postpone trials. Perhaps the most publicized virtual trial that has taken place this year is the *Ricardo Ocampo et al. v. Honeywell International Inc.*, No. RG19041182 trial in California's Alameda County Superior Court. *Honeywell* was an asbestos case involving defective automotive breaks that resulted in a complete defense verdict. Plaintiff, a janitor at an automobile dealership, claimed that his exposure to asbestos caused his mesothelioma. The trial lasted for a week, and the jury deliberated for two days. From the *Honeywell* trial and the few other virtual trials that have gone forward,

some common themes and issues have emerged that you will want to be aware of and prepared for if you are have a virtual trial coming up.

- **Juror Attentiveness.** It is hard to keep a juror's attention in an in-person trial—and it is even harder to do so virtually. In *Honeywell*, there were reports of jurors doing other work while listening to evidence and walking around at various points. Make sure you are doing everything you can to keep their attention, and make sure that someone from your office is recording any abnormal juror activity in case you ultimately need to move for a mistrial.
- **Technology.** This goes without saying, but make sure you test all of the equipment you will be using at trial before trial begins. Everyone knows that technology fails sometimes, but you want to ensure that there are no issues that occur that are within your control. In addition to keep tracking of juror inattentiveness, you will want to make sure you are recording any technical problems that occur. If the jurors cannot hear testimony clearly, or if there is any significant lag time, these are issues that could affect the integrity of the trial.
- **Deliberations.** It is not a given that if a trial is conducted virtually, that deliberations will be virtual as well. In fact, in *Honeywell*, the presiding Judge wanted the jurors to participate in person, but it turned out that the Court's meeting rooms could not safely accommodate the twelve jurors. Consider whether you want to insist on having deliberations take place in person to avoid any prejudice to your client or if you are comfortable with them proceeding virtually.
- **Informal Communications.** Trial does, of course, feel a little more informal when you are doing it from your home or office. This comfort, however, can lead to conversations that would not typically happen in the

courtroom. Be sure that you are conducting yourself as if you were in-person at trial—do not make inappropriate conversation with jurors, the court, clients, or opposing counsel. If you witness any such inappropriateness from any other participant, be sure to record it.

---

**Brandon M. Pellegrino** is an associate at *Bowman and Brooke LLP's Bloomfield Hills, Michigan office*. Brandon focuses his practice on representing entities in product liability, personal injury, commercial issues, and complex construction litigation. He also focuses his practice on e-discovery issues, including extensive experience with complicated product liability discovery. Brandon is currently the Chair of the DRI Young Lawyers Online Programming subcommittee and will serve as the Chair of the DRI Young Lawyers Online Community subcommittee for 2021. Brandon can be reached at [Brandon.Pellegrino@bowmanandbrooke.com](mailto:Brandon.Pellegrino@bowmanandbrooke.com).

**Sara C. Schiavone** is a litigation associate at *Porter, Wright, Morris & Arthur, LLP* and is based in the Columbus, Ohio office. Her work focuses primarily on tort litigation, with an emphasis on product liability, wrongful death, catastrophic injury cases.. Sara is the Co-Vice Chair of the Young Lawyers Online Education subcommittee and is also the Chair of the Product Liability Online Communities subcommittee. Sara can be reached at [sschiavone@porterwright.com](mailto:sschiavone@porterwright.com).

**Taryn Harper** is an associate in *Greenberg Traurig, LLP's Atlanta office*. Taryn focuses her practice on products liability litigation, with an emphasis on pharmaceutical and medical device litigation. Taryn is a member of the DRI Young Lawyers Steering Committee and is Co-Vice Chair of the Online Education subcommittee. Taryn can be reached at [harpert@gtlaw.com](mailto:harpert@gtlaw.com).

## Article of Note

# Baseball Arbitration: An Alternative Mechanism to Resolve Civil Matters During the COVID-19 Health Crisis

By Joseph C. Megariotis



Since March 2020, the COVID-19 health crisis has caused courts all over the country to adjourn civil trials in order to protect the health and welfare of the public at large, including court personnel, attorneys, and

jurors. As the backlog continues to grow, courts throughout the nation are looking for creative ways to close cases without conducting jury trials. In fact, some courts have asked for parties in civil matters to consent to bench trials, rather than waiting until it is safe to conduct a jury trial. Unfortunately, this has not been a popular option for many litigants.

In September 2020, the Civil Division of the New Jersey Superior Court in Bergen County released a notice to the bar initiating a complimentary dispute resolution technique known as “Baseball Arbitration” in response to litigant’s lack of interest in waiving jury trials and submitting to bench trials. The Court believed that parties may be more comfortable submitting a civil matter to a judge, without a jury, if there were specific parameters in place, rather than a bench trial. The parties would have to consent to Baseball Arbitration and agree that the judge’s decision be binding and not subject to appeal. See Bergen County Bar Association, *NOTICE: “Baseball Arbitration” Technique to Be Introduced*, available at: <https://bergenbar.org/notice-baseball-arbitration-technique-to-be-introduced/> (last accessed Nov. 11, 2020).

## So, What Is Baseball Arbitration?

Baseball Arbitration was developed by Major League Baseball and the Major League Baseball Players Association. There is usually a panel of three arbitrators and their decision, which is final and issued without explanation, is limited to one of two proposals: the one submitted by the player or the one submitted by the team. The panel is not permitted to split the baby or award a salary other than the amount requested by the player or the team. In essence, the arbitrators’ decision is to determine which of the two numbers is more reasonable. It is essentially an all-or-nothing approach that will force both parties to realistically evaluate their positions and present a fair number.

Due to the strict limits imposed on the panel’s ability to select an award, Baseball Arbitration effectively removes posturing because each side knows they need to select a reasonable number – one that they are confident they can prove through evidence. If either side requests a number that is either too high or too low, they run the risk of losing credibility with the arbitrator or judge and being forced to accept the opposing side’s number.

In the current context of personal injury litigation, with trial dates being pushed out for several months and, in some cases, over a year, Baseball Arbitration has the potential to streamline settlement negotiations and force both sides to request a real number that an arbitrator or judge will deem fair, just, and reasonable. After all, that is the end goal, isn’t it? Plaintiffs who attempt to swing for the fences with an aggressively high number run the risk of being seen as unreasonable, and defendants who try to low-ball the amount of alleged damages may lose credibility and compel the arbitrator to pick the plaintiff’s number. It is a chess game that requires careful case evaluation and analysis, but in the end, reasonableness should prevail.

For discussion purposes, say, for example, plaintiff’s initial, inflated demand at the early stages of litigation is \$300,000 in an attempt to posture and pump up the value of the case. In response, defendant makes no offer or, alternatively, conveys a low-ball offer of \$25,000 to anchor plaintiff’s expectations. In reality, plaintiff may be looking to settle in the range of \$100,000-\$150,000, and defendant may wish to settle in the range of \$75,000 to \$125,000. Regardless, neither side will move their respective position if they are not compelled or motivated to settle, and the case will sit on the court’s active docket until a trial date is scheduled. This will undoubtedly increase litigation costs and waste valuable time and resources. If, however, the parties cut to the chase and pursued Baseball Arbitration, then perhaps the plaintiff would be more realistic and request a reasonable number, say \$125,000. Likewise, defendant may be less inclined to undervalue the case out of fear of seeming unreasonable and present a more realistic number in the range of \$100,000. The arbitrator is now



faced with a decision - \$125,000 or \$100,000. In the end, both sides presented a real number to resolve the case.

Baseball Arbitration requires attorneys on both sides to examine their positions with great detail and inform their clients of the importance of putting the right amount forward. It also requires each party to consider their audience – the arbitrator or judge, as well as the opposing party. But, like anything else, Baseball Arbitration is not perfect, and it is certainly a unique approach to dispute resolution. While it may not be effective in every case, Baseball Arbitration affords courts and litigants with another mechanism to

resolve cases and also removes the risk, and delay, of relying on a jury during unprecedented times.

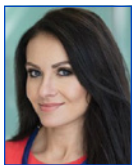
---

**Joseph Megariotis** is an attorney with *Connell Foley LLP* in Newark, New Jersey. He focuses primarily on complex commercial disputes, including franchise and trademark litigation in the retail and hospitality sectors, as well as the defense of large exposure/catastrophic casualty events throughout the country. Joe tailors his litigation approach based on his clients' needs and has experience working with Fortune 500 companies and mom-and-pop businesses. He can be reached at [jmegariotis@connellfoley.com](mailto:jmegariotis@connellfoley.com).

## Leadership Note

# The Chair's Corner

By Catherine Ava Kopiec



Whether you're fresh to the practice and just passed the bar (congrats if you're in that category!), a senior associate, or junior partner, you most certainly have experienced something that you perceive as a failure. Whether it's a judge ruling against you, a partner asking another attorney to second-chair a trial, or not getting the job you hoped for, there are lots of situations in the professional world that may not go our way. It could be something as small as a client pointing out a mistake or piece of information you missed in an email. No one likes to feel as though they have failed in some way. However, the reality is that no one is "failure-proof"—you will receive criticisms throughout your career, every motion probably won't go your way, and sometimes another person may get picked over you. This is probably even more true for us as young lawyers.

While we cannot control the fact that decisions and outcomes will occur that are contrary to what we hope for, we can absolutely control our reactions, and how we treat these perceived setbacks. Law is a tough, demanding career. Even getting to the point of becoming a lawyer is a challenging road itself. It takes a certain degree of resilience to even make it to this stage. I didn't really understand what this word meant until recently. Sure, I know the definition, but to be honest I always associated it with a shampoo commercial I saw once, promising strong and resilient hair. The product was designed to help hair bounce back after being exposed to factors that caused it

to be damaged or weakened. It's honestly not a bad visual for thinking about resilience.

Resilience isn't about being immune to feeling disappointment, or being apathetic. It is about being able to learn from these kinds of events and situations, to bounce back, and to adapt. This year has been particularly challenging for most people in the way of adaptation. We've all been forced to adapt in some way to the circumstances caused by a global pandemic. You'll be happy to hear that this is *not* another COVID article—the point here is to think about skills to build resilience that will help you in your career for many years to come.

Resilience is all about the way you perceive a "failure." I put it in parentheses because the goal is to view it instead as an opportunity to learn and to achieve better results in the future. It can be easy to get bogged down in the negative feelings associated with "failure," and that's usually the first thing that occurs. No one likes experiencing these negative emotions, and it can also lead to self-doubt and fear about future similar actions or events. A simple mind hack is to ask yourself, "What's the worst possible thing that could happen?" If you really take time to think about the possible outcomes, you will usually find that it isn't as catastrophic as your first reaction would lead you to believe. I know this trick has been especially helpful for me.

I once read that resilience (in the mental sense) isn't something that we are born with, but is like a muscle that has to be used in order to grow stronger. Another factor

that can impact resilience is your health. Getting a good quality and quantity of sleep, making time for exercise (or even just movement in the form of walking), and putting good nutrients in your body can all help you be more physically able to handle what's thrown your way.

Another helpful tool to build resilience is being able to acknowledge the good. During an annual review at work, your boss may give you a stellar rating but point out that there were a couple of draft briefs that needed some work. Immediately, you home in on the critique and completely black out all of the great things they said about your billables, the clients you've brought in, and the excellent job you did at trial earlier in the year. It is incredibly easy to focus on the one negative aspect out of an overall great review. Take time to step back and objectively view the whole picture and most times you'll see that your accomplishments are what stand out, not one or two negatives.

In practice, the more experiences you have (positive as well as negative), the more you will learn. The more you learn, the better lawyer you will become. Seems easy, right? The good news is, you're already taking ownership of your development by being a member of DRI, being involved in Young Lawyers, and utilizing resources like this publication to get information and sharpen your skills. Every article read and CLE attended is another item in your toolbox that will prepare you to face challenges and adapt to what comes your way. There are a plethora of resources at your disposal, including a network of young lawyers who are either in your shoes or have recently been there.

Lastly, remember the things that are outside of your control. When it comes to using "failures" as a learning tool, that does not mean that every aspect of an action or event is within your purview. Determine what is up to you and what isn't. In practice, we don't make the facts. Our job is to do the best we can with what we are presented. For me, it was really difficult early on to be sitting at a deposition and have plaintiff's counsel bombard my client with insinuations and questions about why certain things weren't done. I felt like I was a bad lawyer when they made my client out to be a bad guy. The facts of the case were outside my control, but I eventually was able to distinguish that from the things I could control – preparing my client to address hard questions, focusing on causation and damages, and how to tell our side of the story in a compelling way.

Resilience takes practice but being able to adapt to challenges and setbacks while feeling confident in doing so is well worth the effort and will help you get the results you want down the road.

---

**Catherine Ava Kopiec** is an attorney at *Rogers Townsend LLC* in Columbia, South Carolina. She can be reached at [Catherine.Kopiec@rogerstownsend.com](mailto:Catherine.Kopiec@rogerstownsend.com).

## DRI Young Lawyers Member Spotlight

## Rachel H. Cobble

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

I was encouraged by my law firm to become involved with the DRI to take advantage of its great community and resources for defense lawyers.

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

Women in the Law, because I love getting to know and learning from smart women. Litigation Skills, because I am always interested in seeing creative ways other lawyers approach aspects of the litigation process.

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

Every part of life is governed by the law. It gives me such a unique opportunity to learn about different industries and people. I also feel empowered by the knowledge of how to look up and interpret any legal problem a friend or family member may be experiencing.

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

I love pretty much anything related to music or being outside. I play guitar and dabble in songwriting. I also enjoy walking. An ideal Saturday morning for me is a five mile walk with my dog and a friend, probably around the Mountain Brook villages.

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

Trying three cases to defense verdicts and winning various appeals for clients.

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

Making mistakes is the hardest but best part about being a young lawyer. You have so much opportunity to grow and hone your skills if you are willing to constantly humble yourself, admit quickly when you are wrong, and learn from it.

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

Maybe not a crowd pleaser, but I was part of one of the best high school rivalries in the south. No matter how many great SEC games I go to now, I am always still thinking about any McCallie/GPS vs. Baylor athletics in Chattanooga, Tennessee.

**What was your very first job?**

Summer camp counselor. I loved every second.

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

Gian Marcos Wine Bar

---

**Rachel H. Cobble** is an attorney with *Friedman, Dazzio, Zulanis & Bowling, P.C.*, in Birmingham, Alabama. She can be reached at [rcobble@friedman-lawyers.com](mailto:rcobble@friedman-lawyers.com).

## Membership Minute

## Full Steam Ahead to 2021

By Thomas H. Wyatt



It is a new year for DRI! On behalf of the Membership Subcommittee, I am honored to introduce you to your Membership Team this year. Alex Lilly is an Associate at Troutman Pepper in Atlanta, Georgia, and her practice focuses on Business Litigation. Nate Pearlman is an Associate General Counsel in the Litigation Department for Megatel Homes in Dallas, Texas, through its captive counsel, Hesse and Hesse. Keith Stevens is an Associate with Starnes Davis Flore LLP in Birmingham, Alabama, and his practice focuses on labor and employment and medical malpractice. We very much look forward to working with you in 2021, and I, for one, am very excited to have Alex, Nate, and Keith on the team!

As we gear up for a new year of seminars, CLEs, and activities, either virtually, or, hopefully, in person, I wanted to focus on one of the chief reasons that DRI has become my home for professional development – people like you. Many of us joined DRI because we were encouraged to join by a member of our firm, or we saw an advertisement for an upcoming seminar in our practice area, or we knew someone who went to an event and recommended that we go with them next time. Whatever your journey was to get here, however, it is the friendships that we form with one another that keep us coming back.

I had a great time catching up with many of you at the DRI Young Lawyers Mini-Mar and the Virtual Annual Meeting in October, even if it was through my computer screen. What I missed, though, were the personal connections and intentional conversations that I would typically have with the friends that I had made at all the previous events that I have attended. Rest assured, our Committee remains dedicated to providing frequent opportunities to socialize and network as we navigate our way out of 2020. Circle your calendars for June 23-26, 2021, for our Young Lawyers Seminar in Minneapolis. Be on the lookout, too, for the dates of our Annual Meeting in Boston. Annual Meeting is a great way to connect with lawyers and in-house counsel from all over the country that are longtime members of DRI. Our Committee also has some exciting events planned for the time between now and the meetings are on the calendar. If you have not heard from me before, either one of our new Membership Committee members or myself will reach out to get you up to speed.

Despite all the uncertainty that remains in these unsettled times, there are still some great ways to get the most out of your membership. Many of our events this year are being held virtually, which means that they are being offered either for free or at reduced cost. This is a great way to obtain CLE and network with your DRI friends without significant expense. The Young Lawyers Committee is always in need of helping hands, so send me an email or reach out to me by telephone (my contact information is below) if you want to know more ways to get involved. Now is also a great time to reach out and reconnect with some of your DRI contacts that you may not have talked to in a while. I have been lucky to receive holiday presents and greeting cards from some of you already, and it is always a welcome addition to my physical or electronic mailbox. Lastly, consider exploring ways to get involved in DRI beyond Young Lawyers particularly if, like me, you are getting close to the experience level where you will need to transition to other substantive committees in DRI. If you need help getting connected, and especially if you do not know where to begin, drop me a line and I will commit to getting you in touch with the people who can help you.

It stands to be a great year for Young Lawyers in 2021. I look forward to the time when we can all visit in person again.

---

**Thomas H. Wyatt** is a member of *Quattlebaum Grooms & Tull PLLC* in Little Rock, Arkansas. Tom's practice specializes in commercial litigation, property litigation, and products liability. Tom provides a cost-effective, trial-focused approach to cases involving breach of contract, class actions, condemnation, landlord-tenant disputes, and more. Tom has practiced before the United States Court of Appeals for the Eighth Circuit, the United States District Courts for the Eastern and Western Districts of Arkansas, the Arkansas Court of Appeals, and as local counsel on behalf of national companies in numerous circuit courts in the State of Arkansas. Tom can be reached by telephone at (501) 379-1730 or by email at [twyatt@ggtlaw.com](mailto:twyatt@ggtlaw.com).



## News & Announcements

---

### Have Other 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 members of the *Raising the Bar* Subcommittee: **Carmen Weite, Chair** ([cweite@friedman-lawyers.com](mailto:cweite@friedman-lawyers.com)); **Ebony Morris, Vice Chair** ([emorris@garrisonyount.com](mailto:emorris@garrisonyount.com)); **Evan Norris, Vice Chair** ([norris@lewisandwilkins.com](mailto:norris@lewisandwilkins.com)); **Michael Adams, Staff Editor** ([MAdams@hinshawlaw.com](mailto:MAdams@hinshawlaw.com)); **Wheaton Webb, Staff Editor** ([wheaton.webb@troutman.com](mailto:wheaton.webb@troutman.com)).