From Council Chair
Joellen Shortley, Deputy Corporation Counsel, Oakland County

We’ve spent the first part of our fiscal year focusing on our partnerships in the community and with members. Our mission this year is to connect our members with their interests and, provide valuable insight into the area of information technology and updates to current legislative changes. The Information Technology Section sponsored and was represented in the State Bar of Michigan Young Lawyers Section’s 12th Annual Summit (“Summit”) on Sunday, May 17-19, at Motor City Casino and Hotel in Detroit. We are looking forward to offering programs this year that are especially important to our section members and new and young attorneys across the state. We are also reaching out to our former Chairs to share their ideas with us and we are planning a get-together with them in July.

The agenda has been set for our 12th IT Annual Conference and the Section’s Annual Meeting September 12, 2019 in Plymouth, Michigan at the Inn at St. John. We have interesting topics and speakers lined up and we encourage you to let others know about this event. More information about the Conference and a link to registration are on page four of this Newsletter.

Our Privacy Law Committee continues to meet throughout the year under the leadership of the Privacy Associates International, LLC co-chairs Keith Cheresko and Robert L. Rothman. We are grateful to Jaffe Raitt Heuer & Weiss for hosting the meetings and providing food to those attending in person.

Thank you! I look forward to seeing you in September!

Thank you,
Joellen Shortley
2018-19 Council Chair, IT Law Section
248-858-2155 / shortleyj@oakgov.com
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Membership
Annual Dues: $25. Membership benefits include:

- IT Law Newsletter
- Discount to Information Technology Law Annual Conference
- Quarterly Privacy Committee updates by Privacy Associates, Inc.
- Online group discussions on Facebook and LinkedIn
- CLE opportunities and Joint Events with other sections and section members

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About the IT Law Section

Information technology (IT) law is an exciting cross-disciplinary practice area that is growing in importance as electronic communications and interactions continue to become more prevalent in the U.S. and abroad. An IT lawyer is confronted with legal issues from a wide variety of traditional legal practice areas, including but not limited to contracts, intellectual property, torts, employment, first amendment, healthcare, tax, and consumer protection. The application of long-standing as well as new legal principles to the area of information technology makes the practice of IT law both very challenging and very rewarding. The IT Law Section strives to assist its members in staying up to date and informed in a legal environment that is sometimes volatile and always in flux.

UPCOMING: Member Survey!

We will soon be sending to our section members a Survey Monkey questionnaire to gather important information to help the leadership council understand wants and needs of section members. As always, please contact us with ideas on what you would like to see provided to Section members. To access the survey, please visit https://www.surveymonkey.com/r/ITLaw19.

Survey Questions:

1. How long have you been an IT Section member?
2. Have you ever attended the Annual IT Seminar at St. Johns?
3. Do you currently follow our organization on social media? If yes, which platforms?
4. What is the best way to receive news/announcements from the IT Section Members?
5. Are you involved in other Sections? If yes, which ones?
6. What type of events would you like to see the IT Section host?
7. What are you looking to gain from your IT Section Membership?
8. How likely are you to renew your membership next year?
9. Considering your complete experience with our Section and the activities conducted, how likely would you be to recommend us to a friend or a colleague?
ABA Model Rule 1.6(b)(1):

… [a] lawyer shall not knowingly reveal the Confidence or Secret of a Client.”

The January 31, 2019 IT Section Council Meeting & Presentation was held at the Oakland County Board of Commissioners Auditorium, Pontiac, Michigan. Steven D. Balagna, Member of Harmonic Development LLC, reviewed “Reasonable Efforts” to Prevent Inadvertent or Unauthorized Access under ABA Formal Opinion 477R.

Balagna stressed that his presentation was not a substitute for the analysis and judgment that each attorney must undertake in creating your own internal requirements and policies to comply with the law and ethical standards in the area of cyber security.

Balagna reviewed the March 2017 Association of Corporate Counsel publication which discussed “Model Controls” and focused on Model Controls 1-6 and Model Controls 7-13 in his discussion. (Association of Corporate Counsel “Model Information Protection and Security Controls for Outside Counsel Processing Company Confidential Information” March, 2017)

Balagna also encouraged the attendees to join the IT Section and to volunteer their time and energies to promote the IT Section and its goals.

Ethical Obligations:
1) Model Rule 1.6: requires confidentiality.
2) Model Rule 1.15 requires safeguarding documents and property.
3) Model Rules 5.1 & 5.3 require effective measures to ensure conformity to rules of professional conduct through supervision of lawyers and non-lawyers.

Have you:
1) Undertaken Reasonable Efforts”? or,
2) Implemented Necessary “Special Security” Precautions?

Mr. Balagna also reviewed March 2017 Association of Corporate Counsel publication which discussed “Model Controls” and focused on Model Controls 1-6 and Model Controls 7-13 in his discussion. (Association of Corporate Counsel “Model Information Protection and Security Controls for Outside Counsel Processing Company Confidential Information” March, 2017)

Balagna concluded that each attorney has to make sure that he is undertaking reasonable efforts to monitor and manage the technology being used either by using their own basic understanding of applicable technology and the risks of using it or, alternatively, obtaining and utilizing adequate third party technology support.

“Discuss with your clients what electronic security measures might be “reasonable” and, suggests some “special electronic security precautions” that may be necessary for a higher degree of protection.”

Privacy Committee
Keith Cheresko and Bob Rothman (Privacy Associates International LLC principals) co-chair the Privacy Law Committee, which meets quarterly for discussions on hot topics in privacy and data protection. Participation in the Privacy Law Committee is open to Section members without additional charge. It is necessary to request to participate in this group to be added to the invite list. You may sign-up when you join the Section or at any time thereafter as long as remain a section member in good standing. The committee strongly encourages in-person meeting participation; however, on those occasion when you may not be able to attend in person a call-in option may be available upon your prior request during meeting registration. To join, contact Keith at kcheresko@privassoc.com.

Examples of Previous Topics
♦ Discussion of New York’s financial services security regulation—What it means to those subject to New York’s jurisdiction
♦ California Consumer Privacy Protection Act (CCPA) as well as privacy legislation proposals being offered by Intel and others in Washington
♦ Wild, (Whacky?) World of Privacy around the globe—A 90 minute tour addressing the some of the high (low?) points of recently proposed, enacted or effective privacy legislation
♦ Insurance Security and Privacy legislation
♦ EU GDPR
♦ Blockchain—What it is and how it works
Also see the January 2018 IT News for the article on The California Consumer Privacy Act of 2018 (CCPA). The law was passed in June and amended in late September, and more changes are expected before the provisions become operative on July 1, 2020.

NEXT PRIVACY MEETING:
June 2019 — Find us on Facebook for updates!

IT Law Section News • Privacy Committee, Annual Seminar, Member Spotlight

IT Section Annual Seminar & Meeting — Register to attend!
Inn at St. John, Plymouth, Michigan
September 12, 2019

Our Section’s 12th Annual Conference and Annual Section Meeting will be held this year on September 12, 2019 at the Inn at St. John in Plymouth. Every year, the Annual Conference offers timely, useful information, breaks between sessions, and an opportunity to meet with colleagues.

*CLE credits may be available.

Registration opens at 8:30 and the meeting will begin promptly at 9:00 am. The agenda is scheduled to include:
• How to Have a Strong CIO Attorney Relationship
• Liability Limits and Indemnities
• Big Data Analytics
• Negotiating Security Addenda
• Cybersecurity Governance and Best Practices
• You’ve Got Ransomware and Other Cyber Security Nightmares

Sponsored by Dykema and Privacy Associates International LLC.

The Section’s Annual Meeting takes place during the Conference lunch break.

To register, visit https://www.eiseverywhere.com/it091219. Note you may register to attend the Annual Section Meeting without attending the full day Annual Conference.

Member Spotlight:
Christopher Falkowski

Christopher Falkowski’s legal practice focuses primarily on intellectual property (copyrights, trademark, trade secrets and trade dress) as well as information technology law. He works primarily with technology-related startups. Mr. Falkowski was previously Chair of the IT Section in 2008-2009 and, was former editor of the Michigan Computer Lawyer, the official newsletter for the Computer Law Section for the State Bar of Michigan. Mr. Falkowski has developed software applications as a computer programmer for a Fortune 150 technology services company and, provides practical legal advice as an in-house attorney for Fortune 150 technology services companies. With substantial IT transactional experience, including negotiations with IBM, Microsoft, EDS, and Oracle as well as patent prosecution experience, Mr. Falkowski is an author and presenter on many topics related to technology-based legal issues and, provides substantial experience to both licensors and licensees in technology transactions.

Why do you continue with the membership in the IT Section?
The cross-disciplinary aspects of IT law bring an incredible diversity and dynamism to the section and its membership. Developments in information technology law impact the practice of healthcare law, intellectual property, criminal law, First Amendment rights, consumer protection, tax law, tort law, and contract law. Over time, different areas take their turn in becoming highly prominent—never a dull moment.

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