



# ARMAWORKS

[www.armamar.org/gwdc/](http://www.armamar.org/gwdc/)

The Official Newsletter of  
the Greater Washington,  
DC Chapter of ARMA

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## Let's All Make 2010 A Truly Happy New Year

I usually don't make resolutions.

I've always thought that resolutions were for those who wanted to procrastinate. I also thought that resolutions didn't last very long and that those who made them were setting themselves up for failure. I secretly laughed to myself when I saw the crowds in the gym in January because I knew that I wouldn't see them in a month. I also discouraged others from making resolutions because I wanted the best for them and didn't want to see them discouraged. I then took a look at my career in 2009 and realized I needed a change. I did well and made quite a few accomplishments in my organizations. Among other accomplishments, I helped open our own firm wide records warehouse and coordinated a move of well over 100,000 boxes of files. However, I still felt I hit a plateau in my professional development.

I decided to make my first resolution.

I decided that 2010 would be a year that I took my career to the next step. While I made quite a few accomplishments, my education in RIM wasn't as much of a priority as before. With budget and employee cuts, it was easy for me (and probably for some of you) to do my jobs as best I could while putting my professional education on indefinite hold. I realized that doing so would not only stunt my growth, but it would also hinder my organization's education as well.

I encourage all of you to make 2010 a year that you arm yourself with the RIM education you need! We should continually arm ourselves with the latest in technology and information and be ready to be better professionals. GWDC has several programs and seminars that will help arm you with what you need. I encourage you all to make a promise to yourself that you will do one thing this year to enhance your knowledge in records management. Don't let yourselves down.

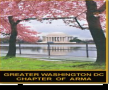
So....what's my resolution? I will obtain my CRM in 2010. Hopefully, my goal won't run out of steam like the folks I see in the gym.....

James Thomas



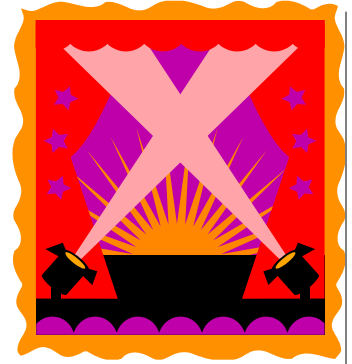
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## Member Spotlight: Darren Bruening

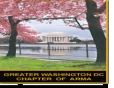
As many of you know, our good friend Darren was involved in the accident over the holidays. Many of us signed a card a previous monthly program and Rahim had a chance to personally deliver it to him. Darren wanted express his thanks for all the support.



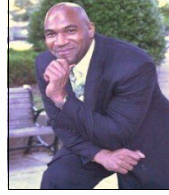
### Sites of Interest

- Gaithersburg Chapter: [www.armamar.org/gmd/](http://www.armamar.org/gmd/)
- Greater Baltimore Chapter: [www.armamar.org/gbmc/](http://www.armamar.org/gbmc/)
- Northern Virginia Chapter: [www/armamar.org/nova/](http://www/armamar.org/nova/)





## Letter from the President Rahim Briggs



Happy New Years Membership!

On behalf of the Board of Directors, we hope that each of you had a wonderful Holiday season! With that being said, it's time to start the New Year (and decade) on the right foot. As each of you may well know, the Theme for the 2009-2010 program years is entitled: "The Increasing Value of RIM". In keeping consistent with this year's program theme, I would like to start this letter off by recapping a few our highlights and events that has shaped our year thus far:

Our Board of Directors had a very successful summer planning session with a specific goal in mind of focusing on exciting and engaging programs that will enable the membership to apply the value of RIM to your company or organization. In doing so, Doug Smith, Vice-President of Programs has done a terrific job with connecting with records professionals to capitalize on this year's theme to produce exciting and engaging programs that's consistent to the "Increasing Value of RIM". To recap on our programs thus far, the October program theme entitled: "The Increasing Value of RIM & Information Management" presented by Jeffrey Ritter focused on how records managers are challenged on many levels and the skills needed to build a more diverse and complex layer of knowledge and abilities. The November program theme entitled: "Introducing the RIM Core Competencies" presented by Past-President Deb Marshall focused on RIM Core Competencies that were developed by ARMA International to give organizations and records professionals insight into the skills needed to manage records and information. We closed out the calendar year prior to the Holidays with a December program theme entitled: "How To Inventory Records" presented by Dave Rorrer & Cindy Kelly focused on the implementation of best practices for inventorying records. Several areas were discussed during this meeting such as the planning phase of conducting site surveys and defining groups through actual implementation. As we begin the new year, we look forward to producing programs that will continue to bring you educational programs that have always been the hallmark of our chapter.

In keeping consistent with this year's vision, you'll be pleased to know that your Board of Directors has been working diligently on chapter projects focused on leveraging today's technology to build and increase our membership while connecting with other chapters within our area and around the world for the planning of collaborative events. In Marketing, Directors Jesse Lake and Leigh Isaac have been leading the effort to launch the chapter's Facebook, Linked In and Twitter accounts for regular chapter updates this Spring with the focus on connecting to RIM Professionals outside the traditional records management arena and to use these collaborative tools to connect with social groups in the social network world. In Regional Cooperation, Susan Brown is working hard to present our ICRM Seminar slated for Mid-March and Shred Day to include area chapters scheduled for late April in honor of Earth Day. For the San Francisco Conference, Ashera Stanton is leading the effort to ensure that the GWDC booth is well represented and will reflect the many themes of Washington as we'll be the site of the International ARMA Conference for 2011! Angela Minturn will be updating the Chapter's website regularly which will include current Board Bios, webinars, policy briefs and publications. In the International Cooperation, Past-President Ekita Mitchell is in the process of ensuring that our chapter has a European sister chapter relationship. In fact, our European chapter recently held their chapter elections and will be up and running soon!

We would also like to take a moment to request that members of the chapter continue to keep Darren Bruening, Vice-President of Membership in your thoughts and prayers. Darren Bruening was injured at his home this past November and is currently recuperating comfortably. Prayerfully, Darren Bruening is setting his sights to return back to work and continue to serve the chapter by the Spring. We would also like to express our appreciation to Lorraine Crawford for making arrangements of getting the oversized "Get Well" card that was signed by chapter members and was delivered to Darren Bruening after the New Year's. We would also like to thank Lorraine Crawford for stepping up to the plate to during Darren Bruening's absence to ensure the membership receive monthly E-vites for chapter meetings. In closing, we look forward and encourage your continued support and participation of the programs that our chapter has to offer.

Happy New Years!



**Breach of Fiduciary Duty Risks in Lateral Departures, Hirings**  
**Reproduced from the Law Office Management & Administration Report Sept. 2009**

LOMAR was privileged to attend the 14<sup>th</sup> annual meeting of LEGUS, the international network of law firms, earlier this summer. One of the presentations offered at the conference added a dimension to the findings in IOMA's *Lateral Hiring and Integration Survey Report, 2<sup>nd</sup> Edition*.

Our Survey reported an almost cavalier attitude in the part of those who recruit, vet, and hire new lateral partners and associates. Little attention, the survey found, was devoted to investigating the circumstances if the departure of laterals from their former firms. As reported at the LEGUS conference by Becker & Poliakoff's vice managing shareholder, Steven B. Lesser, that attitude and inattention can be highly detrimental to the hiring law firm.

Lesser's presentation stemmed from his firm's experience and his subsequent research in the duty owed by departing partners to their old firms and the potential risk to hiring firms when the lateral attorney's conduct breaches ethical and fiduciary duties.

**Clues to unanticipated lateral departures.** For whatever reason, attorneys planning to leave their present firm often are not forthcoming about their intentions. In worse case scenarios, attorneys planning to depart sometimes download client files contact clients directly, or otherwise attempt to take business from them. Lesser underscored that clients belong to the firm, not to originating or servicing attorneys. Open matters should not be considered part of the departing attorney's book of business. Rather, they are the subject of departure negotiations.

Certain behaviors by attorneys can reveal their intentions even though they may opt not to reveal those intentions directly to firm leadership. Lesser says firms should be alert to "malicious compliance with firm rules and practices. Other telltale signs include decreases in billings, collections, and origination. As the attorney further isolates himself or herself from colleagues, a loss of team attitude become apparent. In short, Lesser cautions law firm managers to pay attention to the numbers associated with an attorney's performance.

Beyond the numbers, there are other behaviors that an astute IT management department can bring to leadership's attention. For example, accessing, exporting, e-mailing, downloading of documents, and Internet usage are activities worthy of a closer look. Other indicators that something might be afoot include moving documents to personal email accounts, deleting calendars, and the frequent use of inappropriate terminology in messages sent to clients – words like guarantee, promise, and other inappropriate content – which may suggest a courting of clients in anticipation of leaving the firm.

**Breach fact patterns.** Claims of a breach of fiduciary duty against a shareholder of a law firm have been upheld in a variety of fact situations. Case law rulings holding the departing shareholder in breach of his or her fiduciary duty to the former firm exists when the shareholder:

1. forms a competitive law firm and devotes significant time to the new firm while still a shareholder of the old firm;
2. resigns from the existing firm without providing any prior notice;
3. arranges for a mass exodus of employees from the existing firm;

**(article continued on next page)**



4. cultivates employee discontent in the existing office prior to his or her resignation;
5. solicits employees of the existing firm while still a shareholder;
6. takes or conceals client files;
7. downloads client information from the firm's computer system and causes subordinate attorneys and the staff members to the same;
8. deletes calendars and other computer files containing valuable client information;
9. refuses to provide case lists and calendars to the firm's management upon departure;
10. unilaterally solicits clients of the firm in derogation of state bar rules governing the standards of conduct between departing attorneys and their former bosses; and
11. diverts contingent-fee cases and improperly usurped corporate opportunities for the benefit of his new firm by filing new, but previously accrued, contingent-fee claims for longtime firm clients shortly after resigning.

**When the hiring law firm suffers consequences.** Lesser points for David Ellenhorn's work, *Legal and Ethical Issues Related to Lateral Hiring* (Chapter 11 of PLI Course Handbook, *Staying Out of Trouble: What Every Lawyer Must Know About Ethics 2005*) Ellenhorn writes:

*"It is increasingly clear that if a partner breaches fiduciary duties in the course of departing by, for example, improperly soliciting firm clients, he can be liable for damages to her former law firm. And such liability may be extended to his new firm under principles of aiding and abetting a breach of fiduciary duties, tortious interference with business opportunities, or other legal theories. Thus, the new firm, as well as the departing lawyer, face risks when a lateral move is made."*

**ABA clarifications.** ABA Formal Ethics Opinion 99-414, "Ethical Obligation When a Lawyer Changes Firms," sheds light on the behaviors that are acceptable in these circumstances. The ABA guidance rests on the premise that the interests of the client have primacy and must, above all else, be protected. The opinion addresses the following requirements:

1. *Notice.* The departing attorney lawyer and the remaining members of the firm have a joint obligation to inform clients of the impending departure of an attorney who is responsible for representation or plays a principal role in the firm's delivery of service to the client. This notice requirement rests on the foundation that the client ultimately chooses who is to provide its representation. Therefore, notice of the departure of the client's lawyers is critical.

2. *Notice is not impermissible solicitation.* This standard applies to clients with whom the departing attorney has a current relationship. The departing attorney may not solicit clients of the firm with whom he or she has no prior professional relationship.



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3. *Notice must fairly describe the client's alternatives.* The initial written on in-person notice to the client should be limited to clients to whom the departing attorney has a direct professional responsibility., should not urge the client to sever its relationship with the firm, should make clear that the client has the ultimate right to decide on its representation, and should not disparage the departing attorney's former firm.
4. *Provide additional information.* The departing lawyer also may inform his or her clients whether or not he or she will be able to continue representing the client at the new firm. If the client requests further details, sufficient information to allow the client to make an informed judgment as to its future representation may be supplied to the client.
5. *Joint notification is preferred.* When the separation is amicable, if preferable for the departing lawyer and the firm to jointly inform the client of the lawyer's impending departure. While the departing lawyer anticipates that the firm will not participate in a joint communication to clients, the duty rests with the departing lawyer to make the notification and to underscore the client's right to choose representation without disparaging the firm from which the lawyer will depart.
6. *Entitlement to files, documents, and to other property.* To the extent such client documents were prepared by the departing attorney, copies may be made by the attorney. Other documents not prepared by the departing attorney will require the firm's consent before copying and removal. As with other issues attending a departing attorney, the client may direct the disposition of relevant files and client property.
7. *Other laws.* The ABA opinion, of course, focuses on the ethical obligations of the departing lawyer and the law firm vis-à-vis the client. The opinion acknowledges that other laws must be recognized for their relevance to the situation and counseled the parties on charges of engaging in unfair competition, appropriation of trade secrets, breach of fiduciary and other duties, and conduct proscribed in Ethics Rule 8.4(c) as dishonest, fraudulent, deceitful, and knowing misrepresentation.



## Greater Washington DC Chapter (GWDC) ARMA Board of Directors Roster 2009-2010

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