



FBAnewsletter

Fall 2014

Federal Bar Association - Eastern District of Michigan Chapter - **56** years of service to our Federal Bench and Bar

Rakow Scholarships, Rom Award, and Court Historical Society Annual Meeting

On Thursday, November 20, the Chapter and the Historical Society will once again host a joint luncheon event. The event will begin at 11:30 a.m., at the Westin Book Cadillac Hotel.

The program will feature the annual Rakow Scholarship awards presented by the Federal Bar Foundation to an outstanding student from each Michigan law school.

The program also will feature the presentation of the third annual Barbara J. Rom Bankruptcy Award. The Chapter is currently seeking nominations for this award, which are due on October 27. The Rom Award will once again be presented to a bankruptcy practitioner who has demonstrated the same level of excellence and dedication in the practice of bankruptcy law as the Award's namesake. For a full description of the Award and nominations forms, please visit the Chapter website at www.fbamich.org/FBAHome/Awards.aspx

The Annual Meeting of the Court Historical Society will follow. This year's speaker will be former Michigan Supreme Court Justice Marilyn J. Kelly. Justice Kelly's legal accomplishments and record of community involvement are well known. She served 16 years as a Justice, including

as Chief Justice from 2009 to 2011. Before that she served on the Michigan Court of Appeals. She has received numerous honors and awards, including the Distinguished Alumni Award from Wayne State University, where she received her law degree. Justice Kelly now teaches as a Distinguished Jurist in Residence at WSU Law School.

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President's Column

Thomas M. Schehr

At the outset of this first President's Column, I must acknowledge that I am privileged to take the helm of an organization that has been run so well for so many years. The support and

participation from our Court has been outstanding for as long as anyone can remember. I am fortunate to step on the shoulders of so many excellent Past Presidents, and to have the support of a talented Officer group and wonderful Executive Director. This is not hyperbole: Our Chapter has received the President's Award for Chapter Excellence from FBA National -- which is the top category of recognition for a Chapter -- for the last thirteen years in a row, and the Outstanding Newsletter Award from FBA National for each of the last twelve years.

For this FBA year, our focus will be on providing highly relevant programming to our membership, as well as continuing the modernization of our Chapter. In terms of programming, we have a number of interesting events already on the calendar, including a brown-bag luncheon presentation regarding removal of cases to federal court on October 7; a "Judicial Family Reunion" for Judges and former law clerks on October 16; an "iPad for Lawyers" program on October 28; and a December 5 discussion between Judge Avern Cohn and ALJ Justin T. Arbes on the differences in challenging the validity of a patent at the USPTO and federal court. In the planning stages are programs regarding the new Federal Rules of Civil Procedure that will be adopted in 2015; immigration issues; a "speed judging" event that will provide our newer lawyers with an opportunity to interact

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**WINNER
12 YEARS**
National FBA
Outstanding
Newsletter
Award

President's Column (continued)

with the bench; and a program celebrating the 800th anniversary of the Magna Carta. Watch the website for other programs, most of which allow for online registration.

These programs supplement the staples of our organization, including our Luncheon Program, which kicks off with Chief Judge Gerald E. Rosen giving the "State of the Court" on October 1, followed by the annual Rakow Scholarship Awards/Historical Society Luncheon on November 20, at which former Michigan Supreme Court Justice Marilyn J. Kelly will be the keynote speaker and the 3rd Annual Barbara J. Rom Award for Excellence in Bankruptcy Practice will be bestowed. (Nominations are open – visit our website for details and the nomination form.) Our annual Holiday Party is set for December 4, and our annual New Lawyers Seminar is scheduled for December 9 and 10.

Regarding the modernization of the Chapter, we are continuing an effort that commenced a couple of years ago. We have invested in new computer hardware, specialized software, and the "back office" component to our website. We have implemented an internal controls policy that is designed to deal with the day-to-day realities of one of the largest and most successful FBA Chapters in the country. This year, we intend to upgrade the home page of our website. The website is the front door to our organization. The changes will extend beyond the cosmetic to include fundamental additions to its content. We were one of the first Chapters nationwide to have a website, and in the intervening years technology has improved to allow the Chapter to provide greater value and more content to our membership. Among other things, we intend to post some of our programming in the "members only" section of the website for FBA members to view when convenient.

We are also working with our newer lawyers division, known as the RISE Committee, to add newer lawyers to our membership. This membership drive is in the planning stages, and given the creativity of the RISE Co-Chairs -- Susan Asam, Erin Behler, Sean Cowley, and Nathan Dupes -- and the rest of the RISE Steering Committee, I'm confident that we will add a host of newer lawyers to our Chapter.

Overall, I am hopeful to build on the successes of my predecessor, Michael K. Lee, and to leave the Chapter in good hands for our Officer group: Kim Altman, Susan Gillooly, Jeff Appel, and Saura Sahu. With the excellent support we have in place, I'm confident that this will be another outstanding year for our Chapter.

Chapter Again Receives FBA National Awards

At the recent national Federal Bar Association Annual Meeting and Convention in Providence RI, the Chapter was again the recipient of two awards. The Chapter earned the Presidential Excellence Award, given for having done a superior job in programming (the highest award conferred by the FBA); and for the 12th consecutive year, the Chapter was presented with an Outstanding Newsletter Recognition Award. Congratulations to the entire Chapter and the Newsletter Committee.

Chapter President Thomas M. Schehr and former Chapter President and current FBA Foundation Fellows Program Chair Dennis J. Clark served as the Chapter delegates at the National Council Meeting. Current membership in the national FBA stands at over 16,800. Both the FBA and the affiliated Federal Bar Building Corporation (which owns the FBA headquarters office) are financially sound.

As part of the FBA effort to grow the number of law student associate members, the National Council approved a more affordable dues structure for that group. The national organization welcomed six new chapters: Maine, Western Division of the Northern District of Illinois, New Hampshire, Northern District of West Virginia, Arkansas and Central District of Illinois. Also, the formation of a new FBA Section was announced -- Admiralty Law.

The FBA Government Relations Committee reported that the crisis in funding for the federal courts has receded somewhat with the 2014 fiscal year budget being increased over 2013 to help recover from the prior cutbacks caused by "sequestration." While another increase in the budget has been requested, it appears that current financial levels will remain for the foreseeable future. There are currently 58 vacancies in judicial positions nationally, with 27 nominations pending. Nineteen additional judgeships are needed (especially in California, Texas, and Arizona).

FBA members are encouraged to take advantage of the new and improved networking opportunities available through the FBA presence on Facebook, Twitter, and LinkedIn. Also, the e-newsletter is published twice monthly.

The CLE program at the convention offered many interesting and informative substantive and ethics sessions covering 21 topics with 55 speakers, including: remedying cyber-attacks and data breaches, qui tam and Sarbanes-Oxley whistleblowers, ethical perils of social media,

proposed amendments to the Federal Rules of Criminal Procedure, same-sex marriage, major Fourth Amendment cases, top 10 bankruptcy cases and obtaining and admitting electronic evidence. Among the CLE offerings, Chief Judge Gerald E. Rosen participated in a panel discussion of "Cutting Edge Cases in Federal Employment Law Litigation: A View from the Bench and Bar."

At the annual banquet, the FBA installed Matthew B. Moreland of New Orleans as its national President. The Earl W. Kintner Award for Distinguished Service was presented to Larry D. Thompson. The Sarah T. Hughes Civil Rights Award was presented to Kara Van de Carr.

The FBA will hold its 2015 Annual Meeting and Convention in Salt Lake City on September 10-12, 2015.



Court Administrator Dave Weaver

The General Services Administration (GSA) has announced that EYP Architecture and Engineering in Washington D.C. has been selected to carry out the \$131 million dollar renovation

of the historic Theodore Levin U.S. Courthouse in Detroit. EYP has significant experience with the type of renovation planned for the Levin Courthouse. It recently completed a similar project at the Birch Bayh Federal Office Building and U.S. Courthouse in Indianapolis. The formal project design process with GSA and EYP will begin this Fall with actual construction likely to begin in early calendar year 2016.

Our two magistrate judge vacancies have been filled, pending formal background checks. The successful candidates are AUSA Elizabeth A. Stafford, and attorney Anthony P. Patti of Hooper, Hathaway, Price, Beauche and Wallace PC in Ann Arbor. Both will be stationed in Detroit, and we look forward to having them on board.

The Court recently launched its redesigned Internet site at www.mied.uscourts.gov. The site design is much easier to

navigate and was designed using templates offered by the Administrative Office of the U.S. Courts to promote commonality among the many federal court websites. The launch has been relatively smooth, though there have been a few issues that have been reported. We are working to improve access to our judges' individual practices pages and making it easier to find recent selected opinions. We want your input on the new site; so, if you have any comments, questions or suggestions, do not hesitate to contact me at: david_weaver@mied.uscourts.gov

Judge Parker Investiture

On June 27, family, friends, and current and former colleagues of the Honorable Linda V. Parker gathered for her investiture as one of the newest district judges for the Eastern District. Chief Judge Gerald E. Rosen opened the ceremony, followed by an invocation by Rev. Nicholas Hood, III, husband of Judge Denise Page Hood. Before the invocation, Rev. Hood recalled his childhood playing games like "Kick the Can" in the alley behind his house with Judge Parker and her siblings, Amy and James. Rev. Hood encouraged Judge Parker "to keep 'kicking the can' for justice, for equality, for fairness and mercy, for the rule of law and the preservation of this great nation."

After introductions of the federal and state court judges in attendance, Judge Damon Keith administered the oath while Judge Parker's mother, Sheilah, held the Bible. Before administering the oath, Judge Keith shared that he has known Judge Parker all of her life, having attended Northwestern High School and West Virginia State College with her late father, James "Scoop" Parker. Judge Keith expressed his deep warmth of feeling, and appreciation to be able to administer the oath to Scoop's daughter. Next, Judge Parker's family presented her with her robe.

Judge Victoria A. Roberts, a friend of Judge Parker for more than twenty years, then presented her with the gavel. Judge Roberts eloquently described Judge Parker as someone looking to do meaningful work for causes that she believes in, with a keen

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Sheilah Parker, Judge Linda V. Parker, and Judge Damon J. Keith during the administration of the oath.

Judge Parker *(from page 3)*

sense of right and wrong, and a desire to fight for justice. Judge Roberts also remarked on Judge Parker's humility and passion for learning which, Judge Roberts said, makes Judge Parker a willing listener, open to different perspectives and positions, and eager to develop the best practices in federal court. Judge Roberts indicated that these qualities will enable Judge Parker to convince others of her authority without ever having to pound the gavel, which Judge Roberts then presented.

Congratulatory letters from U.S. Senators Carl Levin and Debbie Stabenow were read, as well as a letter from Judge Parker's dear friend, U.S. Attorney General Eric H. Holder, Jr. In his letter, Attorney General Holder remarked on Judge Parker's remarkable career, from her clerkship in the D.C. Superior Court, to her work at the U.S. Environmental Protection Agency, to her service in the United States Attorney's Office for the Eastern District, leadership of the Michigan Department of Civil Rights, and service on Michigan's Third Judicial Circuit Court. He wrote that Judge Parker had "built an impeccable reputation as a talented legal professional, a dedicated public servant, and a passionate advocate for the cause of justice." These sentiments were repeated several times by the speakers who followed: Nicole Y. Lamb-Hale, Judge Edward Ewell, Jr., and Saul A. Green.

Judge Parker concluded the formal remarks, first thanking everyone for joining her on this "awesome day" and especially recognizing her mother who would be turning eighty-nine, her Aunt Georgia who just celebrated her ninety-second birthday, and her fourth grade teacher, Vicky Rybicki. She then acknowledged those people who could not be with her in body: her father, her dear friend Kelvin Scott, and godmother Catherine Barthwell. Judge Parker next expressed her deep appreciation to the many people in attendance who have touched her throughout her life and helped her get to this day, remarking that her "journey to this place, to this moment today is really the result of just the collective love and the generosity, the wisdom, the truthfulness and the insightful guidance that has been given to me by each one of you." She concluded by thanking President Barack Obama for "this enormous honor and responsibility" and by promising to "live up to the oath that has just been administered."

Focus on an FBA Member: The Hon. Julian Abele Cook, Jr. -- Senior U.S. District Judge By Michael J. Riordan*

The "consummate gentleman jurist" is the term a long-time federal practitioner uses to describe Senior U. S. District Judge Julian Abele Cook, Jr., who has served the Eastern District for the past thirty-six years, seven of them as chief judge. Beginning on September 23, Judge Cook retired from handling an active docket in order to spend more time with his wife of fifty-six years, Carol Annette Dibble Cook, who he calls "the love of my life, my partner, and confidant," and their three children and three grandchildren.

A native of Washington D.C., President Jimmy Carter appointed Judge Cook to the Eastern District in 1978. He received his B.A. from Penn State University in 1952, his JD from Georgetown University Law School in 1957 and a LLM. from the University of Virginia School of Law in 1988. Between undergrad and law school, Judge Cook served in the United States Army.

Calling himself "extremely lucky in life," Judge Cook began his legal career as a law clerk to Oakland County Circuit Judge Arthur Moore, from 1957-58. For the next twenty years, he was in private practice with offices first in Detroit and then in Pontiac. He also was a Special Assistant Michigan Attorney General from 1958-78 and was chairman of the Michigan Civil Rights Commission from 1968 through 1971. Judge Cook served as a member of the Michigan State Board of Ethics in 1977 and 1978.

While Judge Cook's biographical data is impressive enough, it is the character of the man himself that has endeared him to the legions of attorneys who have practiced before him, the judges who served with him, the law clerks he has mentored, and the court staff who have supported him. "When I arrived at the U.S. Courthouse in 1978 to assume my new job on the bench I was extremely nervous," he said. "Other than Judges Keith and Pratt, I knew no one in the building." But, he said "I could not have imagined a more collegial group of judges and staff than I have been fortunate enough to work with, and call friends, over these many years. From the maintenance staff to the security guards and from the probation department to the Assistant



Judge Linda V. Parker with her siblings, James Parker and Dr. Amy Parker, at the investiture.

United States Attorneys and Federal Defenders, everyone has been so kind to my wife and me over the decades.”

When asked about the accomplishments he is most proud of from his time on the bench, Judge Cook did not mention the many significant cases he handled over the years, such as the Northwest Flight 255 crash litigation or the Detroit Police civil rights monitor cases. Nor did he mention the honorary degrees he has received from Georgetown University, the University of Detroit Mercy, Wayne State University, and Michigan State University. He also did not mention the “Champion of Justice” award he received from the State Bar of Michigan or the “Trailblazers Award” the D. Augustus Striker Bar Association bestowed on him.

Rather, he puts his family at the top of his list of accomplishments. By any measure his children: Julian Abele Cook, III, a law professor at the University of Georgia; Peter Dibble Cook, an architect with the renowned Gensler Global Design & Architectural firm; and Susan Annette Cook, a graphic designer, were “outstanding students and are enjoying wonderful careers.” But, he emphasized, “my wife and I are most proud that they are good, kind people. There is nothing more satisfying for a parent than to look at a child that has grown into a person of good values and morals, who has empathy for the needs of others. I know they will pass these gifts on to my grandchildren.”

He also is most proud of the other “family” in his life. That is the family he has come to know and love as a judge in the Eastern District. “I always tried to treat each and every person with respect. It was the least I could do as many persons appearing in my

courtroom were at a crossroads in their lives and it was my job to see that they were accorded every decency available.”

As U.S. Attorney Barbara McQuade commented, “appearing before Judge Cook was always a pleasure. You knew that he would be prepared before the hearing and gracious throughout it. Even when he ruled against you, you came away satisfied that you had been heard and treated with great courtesy.” Recognizing his invaluable contribution to civility, in 2007, the Chapter instituted the Cook-Friedman Civility Award which is conferred annually on a civil practitioner who embodies the qualities of Judge Cook and the Eastern District’s “Lawyer’s Commitment of Professional Civility.”

“If I had to give one piece of advice to young lawyers,” said Judge Cook, “it is to take the words they say when professing their oath of office to heart. Those words are not meant to be just ceremonial or perfunctory.

Those are the standards that all lawyers and judges should live by.” Saura Sahu, a former law clerk to Judge Cook, said that the Judge was a “living embodiment of judgment and leadership on the bench. He has been an impeccable lawyer and judge.” Brandy Robinson, another former law clerk, echoes those sentiments. “His quiet lessons – be humble, be kind, be excellent - will resonate with me and so many others for a lifetime.” Added former clerk Monica Navarro, “Judge and Mrs. Cook had such respect and love for each of his law clerks, the court family and those that appeared before him that, when I decided to get married, I brought my now-husband first to them for their approval before I even brought him home to meet my own parents.”

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Senior U.S. Circuit Court of Appeals Judge Damon J. Keith and Judge Julian Able Cook, Jr. at the reception hosted by Judge Cook on September 19.

Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.



Margot Kagan, Judge Cook Law Clerk Lia Ernst, Carol Cook, and Judge Julian Able Cook at the September 19 reception.

Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

Judge Cook *(from page 5)*

Usually, when a court is fortunate enough to have a man of Judge Cook's character in its midst, it is the practitioners of the district who host an event to honor such a person's contributions. But, Judge and Mrs. Cook turned the table on the usual order. It was they who hosted a celebration for their "families" on September 19 at the Courthouse. "We did it as a way to thank the many people who have been so wonderful to us. It was the least we could do to show our profound appreciation." Complete with plenty of food and refreshments and entertainment by Barbara Ware, accompanied by Cliff Monere on the keyboard, over three hundred people gathered to celebrate with the judge, his wife and two of his children. Many waited in the receiving line more than an hour to greet the judge. "I wanted no speeches or tributes to me. It was just a quiet way to thank everyone for making our lives so special. But really, I don't think I will ever be able to thank them enough."

Not so, Judge Cook. It is we who will never be able to thank you enough for the many, many ways you have made the lives of the thousands who have appeared before you, our District, and our Country better. It is a gift and legacy that you have given your family, your court family, and the legions that have practiced or appeared before you. It is a gift that will continue to be fruitful for many generations to come. As Judge Cook's most recent law clerk, Adam Wenner, commented, "he taught me the essence of quiet leadership and the importance of never compromising reputation. Judge Cook surely will never acknowledge the impact of his legacy, but I'm confident it will live on well beyond his years." That it will. No question.

**Judge of the Michigan Court of Appeals, former Assistant United States Attorney, and past-Chapter president.*

Judge Michelson Investiture

On July 1, the Court raised ice cream sandwiches and cups of espresso to toast the appointment of Laurie J. Michelson as a United States District Judge. She needed no introduction to the Court, where she has served as a Magistrate Judge since 2011, and the reception was enthusiastically attended by her courthouse family. Notably, this appointment marks the first time that a sitting magistrate judge has been elevated to district judge in the Eastern District of Michigan. (Judge Barbara K. Hackett served as a magistrate judge in the Eastern District, resigned to return to private practice, and then was nominated and confirmed as a district judge in 1986.)



Judge Laurie J. Michelson and her family at her investiture on July 1.

J u d g e Michelson began her career at the Courthouse in 1992 as law clerk to the late Circuit Judge Cornelia G. Kennedy. Judge Kennedy did Detroit a great favor by snatching Judge Michelson back from Chicago, where she had strayed to attend Northwestern University Law School. Judge Michelson's resume is otherwise unimpeachable:

she was born in Detroit, graduated from Seaholm High School in Birmingham, and received her undergraduate degree from the University of Michigan. After her clerkship, Judge Michelson joined Butzel Long's Detroit office. At the culmination of her 18-year career there, Judge Michelson led the firm's Intellectual Property, Media and Technology practice group, and had a busy criminal defense practice.

Judge Michelson left Butzel Long in 2011 to become a U.S. Magistrate Judge. In an interview with the Detroit Legal News about that appointment, she stated, "Some people said, 'Why do you want to be a magistrate judge and go do prisoner cases and Social Security cases' And you realize that in these Social Security cases, that is probably the most important thing that's going on in that person's life. There's nothing insignificant about it." Judge Michelson never lost that deep appreciation for the personal significance of every case. She earned high praise from the litigants who appeared before her as well as the district judges who referred their cases and motions

to her. In fact, Judge Michelson noted in her speech, only two district judges reversed her more than once—not that she was keeping track.

The Chapter is especially proud to note that Judge Michelson was its President from 2010 to 2011, and received an award in special recognition of her outstanding leadership.

Judge Michelson's deep roots in Detroit were evident at the July 1 reception. A dense crowd of Detroit legal luminaries packed the gathering at the Levin Courthouse to celebrate her appointment and enjoy a dessert buffet, ice cream sandwich cart, and espresso bar. At the center of the reception was Judge Michelson's family. Her father, siblings, nieces, and nephews lit up the room with their characteristic Michelson warmth.

J a m i e Michelson, Judge Michelson's brother, served as master of ceremonies. The family's love for sports played a central role in his comments. Judge "Mickelson," he joked, is well known for her skills on the golf course. It was fortunate that no sporting events had interfered with this reception, he said, noting that

he'd missed her law school graduation because her sister Debbie was competing in the state tennis championships.

David DuMouchel, Judge Michelson's longtime mentor at Butzel Long, told the audience that this spirit of sportsmanship served her well during her tenure at the firm. He read aloud the letter he'd written in support of her appointment as a magistrate judge, in which he wrote that she was always at the top of the list when an attorney was needed in a case. Her work ethic, intelligence, and positive attitude made her an asset to any team. DuMouchel also highlighted her strong character, noting that she would never confuse a federal bench "appointment with anointment."

Turning to Judge Michelson's new playing field, Chief Judge Gerald E. Rosen discussed her transition from magistrate judge to district judge. He announced he would be appointing her resident golf coach. And he confided that although he was not privy to her Article III background check, there was not a single negative comment

in her magistrate judge application file. Her report was so clean, he joked, that he suspected a conspiracy. Later in the reception, Judge Michelson joked that she felt lucky to clear the background checks although FBI agents interviewed her father twice.

Eric Lee, Judge Michelson's law clerk of three years, shared his perspective on her judicial makeup and outstanding mentorship. With his fellow law clerks, case manager, and interns nodding in agreement, Eric spoke to her unique ability to deconstruct complex legal issues with ease and opined that her love for the law made her the perfect fit for a lifetime appointment to the federal bench.

Pamela Renusch, Judge Michelson's twin sister, captured the heart of the day's festivities in a witty

and emotional speech that encompassed years of sports, school, and career-building. Renusch cleverly reminded the audience that, as a twin, she shared Judge Michelson's genetic makeup and, of course, all of her positive traits. Joking aside, it was clear that Renusch admired her



Judge Laurie J. Michelson and her staff, Elisabeth Madden, Anne Fitzpatrick, Jane Johnson, and Eric Lee.

younger sister (by seven minutes). Renusch summed up her sister's success this way: "If you work really hard and are kind, amazing things will happen."

In a day dedicated to her personal achievements, Judge Michelson's remarks reflected her humility. She described her journey to a district judge appointment as a combination of hard work and luck. Each stage in her career, she noted, introduced her to new people from whom she could learn. She expressed gratitude to all who helped her along the way, including her parents (James and Bonnie Michelson), siblings (Jamie and Beth Michelson, Pam and Paul Renusch, and Debbie and Pierre Fuger), Judge Kennedy, Butzel Long and David DuMouchel, the Judicial Selection Advisory Committee, Senators Levin and Stabenow, President Obama, members of the bench of the Eastern District, and her past and present chambers staff.

Luck was an appropriate theme for the day as the Eastern District is extremely lucky to have Judge Michelson as a lifetime appointee.

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Supreme Court Preview

by M Bryan Schneider

Fresh off its summer recess, the Supreme Court opened the October 2014 Term in usual fashion, summarily reversing a grant of habeas relief by the Ninth Circuit. Although public attention focused on the Court's

denial of *certiorari* in the gay marriage cases, the Court granted *certiorari* in 8 cases following its long conference, bringing to 50 the total number of cases granted thus far. The Court's docket for the current Term includes a number of cases which will be of interest to federal practitioners.

Of particular note to both civil and criminal practitioners, the Court will return to a topic it last considered almost 30 years ago—the admissibility of juror testimony to impeach a verdict under FRE 606. Specifically, in *Warger v. Shauers*, the Court will consider whether juror testimony about statements made during deliberations are admissible when it is relevant to show that a juror was dishonest during *voir dire*. In civil procedure matters, the Court will address whether a defendant seeking removal of a state action to

federal court must present evidence supporting removal, or may merely provide a short and plain statement of the grounds for removal (*Dart Cherokee Basin v. Owens*). The Court will also consider whether dismissal of an action that has been consolidated with other suits is immediately appealable (*Gelboim v. Bank of America*).

The Court has granted review in a number of cases addressing civil rights and employment law matters. In *Holt v. Hobbs*, the Court will consider whether a prison grooming policy prohibiting beards violates an inmate's religious rights under the Religious Land Use and Institutionalized Persons Act. The Court will also consider whether a dismissal of a prisoner civil rights suit counts as a “strike” under the three strikes provision of the Prison Litigation Reform Act when the dismissal is still pending on appeal (*Coleman-Bey v. Tollefson*). Perhaps the third time will be a charm when the Court hears *Texas Department of Housing v. The Inclusive Committee Project*, a case presenting an important issue that the Court had previously granted review on in two cases which were subsequently settled: whether disparate impact claims are cognizable under the Fair Housing Act.

Turning to employment matters, the Court will consider whether a Title VII plaintiff asserting a claim that he was

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Supreme Court (from page 9)

not hired because of a religious observance or practice must show that the employer had actual knowledge that a religious accommodation was required (*EEOC v. Abercrombie & Fitch*). In another Title VII case, the Court will address whether a court may enforce the EEOC's mandatory duty to attempt to conciliate discrimination claims before filing suit (*Mach Mining v. EEOC*). The Court will also consider whether an employer who provides accommodations to employees with work limitations must provide similar accommodations to pregnant employees under the Pregnancy Discrimination Act (*Young v. United Parcel Service*). In *Integrity Staffing Solutions v. Busk*, the Court will decide whether time spent in employer-mandated security screenings is compensable time under the Fair Labor Standards Act, and in *M&G Polymers v. Tackett*, the Court will consider whether, under the Labor-Management Relations Act, retiree health benefits should continue indefinitely following termination of the collective bargaining agreement where the agreement is silent as to the duration of benefits.

In intellectual property matters, the Court will consider the standard of review an appellate court should apply to a district court's factual findings made in support of its construction of a patent's terms (*Teva Pharmaceuticals v. Sandoz*). In trademark issues, the Court will decide whether "tacking" of a trademark to an older mark for purposes of determining first use presents a factual question for the jury or a legal question for the court (*Hana Financial v. Hana Bank*), and whether findings by the Trademark Trial and Appeal Board concerning likelihood of confusion have preclusive effect in a subsequent infringement action (*B&B Hardware v. Hargis Industries*).

Bankruptcy practitioners will be following two cases this term. In *Baker Botts v. ASARCO*, the Court will decide whether a bankruptcy court may compensate a Trustee for the costs of defending a prior fee application, and in *Wellness International Network v. Sharif* the Court will consider whether the presence of a subsidiary state law issue deprives a bankruptcy court of jurisdiction to decide whether property is property of the bankruptcy estate, as well as whether parties may consent to the exercise of jurisdiction by a bankruptcy judge under Article III of the Constitution. In tax matters, the Court will consider whether the Tax Injunction Act bars a federal court suit challenging a state law that does not impose a tax, but serves a secondary aspect of tax administration (*Direct Marketing Ass'n v. Brohl*), and whether the Constitution prohibits a state from taxing income of residents earned out-of-state (*Comptroller of the Treasury of Maryland v. Wynne*).

In other business cases, the Court will consider: the application of the six-year ERISA statute of limitations to fiduciary decisions that impose a continuing harm (*Tibble*

v. Edison International); the pleading requirements for alleging that a registration statement contained an untrue statement of fact for purpose of a claim under section 11 of the Securities Act of 1933 (*Omnicare v. Laborers District Council*); whether state-action antitrust immunity extends to a state regulatory board composed primarily of market participants (*North Carolina Board of Dental Examiners v. FTC*); whether a borrower seeking to rescind a transaction under the Truth in Lending Act may do so by notifying the creditor in writing within three years of the transaction, or whether the borrower must file a lawsuit within three years of the transaction (*Jesinoski v. Countrywide Home Loans*).

The Court will also consider several cases impacting claims brought against the federal government. In *United States v. Wong*, the Court will decide whether the six month limitations period for filing suit under the Federal Tort Claims Act (FTCA) is subject to equitable tolling. Relatedly, in *United States v. June*, the Court will consider whether the two year time limit for filing an administrative claim under the FTCA is subject to equitable tolling. In two cases, the Court will consider whether, under the Administrative Procedures Act, a federal agency must engage in notice-and-comment rulemaking before changing their interpretive rules (*Perez v. Mortgage Bankers Ass'n and Nickols v. Mortgage Bankers Ass'n*). And in *Armstrong v. Exceptional Child Center*, the Court will consider whether Medicaid providers have a private right of action to enforce the Medicaid statute.

Thus far, the Court's criminal docket is significantly lighter than its civil docket, but there are still several cases that will be of interest to criminal practitioners. In *Johnson v. United States*, the Court will consider whether mere possession of a short-barreled shotgun constitutes a predicate violent felony under the Armed Career Criminal Act. The Court will also consider whether the enhanced penalty under the bank robbery statute provided when the robber forces another person "to accompany him" during the robbery requires more than *de minimis* movement of the victim (*Whitfield v. United States*). In *Yates v. United States*, the Court will address whether the anti-shredding provisions of the Sarbanes-Oxley Act, which prohibit a person from destroying a record, document or tangible object with intent to impede an investigation, provided sufficient notice that it applied to illegally caught fish destroyed by a commercial fisherman. The Court will also address whether a conviction for transmitting a threat to another person requires, either as a matter of statutory interpretation or the First Amendment, a showing that the defendant had the subjective intent to threaten (*Elonis v. United States*). In constitutional matters, the Court will consider whether a police officer's reasonable mistake of law can justify a traffic stop under the Fourth Amendment (*Heien v. North Carolina*), and whether a person's legal obligation to report suspected child abuse makes that individual an agent of law enforcement for purposes of

determining whether that person's statements constitute testimonial hearsay under the Confrontation Clause (*Ohio v. Clark*).

Finally, the Court will consider two immigration cases this Term. In *Kerry v. Din*, the Court will address whether a consular official's refusal of a visa to a citizen's spouse infringes a constitutionally protected interest of the citizen. And in *Mellouli v. Holder*, the Court will decide whether the provision of the Immigration and Nationality Act allowing for removal based on a conviction for violating a law relating to a controlled substance permits removal based on a drug paraphernalia conviction without a showing of a connection between the paraphernalia and a substance listed in the Controlled Substances Act.

State Of The Court 2014

The Chapter kicked off its luncheon programming for the year with the annual State of the Court Luncheon on October 1, at the Westin Book Cadillac. New Chapter President Thomas Schehr began the event by welcoming attendees, and then introduced Judge Denise Page Hood, chairperson of the Court's Pro Bono Committee. Judge Hood and her committee recognized the numerous law firms, organizations, lawyers, Court staff, and law students who participated in the Court's Pro Bono program this past year. The entire list can be viewed at www.fbamich.org/DocsRemarks.aspx

After the recognition of the Pro Bono honorees, Schehr introduced Chief Judge Gerald E. Rosen for his annual State of the Court address. Chief Judge Rosen reported that the state of the Court is "good," and he highlighted details from his more comprehensive report that can be viewed on the Court's website at <http://www.mied.uscourts.gov/>

But before beginning his formal remarks, Chief Judge Rosen acknowledged the passing of two former judges this past year, Circuit Judge Cornelia G. Kennedy and District Judge Patricia J. Boyle. Chief Judge Rosen recognized the accomplishments of these trail-blazing women in the legal profession, and that they will be missed.

Regarding the Court, Chief Judge Rosen noted that the Court had recently launched its redesigned website, welcomed four new district judges, and hoped to have its full complement of magistrate judges once Elizabeth Stafford and Anthony Patti clear their background checks.

He also discussed the Court budget, which is in a much better position now than it was a year ago, and he reported that he was receiving promising news from Congress with respect to the coming fiscal year, including funding for improvements and renovations to the Levin Courthouse.

Finally, Chief Judge Rosen reported on some of his experiences as the lead mediator in the Detroit bankruptcy case, and he acknowledged the hard work being done by numerous individuals in that important case.

President Schehr concluded the event by inviting everyone to coming events on the Chapter calendar.



Chief Judge Gerald E. Rosen, Judge Denise Page Hood, and Thomas Schehr at the State of the Court Luncheon.

Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

Law Clerk Summer Lunch-and-Learn Event

On July 18, the Chapter Law Clerk Committee hosted a Lunch-and-Learn event in Room 115 of the Courthouse for law clerks, summer associates and interns, and newer lawyers.

Attendees heard from a panel of current and former law clerks representing a wide range of rewarding careers. The panelists explained their backgrounds and discussed how their clerkship helped them on

their career path. Afterward, they took questions from the attendees.

The Law Clerk Committee would like to thank the panelists for providing the attendees with valuable information and advice on clerkships and the opportunities that come from clerking. Our gratitude goes to: AUSA Jonathan Grey; Bradley R. Hall, FDO; Kerry Kornblatt, WSU Law School; Judge Laurie J. Michelson; Susan McNeill McKeever, Bush Seyferth & Paige PLLC; Saura Sahu, Miller Canfield Paddock & Stone PLC; Krystal Player, Law Clerk to Bankruptcy Judge Mark A. Randon; and Adam Wiener, Robert Bosch LLC.

The event proved to be a success, and the Law Clerk Committee plans to hold a similar event next summer.

Summer Associate Program & Mixer

On July 22, the RISE and Summer Programs Committees joined efforts to host the Chapter's 12th Annual Summer Associate Program & Mixer, this year

(continued on page 12)



Judge Sean F. Cox, Judge Laurie J. Michelson, and Thomas Schehr at the Summer Associate Mixer.

Photo by John Meiu, courtesy of Detroit Legal News Publishing LLC.

held at the Fountain Bistro in the beautiful Campus Martius Park in downtown Detroit.

Nearly 100 attendees, including law firm summer associates, law clerks, judges, and attorneys, braved the sweltering heat to attend the outdoor event. The participants enjoyed appetizers, cocktails, and great networking with other program attendees.

Guest speakers included Chief Judge Gerald E. Rosen, Judge Sean F. Cox, Judge Laurie J. Michelson, and Chapter President Tom Schehr of Dykema Gossett. Judge Cox and Judge Michelson shared valuable practical advice and tips regarding federal court practice. Chief Judge Rosen and Schehr provided the students with information about the benefits of FBA membership and becoming involved in the Chapter.

The student attendees thoroughly enjoyed the program, which was, for many of them, their first exposure to the federal court, federal judges, and the FBA.

Thanks to the Chapter's RISE Committee Co-Chairs Erin Behler (Nemeth Law) and Sean Cowley (U.S. Department of Justice), and Summer Programs Committee Co-Chairs Chanille Carswell (Brooks Kushman), Shanta McMullan, (Butzel Long), and Kyle Dufrane (Dykema Gossett). Special thanks to Chapter Executive Director Brian D. Figot, and all of the speakers for making this event a success.

Officers and Directors 2013-2014

These officers and directors started their terms at the Annual Meeting on June 19, 2014.

Officers

President:

Thomas M. Schehr, *Dykema PLLC*

President-Elect:

Kimberly G. Altman, *Career Law Clerk to Hon. Avern Cohn*

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Susan E. Gillooly, *Assistant U.S. Attorney*

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Katherine B. Gullo, *Clerk of the Court,*

United States Bankruptcy Court

George J. Bedrosian, *District Court Ombudsman*

Executive Director

Brian D. Figot

PO Box 20759, Ferndale MI 48220-0759

Phone: 248-594-5950 fbamich@fbamich.org



Ask the Counselor of Civility

Dear Counselor of Civility:

I hope you can help me handle a troubling development in one of my cases.

I am defending a dog-bite case in federal court that features severe injuries to the plaintiff. The diversity case arose when the parties first met at a dog-walk in a public park – plaintiff with her Labrador Retriever and my client with his German Rottweiler. My client's defense is that his dog bit the plaintiff (severing 3 of her fingers) only after she (the plaintiff) had provoked it while trying to separate the two dogs as they engaged in some rough horseplay.

A few weeks ago, I took the plaintiff's deposition and she made admissions helpful to my client's case. The key ones were these:

Q. In addition to calling at the dogs, did you use your hands to try to get them to stop?

A. Yes.

Q. So you actually tried to break up the dogs fighting with your hands?

A. Yes, not touching them – but stepping between them and shaking my fists at them, yes.

Before the deposition concluded, opposing counsel asked on the record that the plaintiff be allowed 30 days to review the transcript under Fed.R.Civ.P. 30(e).

Last week, I was astonished to receive an "errata sheet" to the deposition detailing the plaintiff's "changes" to the transcript – to answer "no" to the two critical questions set out above. Her explanation? Plaintiff claimed she was mistaken in her earlier recall!

I am livid because I suspect opposing counsel has concocted these changes to avoid summary judgment. My instincts tell me I should move to strike this errata sheet and seek attorneys fees against opposing counsel under 28 U.S.C. §1927 for this sharp practice. Is this not unprofessional conduct on his part?

Signed,
Seething Red

Dear Seething:

The Counselor of Civility appreciates your feelings of ire. However, our Civility Principles counsel against seeking sanctions unless such are fully justified and "necessary to protect our client's interests." In this Counselor's opinion, the federal rules will allow you to put

this errata sheet in its place and prevent your opposing counsel from evading the import of the plaintiff's original sworn testimony.

Rule 30(e)(1) allows a deponent to make "changes in form or substance" to the transcript of their testimony. Any such statement of changes by the witness must be delivered to the court reporter and included in his or her certificate of the deposition. The review-and-change provision was apparently intended as a check on the accuracy of records and transcriptions, yet its language seemingly authorizes witnesses to completely re-write their story.

It's clear that federal courts look with suspicion at changes of the sort you're dealing with. A few disallow such contradictions despite the Rule's broad license. The most influential of these cases is *Greenway v. International Paper Co.*, 144 F.R.D.322 (W.D.La. 1992), striking a post-deposition errata sheet with oft-quoted reasoning that "[a] deposition is not a take-home examination."

Some judges here in the Eastern District have followed this narrow interpretation of the rule and will entertain a motion to strike the errata sheet. They reason that Rule 30(e)(1) is designed to correct only errors made by the reporter, not the witness.

Other courts give a plain meaning construction of the rule allowing deponents to reverse course on their sworn testimony.

Even if the errata sheet is allowed to stand, you have at least two key protections to assist you to proceed with a motion for summary judgment.

First, if you feel the need, the court should allow you to re-open the deposition to probe the witness's changes and her reasons for making them. You could fairly ask the court to order that plaintiff bear the costs of the second deposition.

Second, and in any event, the witness's changes are attached to the certified transcript so that both the original testimony and "corrections" to it are part of the deposition. The changes do not erase the prior testimony. This allows you to move for summary judgment based upon the original testimony and suggest that changes made in a post-deposition errata sheet do not raise genuine issues of fact under Fed.R.Civ.P. 56(c). You can analogize to cases applying the "sham affidavit" doctrine in urging disregard of changes that contradict the witness's testimony. (Of course, if the case gets tried, both statements are admissible against the witness).

I suggest you call opposing counsel and inquire about the substance of plaintiff's changed story and probe for an explanation of reasons. If your opposing counsel was involved in preparing the errata sheet, was he mindful that he could not counsel or assist a witness to testify falsely or falsify evidence – either before or after the deposition? Suggest to him that summary judgment will be the likely endgame to this errata-sheet gambit. If the sheet has yet to be furnished to the court reporter, urge that he refrain from doing so. You may even move him to reevaluate his client's claim altogether.

Signed,
The Counselor of Civility



Sustaining Members

We gratefully acknowledge the additional support provided to our Chapter by the following individuals, who opted during the fiscal year ended July 31, 2014, and in the first part of fiscal year 2014-2015, to renew their membership at the Sustaining Member level of \$100. We thank each of you for contributing to our ability to fund essential programming.

Frederick A. Acomb	Susan D. Koval
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Philip J. Kessler	Sharon M. Woods
Gene R. Kohut	

New Law Clerks

The Chapter welcomes the following new Law Clerks for the Sixth Circuit and Eastern District.

Judge Keith

Jahnisa Tate, *University of Georgia Law School*
John Saxon, *The Ohio State University Moritz College of Law*
Sharika Robinson,
North Carolina Central University School of Law

Judge Clay

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David Glanton, *George Washington University Law Center*
M. Theodore Takougang,
University of Virginia School of Law
Yael Shavit, *Yale Law School*

Judge Kethledge

Ashley E. Nummer,
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James Barta, *Georgetown University Law Center*
John Snidow, *Yale Law School*
Matthew Gregory, *University of Michigan Law School*

Judge White

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Mary Megan Anderson, *University of Michigan Law School*

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Judge Cohn

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Judge Zatkoff

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Adam Wenner, *University of Detroit Mercy School of Law*

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Iman Abdulrazzak, *University of Michigan Law School*

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Becket Marum, *University of Virginia Law School*

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Christopher Kopp, *University of Michigan Law School*
Stephanie Maloney, *University of Notre Dame Law School*

Judge Goldsmith

Kimberly Leaman, *University of Michigan Law School*
Andrew T. Winkler, *Thomas M. Cooley Law School (JD);*
Georgetown University Law Center (LLM)

Judge Drain

Sean Suber, *University of Virginia School of Law*
Ashley Mitchell, *University of Michigan Law School*

Judge Berg

Courtney Lanz, *University of Wisconsin Law School*
Samuel Díaz, *University of California Berkeley School of Law*

(continued on page 15)

Calendar of Events

**Nov. 20 Rakow Scholarship Awards/
Historical Society Luncheon**
Presentation of Rakow Scholarships
to a student from each Michigan law
school and the Third Annual Barbara
J. Rom Award for Excellence in
Bankruptcy Practice, coupled with the
Annual Meeting of the Court
Historical Society.
Special Keynote Speaker:
Retired Michigan Supreme
Court Justice Marilyn J. Kelly
Westin Book Cadillac Hotel
11:30 AM Reception
12:00 Noon Luncheon

**Dec. 3 Civil Rights Act, 50th Anniversary
Program: Panel Discussion**
Co-sponsored with the
U.S. Attorney's Office
Moderator:
U.S. Attorney Barbara L. McQuade
12:00 Noon
Levin Courthouse, Room 115
HOLD THE DATE, ADDITIONAL
DETAILS COMING SOON.

Dec. 4 Holiday Party
HOLD THE DATE
Westin Book Cadillac Hotel
Registration Coming Soon.

**Dec. 5 IP Committee Lunch:
Judicial Discussion on the
Differences in Challenging the
Validity of a Patent at the USPTO
and Federal District Court**
Judge Avern Cohn and his former

law clerk, Justin T. Arbes, now an
Administrative Patent Law Judge
at the USPTO, will discuss the
differences in challenging the validity
of a patent through an inter partes
review proceeding and federal district
court.

Judge Arbes will also discuss best
practices in handling cases before
the Patent Trial and Appeal Board.
Moderated by Christopher G. Darrow.
12:00 Noon
Room 115 of the Levin Courthouse

Dec. 9-10 New Lawyers Seminar
Levin Courthouse
8:30 A.M. Registration
FEBRUARY 2014 and PRIOR BAR
PASSERS: REGISTER NOW

**Dec. 12 The FBA Book Club Presents for
Discussion: *Uncertain Justice, The
Roberts Court and the Constitution*,
by Laurence Tribe and Joshua Matz**
Levin Courthouse
Room 722
12:00 Noon
Admission: Non-Member \$5.00
Lunch: Bring or your own or register in
advance for a \$10.00 lunch.

Updates and further developments at
www.fbamich.org
See "Hot News" and "Events & Activities"

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New Law Clerks *(from page 15)*

Judge Levy

Jonathan Parnes, *Georgetown University Law Center*

Jesse Taylor, *University of Michigan Law School*

James Woolard, *University of Michigan Law School*

Judge Michelson

Elisabeth F. Madden, *University of Michigan Law School*

Judge Leitman

Scott A. Warheit, *University of Michigan Law School*

Jeremy C. Kress, *Harvard Law School*

Judge Parker

Earl Kirkland, *Cornell Law School*

Lauren Mandel,

American University Washington College of Law

Magistrate Judge Majzoub

Corinne Lambert, *Thomas M. Cooley Law School*

Magistrate Judge Morris

Alexander Gallucci, *University of Notre Dame Law School*

Lilie Schoenack, *University of North Dakota School of Law*



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