

THE ADVOCATE

RAISING THE BAR TO NEW HEIGHTS

FEDERAL BAR ASSOCIATION
NEW ORLEANS CHAPTER



SPRING EDITION 2024

VOL. 33, NO.3

THE HON. BRANDON S. LONG JOINS THE EASTERN DISTRICT OF LOUISIANA AS ITS NEWEST UNITED STATES DISTRICT JUDGE

By G. Dall Kammer, Chief of General Crimes, U.S. Attorney's Office

U.S. District Judge Brandon S. Long took his oath of office on December 21, 2023, becoming the newest member of the Eastern District of Louisiana bench. He fills the vacancy created after the death of Judge Martin L.C. Feldman on January 26, 2022.

Judge Long is a local through and through. He currently resides in Old Metairie, just blocks from his childhood home. He attended St. Catherine of Siena School and graduated from Jesuit High School (A.M.D.G.) in 1995. He and his wife Elizabeth, an architect with a Washington, D.C.-based firm, were married in 2011. They have two sons, ages eight and nine. Judge Long sits on the board of directors for Boys Hope Girls Hope of New Orleans, a local nonprofit that operates group homes for academically-motivated children from disadvantaged backgrounds.

Judge Long attended the University of Texas at Austin on an academic scholarship and graduated *cum laude* in 1999 with Bachelor of Business Administration and Bachelor of Arts degrees. While at Texas, Judge Long completed three degree programs: Business Honors, Accounting, and Government. After graduation, he moved to New York City to work for a business consulting firm, Arthur Andersen. Judge Long was in New York during the 9/11 terrorist attacks, and vividly remembers the infamous Enron scandal that ultimately consumed his job at Arthur Andersen:

"I was with a large group of other employees standing around a television in stunned silence, watching then-Assistant Attorney General Christopher Wray announce the indictment that we all knew would put an end to Arthur Andersen." Little did Judge Long know that Christopher Wray would later become a colleague.



Judge Long with his court staff, including Madeline Thorpe (Law Clerk), Jordan Redmon (Law Clerk), Jeffrey Scalco (Case Manager), and Christine Abadie (Judicial Assistant)

INSIDE THIS ISSUE:

- It is literally impossible to be a woman [lawyer]
- The Gershanik Family Inspires New Orleans
- Federal Practice Series
- Capitol Hill Day
- Dear Jurisprudence
- Lunch with the Court

THE HON. BRANDON S. LONG: CONT'D



Chief Judge Brown swears in Judge Long alongside his wife Elizabeth Long.

Judge Long left New York in 2002 to attend the Duke University School of Law, where he served as a staff editor of the *Duke Law Journal*. He graduated *cum laude* in 2005, joining King & Spalding's Special Matters and Government Investigations practice in Washington, D.C. The leader of that practice group and his new boss was none other than Christopher Wray, who had just departed the Department of Justice. During this time, Judge Long practiced criminal defense, conducted internal investigations, and developed corporate compliance programs for global companies with a particular focus on the Foreign Corrupt Practices Act. He also worked on civil matters and performed hundreds of hours of pro bono work.

In 2010, Judge Long left the private sector to begin a 13-year career as a federal prosecutor. First, he spent four years at the U.S. Attorney's Office for the District of Columbia before returning home and joining the U.S. Attorney's Office for the Eastern District of Louisiana, where he served as a prosecutor in the Financial Crimes Unit, the Deputy Chief of the Narcotics Unit, and the office's Opioid Coordinator. Throughout his career, Judge Long directed the investigation and prosecution of violent crimes, narcotics offenses, public corruption, fraud, sex crimes, money laundering, and tax offenses.

During his last two years as an Assistant U.S. Attorney, Judge Long was recruited back to Washington, D.C. to work at FBI Headquarters as Deputy Chief of Staff and Acting Chief of Staff for his former colleague, FBI Director Christopher Wray. In those roles, he provided daily counsel to the Director on national security, criminal, and internal operational matters. He also helped with communications and public statements, advised on media appearances and congressional engagements, and worked with the Department of Justice on policy matters.

Sitting in his new chambers, still in the process of being furnished, Judge Long said that he would miss being a federal prosecutor. Judge Long said he "[N]ever had a bad day as a prosecutor... That's because my job, at the end of the day, was to pursue justice. To me, it was equally important to prosecute criminal cases with earnestness and vigor as to ensure that no one was prosecuted unjustly." Judge Long said he considers this experience an important foundation as he assumes the federal bench: "Similarly, I am now responsible for the fair, objective, and respectful observance of the law. I look forward to continuing to do my part to uphold the rule of law and administer justice fairly for all litigants who appear before me."

I also asked him what he expects of himself and of others who practice in his Court. Having personally worked with Judge Long for many years, his answer came as no surprise: "I will always be well prepared. I will listen carefully and with an open mind to the arguments of the parties. And I will try to be measured and reasonable in the way I approach matters. I expect the same from litigants. Bombast and personal attacks will not help advance your position. The best attorneys look for common ground, try to resolve issues by placing themselves in the other's shoes, and pursue their clients' interests respectfully, honorably, and zealously. I place a high premium on that type of practice."

Please join the Federal Bar Association New Orleans Chapter in welcoming Judge Brandon S. Long. May we all strive to be more respectful, honorable, and reasonable in our practice.

President's Message

By

BRIAN CAPITELLI

Capitelli & Wicker



As spring arrives, I find myself reminiscing about one of the most temperate and pleasant seasons I have experienced in our fair city. Of course, I am referring to the Spring of 2020, where I spent afternoons on my back porch trapped (I mean enjoying quality times) with my family. And while I generally focused on surviving with my three, cooped-up kids, I also attempted to slow down and limit the multi-tasking that a busy practice requires. I found tremendous value in taking time to reflect upon my work and myself. Since then, although it can often be difficult to do so, I have endeavored to carry forward the lessons of reflection into my work and life.

In that same vein, it is important for our organization to take the time to reflect upon our accomplishments over the past six months. During this period, our Chapter has continued to provide unique opportunities for networking and education. This past December, our Younger Lawyers Division (YLD) presented the second Mental Health and Wellness CLE with Sheila Wilkinson. The YLD also plans to present additional CLEs to address mental wellness concerns later this year.

Beyond our YLD's stellar work, as I indicated at our Annual Meeting, I hoped to accomplish two goals in my year as Chapter President: (1) continue to increase our membership; and, (2) provide unique volunteer opportunities for our membership.

As to the first goal, I am happy to report that after attending the recent National Council Mid-Year Meeting, our chapter remains the largest FBA chapter. That said, we still have work to do. The National FBA has initiated a membership drive—the "Countdown to Kansas City"—to precede this year's Annual Meeting. On behalf of our Chapter, we have submitted a membership plan, one that is aligned with the FBA's two goals for each chapter, to increase membership by 10% and to achieve 80% membership retention. Special thanks to our Membership Chair Kathleen Gasparian and our new Executive Director Debbie Skrmetta who have been instrumental in updating our membership plan.

As to our second goal, we are working with a local nonprofit to present additional volunteer opportunities for our membership, and we will continue our partnership with the Rebuild Center in serving the homeless in our community. Further, our Chapter has a busy summer ahead with the annual Morning at the Federal Courthouse and Justice Camp programs. Justice Camp has received many accolades and awards and has become one of the hallmark events for our organization. If you have or know a rising 9th- or 10th-grader, I encourage you to have them apply to this program. It is set for June 24th through June 28th, and it is a great, educational, practical, and rewarding experience for campers.

Most importantly, I am grateful for the hard work that everyone has contributed to strengthening our chapter over the past year, and I would be remiss if I did not specifically mention the hard work of our Board Members and Executive Director Debbie Skrmetta. Thank you.

Here's to a beautiful spring. I hope to see you at an FBA event and, with some luck, the Rolling Stones will actually be at the Fairgrounds soon.


Brian Capitelli

THE ADVOCATE EDITORIAL BOARD 2023-2024

Diana Surprenant (Co-Chair), Scott Sternberg (Co-Chair), Matt Almon, Brian Ballay,

Vanessa Beary, Colin Cambre, Melanie Derefinko (YLD), Camille Gauthier (YLD), Catherine Giarrusso, Stephen Haedicke, Palmer Lambert, Kelly Legier, Peter Mansfield, Kevin McGlone, Carey Menasco, Amanda Plaiscia, Karen Shipman, Judge van Meerveld

YLD CHAIR MESSAGE

By Chloé M. Chetta,
Barrasso Usdin Kupperman Freeman & Sarver, LLC

As I reflect on the FBA's first quarter of 2024 and look forward to the months ahead, one theme stays top of mind: lawyers of all ages, practice areas, and experience levels must let go of "the way we've always done it" and instead invest in continuous learning and skill development. And the FBA is here to help with that.



Unlike many other bar associations (and even other FBA chapters), our chapter is proud to offer free CLEs to all its members all year long. Rather than waiting until the end of the year to frantically collect CLE hours during the busy holiday season—the way many of us have always done it—consider learning with us year-round!

The FBA's regular programming aims to test your knowledge and experience, encourage you to think creatively, and find new solutions to old problems. For example, I've heard Chief Magistrate Judge Michael North urge CLE attendees time and again to "throw away your discovery templates!"—the way many of us have always started draft requests—because they're no longer any good based on recent decisions from our Eastern District of Louisiana magistrate judges. This guidance was invaluable to me when a recent opponent sent pages of preliminary instructions to discovery requests that defined "document" to include "floppy disks" for an alleged breach of contract in 2021. (And if anyone reading this is still using floppy disks, it's probably time to throw those away too.)

The very newsletter you're reading can also be a source of learning for FBA members. In the last edition of *The Advocate*, the anonymous advice column "Dear Jurisprudence" pointed out what looks like a persistent mistake, likely stemming from a copy-and-paste error, in Fifth Circuit and local caselaw—another example of how doing things the way we've always done it may not be the right approach. I look forward to learning more from "Dear Jurisprudence" in this and future editions of *The Advocate!*

The FBA's younger lawyers are often the most excited to learn and grow in the profession. Countless younger lawyers volunteered their time to teach and share with others at our Malcolm Monroe Federal Practice Seminar and Swearing In Ceremony. After one panel of law clerk alumni highlighted best practices across Louisiana's district courts and shared dos/don'ts for briefing and interacting with chambers, one attendee bravely stood up to say, "this is so helpful, and I wholeheartedly agree, but how do I explain all this to my boss who insists on doing things a certain way?" This exchange reminded me that young people, with all their texting and social media and use of contractions in briefing, really aren't the problem. It's the inability—or simple unwillingness—to pivot, progress, or improve that hinders our professional growth.

So in the words of Pete Townshend, "the kids are alright." And for those with a life-long love of learning, you will be too. The FBA looks forward to learning with you for years to come.

Chloé M. Chetta

“IT IS LITERALLY IMPOSSIBLE TO BE A WOMAN [LAWYER]”:

The Professionalism CLE that Turned the Bar Pink

By Kansas S. Guidry, Flanagan Partners LLP

In a much-anticipated CLE (that had to change locations three times to accommodate growing demand), hosted by the Association for Women Attorneys and the Federal Bar Association, about one hundred attorneys gathered on February 27, 2024 to discuss the difficulties of being a woman attorney. The audience included special guests, Judges Susie Morgan, Wendy B. Vitter, and Bernadette D'Souza, and Clerk of Court Carol L. Michel.

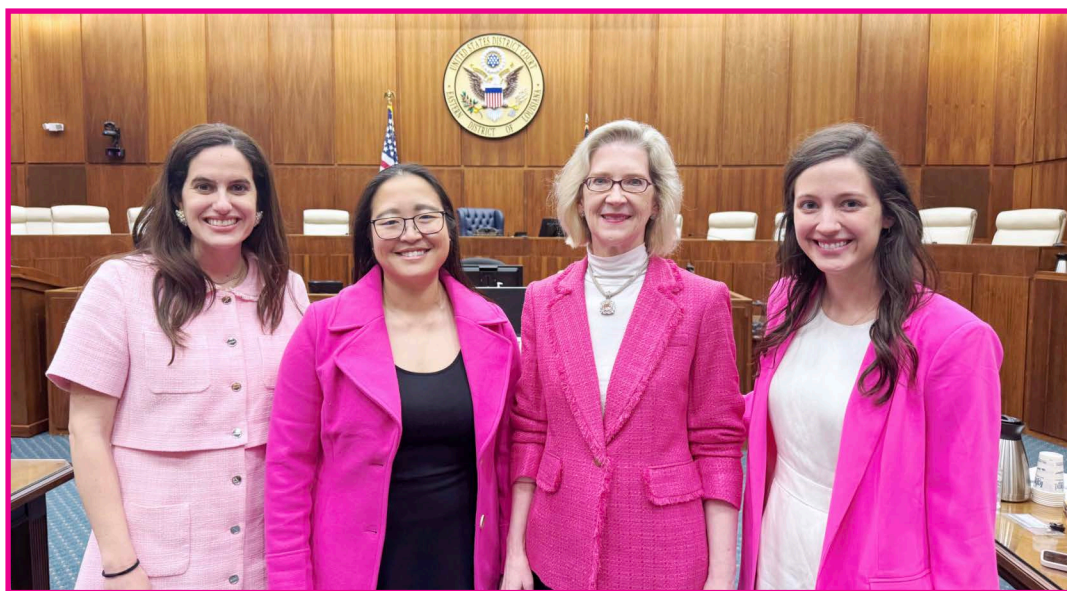


The highlight of the event was Magistrate Judge Janis van Meerveld's reenactment of Gloria's iconic monologue from the Academy Award nominated movie, *Barbie*. Judge van Meerveld was careful to point out that while Gloria is wrong that it is not literally impossible to be a woman (there are 3.95 billion of us), she unfortunately is right about everything else. Regaling us with scientific studies, anecdotes, a “mojo dojo casa house” reference that brought the house down, and a much more realistic revision of the lyrics to “I'm Just Ken,” Judge van Meerveld shed light on the challenges women attorneys routinely face. In one poignant example, she cited a *Virginia Law Review* article showing that female Supreme Court justices are interrupted more than their male colleagues by both their peers and the attorneys appearing before them.

Attendees then engaged in a game of Bingo where audience members shared examples of bias and gender discrimination they have faced. Prizes were awarded for marking squares covering common issues, including maternal walls, unfair compensation, imposter syndrome, and harassment. Attendees gave the CLE perfect scores across the board with many requesting a sequel. This Barbie can't wait to see the amazing presentation this team puts on next.



Camille Gauthier and Whitney Antoine



AWA board members Ashley Barriere, Amy McIntire, Judge Janis van Meerveld and Chloé Chetta.

¹ Tonja Jacobi & Dylan Schweers, *Justice, Interrupted: The Effect of Gender, Ideology, and Seniority at Supreme Court Oral Arguments*, 103 VA. L. REV. 1379 (2017).

Naturalized N'Awlins

DR. JUAN GERSHANIK – WORLD RENOWNED NEONATOLOGIST AND RESEARCHER
MRS. ANA GERSHANIK – COLUMNIST, SINGER, SYMPHONY ENTHUSIAST
BOTH – TEACHERS, PHILANTHROPISTS, AND ADVOCATES

By Carey L. Menasco, Liskow & Lewis

Since arriving in the United States in 1966, Dr. Juan Jorge Gershanik and Ana Ester Gershanik have made significant and lasting contributions to their communities. Lives have been saved and enriched because of their combined efforts.

GROWING UP IN ARGENTINA

Both Juan and Ana were born in and grew up in Argentina. In 1957, at age 15, Juan moved from his hometown of Concepcion del Uruguay to Rosario de Santa Fe for needed personal medical care and decided to pursue a career in medicine. Rosario, Ana's hometown, is a port city much like New Orleans. He met Ana there in 1960 when she was 16 years old and finishing school at Escuela Normal Nicolas Avellaneda, a high school/collegiate program where she obtained a degree in elementary education in both English and Spanish.

Juan and Ana met at a party for students. Both came from similar middle-class backgrounds, both were of Jewish faith, and both had strong ties to community service instilled by their parents. Their attraction was immediate and reciprocal!

Ana graduated from the Escuela Normal school in 1960 and continued her studies at the Universidad Nacional del Litoral to get a degree in Political and Diplomatic Sciences. She also pursued a degree in music at a private conservatory.

Juan received his medical degree from the School of Medicine at the Universidad Nacional del Litoral in 1963 at just 21-years-old – one of the youngest to graduate from medical school!

The newly minted Dr. Gershanik was interested in specializing in the United States, as many of his colleagues had done for a year or two before returning to Argentina to practice medicine. He applied for and obtained an internship in pediatrics at Variety Children's Hospital in Miami. But, he knew he couldn't move to the United States without Ana! After dating for five-and-a-half years, Ana and Juan married in Rosario in June 1966. Three days later, they traveled to the United States.

THE GERSHANIKS MOVE TO THE UNITED STATES

Although Ana had been bilingual in English and Spanish since childhood, Juan bravely came to the United States speaking only a few words in English. Juan had been promised that he would be working with Cuban immigrants who spoke the same language, but that did not happen, and he had a crash course in learning English! Having firsthand experience, Juan remained focused on eliminating language as a barrier to effective patient care throughout his career.



Dr. and Mrs. Juan Gershanik, new arrivals to the United States, Miami, FL 1966

While Juan continued his internship, Ana taught and worked evenings as a translator at the Variety Children's Hospital, where she helped Cuban immigrants communicate with their doctors. Helping others and removing barriers would become a consistent theme in the life of the Gershaniks.

Twenty days after Ana and Juan arrived in Miami, there was a military coup in Argentina. Although they had planned to return to Argentina after Juan's internship, the conditions in Argentina prompted Dr. Gershanik to pursue a residency in Pediatrics in the United States. And so, they moved to Lexington, Kentucky, where Juan embraced the field of Neonatology and where they welcomed their first child, Alex. In 1969, they moved to Charleston, South Carolina, where Juan completed a one-year fellowship in neonatology and then joined the School of Medicine's faculty.

Once in Charleston, Dr. Gershanik's career firmly established in the United States, and with circumstances in Argentina deteriorating, the United States was going to be their new home. Ana became the first female teacher at Porter-Gaud, then an all-boys school with all-men faculty in Charleston. She also started pursuing her master's degree in education at The Citadel.

Both Ana and Juan were thrilled that in the United States, they were able to succeed purely on their merit, unlike the fraught situation in Argentina where politics and connections were paramount.

SHREVEPORT BECOMES HOME FROM 1971 to 1979

In 1971, Dr. Gershanik was hired as a professor and head of the Section of Neonatology at LSU-Shreveport. He was attracted by the new challenges and the diversity and academic level of the faculty being recruited to the new medical school in Shreveport. It was there that Dr. Gershanik developed the first neonatal intensive care unit with an organized transport system within the state of Louisiana.

Although Dr. Gershanik was a professor, he struggled with delegating responsibility. Dr. Gershanik recalled one instance where he worked with a sick premature baby on New Year's Eve, in a tuxedo, having come in on an emergency call to the NICU. After hearing of the New Year's attire and work, his dean called him to his office and told him to leave some of this work to the residents. Dr. Juan responded, "These kids come with only one life and one brain, I cannot afford it!"

The Gershaniks said they enjoyed their time in Shreveport, where they made many lifelong friends and welcomed two more children, Viviana and Esteban.



Mrs. Gershanik and Dr. Gershanik at the inauguration of the Centro Hispano de Salud at West Jefferson Hospital 2022

NATURALIZATION AND NEW ORLEANS

In 1975, Dr. Gershanik became a U.S. citizen. He said the ceremony made him proud, and that he remembers vividly how he had developed a love for this country. Ana Gershanik became a U.S. citizen a year later, an emotional moment, she said, as two of her dear friends from Shreveport witnessed the ceremony.

A few years later, in 1979, Dr. Gershanik received an offer to start a Neonatal Intensive Care Unit at Southern Baptist Hospital, which was later renamed Memorial Medical Center. The Hospital wanted Juan to create a state-of-the-art facility there, just as he had done at LSU-Shreveport.

Inspired by the prospect of creating another premier neonatology unit that could help even more preemies, the Gershaniks relocated to New Orleans, and the city and our region have been the beneficiary of that decision ever since.

A SNIPPET OF DR. GERSHANIK'S CAREER SUCCESSES

While at Southern Baptist, in 1981, Dr. Gershanik received world-wide acclaim for his research and discovery concerning the toxicity of benzyl alcohol in neonates, which changed the course of treatment for those vulnerable patients. Dr. Gershanik's findings saved thousands of lives. Because of this discovery, he is in the Timeline of Neonatology (Neonatology on the Web, Classics and Diversions).

In 1993, Dr. Gershanik took care of a set of quintuplets at Southern Baptist Hospital. After the care given, the Guillet parents asked him to be the godfather of one of the quints. The Gershaniks remain in contact with the Guillet quints (now thirty years old) to this date.

When Hurricane Katrina made landfall in 2005, Dr. Gershanik helped to evacuate the babies from the NICU safely at the hospital. That included a one-and-a-half-pound preemie delivered at twenty-five weeks who needed an incubator to survive. The incubator could not fit on the helicopter, so Dr. Gershanik held the tiny infant and manually inflated his lungs to keep him alive all the way to Baton Rouge. Four months later, the baby was able to be discharged from the hospital. The Gershaniks remain in contact with that child, now 19, to this date.

Until his retirement in 2022, Dr. Gershanik was the Medical Director of the Neonatal Intensive Care Unit at West Jefferson Medical Center ("WJMC"). He previously served as Chair of the Pediatrics Department and as member of the Medical Executive Committee. Dr. Gershanik was honored for his years of dedicated service in 2023 with the Neonatal Intensive Care Unit being named after him.

Dr. Gershanik has kept his focus on the significant adverse effects a language barrier can have in providing medical care to underserved communities, particularly the Hispanic community. Even with a family member to translate, Dr. Gershanik observes, effective treatment suffers. He believes the true answer is to have doctors who speak the language and know the culture of their patients. Dr. Gershanik's life-long dream finally came to fruition with the December 2022 opening of WJMC's Centro Hispano de Salud – the first of its kind facility with a bilingual staff focused on the needs of the Hispanic community. The new facility has been so successful that Dr. Gershanik expects similar facilities will become commonplace.

A SNIPPET OF MRS. GERSHANIK'S PROFESSIONAL SUCCESSES

Realizing the responsibility of raising children in a new country and due to Juan's dedication to his work, Ana quit working full time when her second child was born. Nevertheless, she continued work as a substitute teacher, taught piano, and began her journey into non-profit volunteer work.

While in Shreveport raising her three young children, Ana decided to complete her master's degree in education. With no school in Shreveport offering the degree, Ana rode the bus three times per week to Natchitoches and completed her master's degree in secondary education at Northwestern State University. An impressive accomplishment, as any mother can attest!

The very first non-profit she joined was the National Council of Jewish Women ("NCJW"). Ana was impressed by the organization's commitment to social justice and remains involved to this day. Because of her love for music, Ana became involved with the Shreveport Symphony Orchestra. She is very proud of the Symphony Enrichment Programs in Caddo Parish schools, which she co-developed. After moving to New Orleans, Ana became very involved with NCJW and the Louisiana Philharmonic Orchestra, heading different projects for the local community and currently serving on the Boards of both organizations.

Ana also served for many years on the Board of the Council for Alcohol and Drug Abuse of Greater New Orleans ("CADA"), where she helped to develop and implement a prevention education program that was targeted to the Hispanic community in Spanish. (After Ana rolled off the CADA Board, Juan took her place and remains a fierce advocate of prevention education in both English and Spanish. Juan remains on the CADA Board today.)

In 1989, Ana became a columnist for The Times Picayune, where she wrote "Nuestro Pueblo" ("Our People") weekly. In the column, she focused on contributions of the Spanish-speaking residents and events in the Latino community. Ana continued writing her Times Picayune column and articles for other publications until 2019. She said she has many fond memories and photographs of the several celebrities she met over the years through her writings.

Juan describes Ana as his "role model" when it comes to giving back to the community. She has had leadership roles in many organizations, including the Agenda for Children, the Anti-Defamation League, Puentes New Orleans, United Way's Women United and Young Audiences, the Jewish Federation of Greater New Orleans' Goldring Family Foundation Center for Jewish -Multicultural Affairs Advisory Council, the Loyola University School of Humanities and Sciences, Tulane Cancer Center, WLAE, Board of Trustees of the Greater New Orleans Foundation, CADA, Louisiana Children's Museum, VIA, and the United Way of Greater New Orleans. She has received awards and recognitions far too numerous to list here.

Ana noted that much of her community involvement has been focused on the immigrant community. While she and Juan were fortunate in their experience, they understand the challenges that immigrants face and know the successes that can be achieved with a little help adapting to their new community.

LIFE TODAY AND LOVE OF THE UNITED STATES AND NEW ORLEANS

Ana and Juan have a deep love for New Orleans and emphasize they were accepted with open arms. Their neighbors were kind and inclusive. Ana observed many commonalities between New Orleans and Rosario – people in both places are family oriented, take time to have fun, like to eat – plus the overall neighborhood camaraderie.

Physical embodiments of Ana and Juan's love for the City of New Orleans and her inhabitants can be seen around town. In 2018, Juan and Ana commissioned and dedicated an 18-foot monument to the Latin American workers who were instrumental in rebuilding New Orleans after Katrina. Ana made sure a woman was one of those depicted! The monument can be seen in Crescent Park.

At Mardi Gras, the Krewe of VIPs can be seen in front of Touro Synagogue. Juan developed this program for young people with special needs and their families to provide safe, wheel-chair accessible viewing stands. This community might not be able to watch the parades otherwise.

Both Juan and Ana expressed joy that they were able to transmit their values to their three children, all of whom are successful in their professions and in community endeavors. Now that Juan has retired, he and Ana enjoy spending time with their children and six grandchildren, each of whom they described with glowing admiration. Both remain committed to their work with non-profit organizations.

New Orleans is so fortunate that Juan and Ana Gershanik decided to make their home here. This article does not do justice to the many contributions they have made. They are the true embodiment of the American Dream.



(From top left): Alex Gershanik, Viviana Gershanik Denechaud, Dr. Esteban Gershanik, Mrs. Ana Gershanik, and Dr. Juan Gershanik at Dr. Juan Gershanik's 80th birthday in 2021

TIDBITS

Ana's Favorite New Orleans restaurants: **Pêche and Lilette**

Juan's Favorite New Orleans restaurants:

La Boca Steakhouse and Baru Bistro and Tapas

Primary source: Interview with Dr. Juan and Mrs. Ana Gershanik on March 5, 2024. Additional sources considered:

<https://bit.ly/DrJuanGershanik>

<https://bit.ly/Gershaniks>

<https://bit.ly/3JqHBZg>

JUDGE MARTIN L.C. FELDMAN FEDERAL PRACTICE SERIES CLE

SESSION 1: FEDERAL COURT: WE DON'T BITE (UNLESS PROVOKED)

By Colleen Templeton, Gasparian Spivey Immigration

The Judge Martin L.C. Feldman Federal Practice Series CLE kicked off with Session 1, "Federal Court: We Don't Bite (Unless Provoked)" on Thursday, March 7th. Led by U.S. District Court Chief Judge Nannette Jolivette Brown and Magistrate Judge Janis van Meerveld, this session highlighted key tips for federal court procedure and practice, with warnings on how not to get "bitten" by one's own mistakes. The CLE covered common pitfalls in federal court such as ill-preparedness and lack of familiarity with the Federal Rules of Civil Procedure or Local Rules. Judges van Meerveld and Brown discussed best practices for each step of a federal court case, providing particularly helpful guidance on settlement conferences (follow those instructions on the pre-conference submission), Local Rules (note the recent amendments effective January 1, 2024), and motions (do not file a *Daubert* motion as a motion in limine). The CLE was an excellent primer for attorneys who do not practice regularly in federal court, and a good reminder for those who do.



Chief Judge Brown and Magistrate Judge van Meerveld discuss practicing in federal court.

SESSION 2: RECENT CHANGES IN EMPLOYMENT LAW

By Melanie Derefinko, Liskow & Lewis, APLC



Assistant Regional Attorney, Gregory Juge, Magistrate Judge Donna Currault, and Camille Bryant present on changes to employment law.

On March 14, 2024, EEOC Assistant Regional Attorney, Gregory Juge, Eastern District of Louisiana Magistrate Judge Donna Currault, and McGlinchey Stafford Partner, Camille Bryant, discussed several hot topics and changes to employment law, both in the Fifth Circuit and around the country.

For those who practice in employment law, check out the following recent changes and issues that may arise in the near future:

- The Equal Employment Opportunity Commission's Proposed Enforcement Guidance on Harassment in the Workplace. The Proposed Guidance, if issued, would be the first update to the EEOC's guidance on workplace harassment since 1999.
- The Supreme Court's reversal of its longstanding precedent on affirmative action in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023). While the Supreme Court's decision focuses on affirmative action in the context of higher education, it would not be surprising to see private employers faced with increased reverse discrimination claims that challenge an employer's diversity, equity, and inclusion initiatives.
- The Fifth Circuit's finding in *Hamilton v. Dallas County*, 79 F.4th 494 (5th Cir. 2023) that Title VII is not limited to economically adverse employment actions or "ultimate employment decisions," but may include scheduling and shift changes.
- The federal circuit split on whether reverse discrimination claims require heightened evidentiary requirements such that plaintiffs from majority groups must show background circumstances to support the suspicion that the employer is discriminating against "white" or "majority" employees. Because of the circuit split, the issue may be primed for Supreme Court review.
- The Supreme Court's clarification of the "undue hardship" standard in *Groff v. DeJoy*, 600 U.S. 447 (2023).

JUDGE MARTIN L.C. FELDMAN FEDERAL PRACTICE SERIES CLE

SESSION 3: E-DISCOVERY BEST PRACTICES IN SMALLER CASES

By Palmer Lambert and Remy Higgins, Pendley, Baudin & Coffin, LLP

On March 21, 2024, the New Orleans Chapter of the Federal Bar Association hosted Part Three of the annual Judge Martin Feldman Federal Practice Series CLE: E-Discovery Best Practices in Smaller Cases. Panelists were Magistrate Judge Karen Wells Roby, T.C. Wicker, and Andy Lee, and the presentation was moderated by Margot Want.

Set in Judge Vitter's courtroom, participants were guided through the importance of electronically stored information ("ESI") in every case, even smaller ones. Judge Roby stressed that ESI should be addressed early on, including upon notice of reasonably anticipated litigation or the first encounter with a new client. The panelists offered perspectives from the plaintiff, the defendant, and the bench on various topics involving ESI, including data collection, preservation, ESI orders, Rule 26(f) conferences, and production format. The panelists also provided examples of dos and don'ts with suggestions for best practices on how to avoid common problems and the dreaded adverse inference due to spoliation of evidence under Rule 37. The panel engaged the audience in regular polls and entertained questions throughout the presentation. Participants also received ideas on platforms to consider for assistance in meeting their ESI discovery needs. The New Orleans Chapter thanks the panelists for their time in preparing and presenting this interactive and enlightening CLE.



T.C. Wicker, Magistrate Judge Roby,
Margot Want, Andy Lee

SESSION 4: LEGAL WRITING BY THE NUMBERS (PART TWO): A JUDICIAL SURVEY OF DOS, DON'TS, AND OTHER TIPS

By Chloé M. Chetta, Barrasso Usdin Kupperman Freeman & Sarver, LLC, Jeffrey J. Gelpi, Kean Miller LLP, & Amy L. McIntire, Chaffe McCall, LLP



Amy L. McIntire, Chloé M. Chetta, & Jeffrey J. Gelpi

On March 28, 2024, Chloé Chetta, Jeffrey Gelpi, and Amy McIntire closed out the FBA's Feldman Federal Practice Series CLE with their presentation *Legal Writing by the Numbers (Part Two): A Judicial Survey of Dos, Don'ts, and Other Tips*.

Have you ever wondered what the judges really think about your legal writing and common briefing tactics? In 2022, the federal bar said yes, and our district court and magistrate judges in the Eastern District of Louisiana completed an anonymous survey for feedback on what they like and don't like about most lawyers' writing styles and legal briefs. The presenters compiled the judges' responses and presented an empirical analysis of the results. Two years later, the federal bar had more writing questions, so this year's presenters conducted a follow-up survey, yielding even more responses and feedback.

Unsurprisingly, the judges value clarity and readability: shoot for concise briefs written in plain English using consistent writing choices and techniques that make the facts and law easy for the judges and their law clerks to understand (and verify).

For example, there's no need to expressly define Plaintiff John Doe as ("Doe") in the first sentence if John is the only Doe you're going to talk about. And never define Plaintiff John Doe as ("Plaintiff" or "Doe" or "Mr. Doe")—just pick one! Similarly, if the shortened party name is a well-known entity, like the FBI or IRS, most judges found it unnecessary for you to define

the Federal Bureau of Investigation as (“FBI”) in brackets or parenthesis. After all, it's not like you came up with that abbreviation. If you're going to define a person in a case involving multiple parties with similar names, be consistent throughout the brief and think critically to avoid confusing your reader. Say you're talking about both the Department of Justice and the Department of Interior in the same brief; instead of calling them DOJ and DOI, which look too similar, consider Justice and Interior.

If you're citing a district court or magistrate judge opinion (because you have exhaustively searched for circuit precedent and found none, which you should also tell the court) consider putting the judge's name in a citation parenthetical, especially if you're arguing before the *same* judge. The judges and their clerks will check, so go ahead and make it easier for them. Recognizing that no district or magistrate judge is binding on their colleagues, never refer to another section or division as “*this Court*,” when you really mean a judge down the hall.

The judges gave some mixed feedback on more recent legal writing trends. For example, though every federal circuit and district court (including 80% of our Eastern District judges and magistrate judges) have used the “(cleaned up)” parenthetical,¹ that doesn't mean you should use it. Part of your job as a lawyer and advocate is to “show your work” in briefing by proving the accuracy, credibility, and reliability of your position and arguments. Follow the Bluebook rules for altering case quotes, and if you're desperate to use “(cleaned up),” consider simply paraphrasing your point and including the full quote in a citation parenthetical or searching to see if the quote has already been cleaned up in another case that you can quote instead.

Contractions in judicial opinions are also on the rise, so we're seeing them more and more in briefing too. Most judges said this is okay if the contraction makes the sentence clearer and easier to read. Sometimes adhering to formality for the sake of formality will impede understanding. But judges who disfavor contractions feel strongly about them! So use only sparingly.

The same make-it-easy-to-read-and-understand principle applies to record citations and exhibits as well. Nearly all the judges said that the occasional timeline, graph, chart, or photo in a brief can help illustrate important points that may be difficult to explain in traditional paragraph form. That said, illustrations in briefs must still be accurate and supported by appropriate citations. Similarly, if you attach part of a deposition transcript as an exhibit, make sure the part that you attach tells the whole story. Most judges preferred to see some additional transcript pages before and after the cited colloquy for proper context.

Again, our judges prefer simplicity, efficiency, and readability. As more than one judge put it, “stop trying to sound like what you think a lawyer should sound like.” Do you “traverse” through the courtroom to get to the podium, or do you “walk” there? Do you “alight” from your vehicle, or do you “get out” of it? And better yet, instead of “vehicle” or “automobile,” you can just call it a “car.” Big words don't make you special. Your big brain does!

¹Jack Metzler, *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143 (2017).



IMPROVED ACCESS TO THE COURT THROUGH ELECTRONIC FILING & DOCUMENT SUBMISSION

By Brandon Briscoe, Chief Deputy Clerk, EDLA

The Clerk's Office has implemented two new procedures to make filing easier in the Eastern District of Louisiana. First, counsel in civil litigation can now electronically file sealed documents without having to deliver hard copies to the courthouse. And second, *pro se* litigants who lack CM/ECF access can now electronically submit pleadings through an online portal for potential filing. If properly followed, the new procedures provide the convenience of allowing always-available, 24/7 remote filings that previously required in-person or mail delivery.

1. ELECTRONICALLY FILING DOCUMENTS UNDER SEAL IN CIVIL CASES

In conjunction with the amendment to Local Civil Rule 5.6 (effective 1/1/24) concerning filing documents under seal, the Clerk's office launched a new process in CM/ECF that permits parties to submit sealed documents to the Court electronically. Due to heightened sensitivity and security concerns in criminal cases, parties in criminal cases are still required to file sealed documents via hard copy.

Importantly, the amended local rule emphasizes that sealed filings are disfavored, particularly when parties seek to conceal entire documents from the public record. But when parties believe the circumstances warrant sealing certain information, they may now file a motion to seal in CM/ECF in a way that keeps the to-be-sealed documents hidden from public view—even from the filing attorney. In most instances, counsel will file two pleadings: (1) a motion to file under seal (with redacted and un-redacted versions of the potentially sealed material) and (2) a redacted version of the potentially sealed pleading/document that will be publicly available. When filing the motion to seal, parties will encounter a check-box screen that permits them to select files to be filed hidden from public view. Documents that are “checked” and filed as confidential will be visible only to the Court and not to the public, counsel in the case, or even the filing attorney. Filers should attentively review the instructions and selections on this check-box screen.

If a confidential document is left unchecked and is filed into the public record, filers will not be able to retrieve it themselves. In some instances, the Clerk's Office may be able to assist with correcting mistakenly filed sensitive information, but only during normal business hours. In the interim, the sensitive information will be available for public viewing and downloading, so filers should exercise extreme caution when using this feature. That said, the most frequent error attorneys have made in electronic sealed filings so far has been to leave too many boxes checked, thereby mistakenly hiding non-confidential documents from public view.

Counsel seeking to file documents under seal should carefully review amended Local Civil Rule 5.6 and the Instructions and FAQs for e-filing under seal. All are available at <https://www.laed.uscourts.gov/news/amendments-local-rules-effective-january-1-2024> or scan QR code



2. ELECTRONIC DOCUMENT SUBMISSION FOR *PRO SE* LITIGANTS

Because only licensed attorneys who are members in good standing with the Court may file pleadings electronically in the Court's CM/ECF system, most *pro se* litigants previously could file only by submitting hard-copy documents to the Court's *pro se* unit. But now, *pro se* litigants can access the Court's new Electronic Document Submission System to submit pleadings electronically for potential filing.

The new system allows *pro se* litigants to submit documents remotely, 24/7, without visiting the courthouse during business hours and sparing them the delay and expense of mail delivery. A submission through the new portal is not the same as filing—as with hard-copy submissions, the Clerk's Office will still review electronic documents for compliance with the Federal and Local Rules before accepting them and entering them into the record. And the system does not allow parties to view dockets, download pleadings, or receive automatic notices of filings. But it improves the *pro se* document submission process by increasing convenience, eliminating the potential for *ex parte* communications with Court personnel, and requiring *pro se* litigants to submit only .pdfs that can be filed into the record.

In most instances, documents are processed within 1-2 business days of receipt, with the filing date being the date the document was received. *Pro se* litigants remain responsible for serving all counsel of record and/or unrepresented parties with the documents they submit through the portal. The *Pro Se* filing portal and complete instructions are available at: <https://www.laed.uscourts.gov/content/electronic-document-submission-system-edss> or scan QR code





Dear Jurisprudence,

is our new off the record, anonymous, and categorically not-real-legal-advice column penned by the mysterious "Jurisprudence," who takes on hypothetical questions about practice, procedure, and beyond.

IDEAS? E-mail NOFBAJurisprudence@gmail.com

Dear Jurisprudence: I recently moved for summary judgment in federal district court and noticed that my opponent failed to include affidavits to authenticate the exhibits attached to the opposition. I thought the federal rules required authentication; could my opponent have forfeited his position so easily? I'm prepared to hammer this in my reply—and win!

—Affidavit Overachiever

Dear Overachiever,

I hate to be the bearer of bad news, but these persnickety rules change every year, and this one changed more than a decade ago! Though antiquated statements still may persist in cases here or there, those that insist on an affidavit attesting to every document are simply wasting their time!

To begin, federal courts generally do not require an *affidavit* to accompany summary judgment briefing—28 U.S.C. § 1746 declares that *declarations* are in fashion for every season! This statute makes clear that whenever a "sworn" attestation appears required, you can slay your opponent far more simply with a declaration under penalty of perjury—no notary needed.

But back to the matter at hand: your worthy adversary needs neither affidavit nor declaration to support the opposition to your motion. Such niceties were indeed required at one time (and state court has its own peculiar rules). The Fifth Circuit had pronounced that "to be admissible as summary judgment evidence documents must be authenticated by and attached to an affidavit," *Haynes v. Pennzoil Co.*, 141 F.3d 1163, at *3 (5th Cir. 1998), and that "[u]nsworn documents are not appropriate for consideration," *Martin v. John W. Stone Oil Distrib., Inc.*, 819 F.2d 547, 549 (5th Cir. 1987).

But, in 2010, the Advisory Committee recommended a rule change "to clarify and streamline the [summary judgment] procedures," and pragmatism prevailed. *Lee v. Offshore Logistical & Transp., LLC*, 859 F.3d 353, 354 (5th Cir. 2017). Now, "materials cited to support or dispute a fact need only be *capable of*" presentation in a form that would be admissible in evidence at trial. *Maurer v. Independence Town*, 870 F.3d 380, 384 (5th Cir. 2017) (quoting *LSR Consulting, LLC v. Wells Fargo Bank, N.A.*, 835 F.3d 530, 534 (5th Cir. 2016)). Thus, "new" Rule 56 expressly contemplates that affidavits are only *one* way to support (or oppose) a fact, while "documents . . . declarations, and other materials" can do the same. *Lee*, 859 F.3d at 355.

This greater flexibility allows courts to consider evidence that "would *likely* be admitted at trial . . . without imposing on parties the time and expense it takes to authenticate everything in the record." *Maurer*, 870 F.3d at 384 (emphasis added) (citing Fed. R. Civ. P. 56(c)(1)(A)). Indeed, dear reader, above all else, our Federal Rules of Civil Procedure must be employed "to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1.

Fret not about your misunderstanding, *Overachiever!* The Fifth Circuit itself has at times overlooked this important revision. Years after the rule change, it advised that district courts "may consider only admissible evidence in ruling on a motion for summary judgment," and cited a case from the early aughts. *Arlington Apartment Investors, LLC v. Allied World Assurance Co.*, 612 F. App'x 237, 238 (5th Cir. 2015) (quoting *Mersch v. City of Dallas*, 207 F.3d 732, 734–35 (5th Cir. 2000)). More surprising still, in *Huff v. Neal*, the Fifth Circuit announced that Rule 56 "requires that evidence be sworn, certified, or verified material," while relying on a case nearly *three decades old*. 555 F. App'x 289, 294 (5th Cir. 2014) (citing *Lodge Hall Music, Inc. v. Waco Wrangler Club, Inc.*, 831 F.2d 77, 80 (5th Cir. 1987)).

It bears repeating that our Federal Rules change every year! And the Fifth Circuit has since righted its ship with a series of published cases. In *LSR Consulting, LLC v. Wells Fargo Bank, N.A.*, 835 F.3d 530 (5th Cir. 2016); *Lee v. Offshore Logistical & Transp., LLC*, 859 F.3d 353 (5th Cir. 2017); and *Maurer v. Independence Town*, 870 F.3d 380 (5th Cir. 2017), you can read for yourself the way of the future and confirm that authenticating affidavits are truly a thing of the past (and, well, the rules are a bit different in Louisiana state court).

So, dear reader, your opponent did right by the rules, and you must let it go and spar over the merits instead. But I trust that the winning argument will win the day! And remember . . . *Good advice is always sustained.*

Yours ever, Jurisprudence



NOFBA Goes to Washington, DC for Capitol Hill Day and the 2024 FBA Leadership Summit

By Debbie Skrmetta, Executive Director, NOFBA

Recently, several members of the New Orleans, Baton Rouge and Lafayette-Acadiana chapters of the Federal Bar Association headed to Washington, DC to advocate for our federal bench and bar as well as participate in a leadership training conference. Attendees from New Orleans included Treasurer Larry Centola, Judge Janis van Meerveld, Ashley Belleau, Kathryn Knight, Kelly Scalise, and Executive Director, Debbie Skrmetta. Baton Rouge Chapter attendees included President Sharon Whitlow, President-Elect Tara Johnston, and Past President and current 5th Circuit CVP Mark Barbre. The Lafayette – Acadiana Chapter was represented by Kenneth St. Pe.

Capitol Hill was packed with representatives from FBA chapters from around the country on March 21, 2024. Over 170 meetings were held to advocate for judicial security, federal court funding, creation of judgeships, and other critical issues to the federal bench and bar. This was the largest Capitol Hill Day the FBA has ever hosted, which made an enormous difference in sharing our important messages. The meetings with our Louisiana delegation were extremely productive, and we received supportive feedback on our requests. We met personally with Senator Bill Cassidy, and Rep. Julia Letlow, and with the offices of Sen. John Kennedy, Speaker Mike Johnson, Majority Leader Steve Scalise, Rep. Troy Carter, and Rep. Clay Higgins.

The last two days of our time in DC were busy with leadership meetings, training, and networking. Topics discussed included membership strategies for success, best practices in programming, bench and bar relations, and law student engagement. Presenters from all over the country brought a variety of different perspectives to the discussions. The chapter leadership roundtable discussions were extremely valuable, highlighting innovative ideas in CLE offerings, engaging law students and younger lawyers, and marketing and communication strategies.

On Friday night, our delegation joined Ashley Belleau, President of the Foundation of the FBA, and past president of the National Federal Bar Association (2010-2011) and the New Orleans Chapter of the FBA (1999-2000), at a reception at the Supreme Court. Ms. Belleau led the ceremony honoring Associate Justice Ketanji Brown Jackson as she became an Honorary Life Fellow of the Foundation. Justice Jackson then presented the Foundation's annual civics essay contest winner, Faith Kim, of Medford, New Jersey, with her award. It was a terrific and memorable way to wrap up an interesting and valuable few days.



*The New Orleans Delegation preparing for Capitol Hill Day
Debbie Skrmetta, Larry Centola, Judge Janis van Meerveld, Ashley Belleau*



*Meeting with Senator Bill Cassidy
Sharon Whitlow, Tara Johnston, Senator Bill Cassidy, Ashley Belleau, Mark Barbre*



Front: Kelly Scalise, Kathryn Knight, Ashley Belleau, Sharon Whitlow, Debbie Skrmetta. Back: Charles Cerise, Larry Centola, Mark Barbre, Tara Johnston, Judge Janis van Meerveld, Kenneth St. Pe



Mark Barbre, Ashley Belleau, Tara Johnston, Congresswoman Julia Letlow, Debbie Skrmetta, Sharon Whitlow, Larry Centola, Judge Janis van Meerveld

EDLA BLACK HISTORY MONTH Program Spotlights Lost New Orleans Community

By Jackie Hickman, Liskow & Lewis, APLC

The United States District Court for the Eastern District of Louisiana celebrated African American history month with a two-hour CLE program entitled “We See You: Remembering and Acknowledging the Lost, Erased, and Ignored Communities of Color in Louisiana.” The program featured WLAE-TV’s Emmy-winning documentary *Battlegrounds: The Lost Community of Fazendeville* and included a panel discussion by Monica Pierre, the film’s executive producer and a Xavier University Professor, Dr. Albert Samuels, a Southern University Professor, and Cashauna Hill, J.D., the Executive Director of the Redress Movement. Chief Judge Nanette Jolivette Brown introduced the program, and Chloé Chetta, Chair of the Younger Lawyers Division of New Orleans Chapter of the Federal Bar Association, moderated the event.

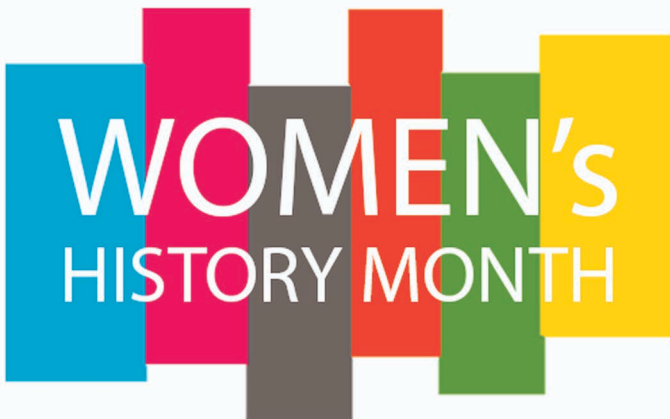
Battlegrounds tells the story of the destruction in 1966 of one of the oldest African American neighborhoods in the New Orleans area. The Fazendeville neighborhood in St. Bernard Parish was founded in 1867 by Jean Pierre Fazende, a free man of color, and became home to many newly emancipated slaves. The community provided one of the first opportunities in United States history for African Americans to own property and quickly expanded to include not only homes, but African American-owned businesses, such as general stores, recreation halls, meeting places, churches, and bars. The neighborhood was almost entirely self-sufficient and thrived independently for nearly 100 years. Former residents interviewed in the documentary described the community as tight-knit and idyllic. The documentary featured historic pictures of Fazendeville homes with white picket fences on neatly lined streets.

The neighborhood was adjacent to the Chalmette Battlefield. However, in the early 1960s, the National Park Service wanted to expand that historic site in anticipation of a commemoration of the 1815 Battle of New Orleans. Over the objections of the Fazendeville residents, President John F Kennedy signed an order authorizing the National Park Service to expropriate the neighborhood. Following that order, in 1966—99 years after its founding—the Fazendeville community was bulldozed, and the residents were forced to find new homes and communities. The experience left many former residents feeling as though they had no voice and were powerless to protect their community. As many former residents attested, the memory of being forced to leave the community they loved lingered painfully.

Between excerpts from the documentary, the program’s panelists discussed themes raised by the story of Fazendeville and lessons to be learned. The panelists drew connections between the destruction of Fazendeville and other historical practices that disempowered African American communities, such as redlining and political gerrymandering. They also discussed a throughline from those historic practices to the modern-day disempowerment of African American communities through gentrification, environmental injustice, and continued gerrymandering. The central theme underlying the discussion was to understand the importance of communities like Fazendeville so that the history of disempowerment of African American communities is not repeated.

Battlegrounds: The Lost Community of Fazendeville is available to the public and free to view on YouTube.

THE COURTHOUSE CELEBRATES



“WOMEN EMPOWERING THE COMMUNITY THROUGH EDUCATION”

By Lilian Pascone, Chief Deputy Clerk, EDLA

On March 20, 2024, Chief Judge Nannette Jolivette Brown welcomed over 300 attendees in-person and online to the Eastern District of Louisiana for a Women’s History Month CLE titled “Women Empowering the Community Through Education.” The event kicked off with a presentation from Dr. Sharlene Sinegal-DeCuir, Professor of History at Xavier University, on the historic work of St. Katharine Drexel and the Sisters of the Blessed Sacrament. Dr. Sinegal-DeCuir explored the fascinating journey of St. Katharine Drexel from a sought-after heiress in Philadelphia to a champion of educational access for African Americans in Louisiana.



*From left to right:
Dr. Johnson, Dean Landrieu, Chief Judge Brown, Dr. Sinegal-DeCuir, Dean Ransom, and Dr. Smith.*

Following Dr. Sinegal-DeCuir’s presentation, Chief Judge Brown moderated a panel of present-day women leaders in higher education as they discussed their professional pathways and the challenges and opportunities for women in their field. In addition to Dr. Sinegal-DeCuir, the panel consisted of Dr. Kathy Johnson, President of the University of New Orleans; Madeleine M. Landrieu, Dean of the College of Law at Loyola University of New Orleans; Dr. Ceeon D. Quiett Smith, the Executive Vice President of Student Success and Operations for Dillard University; and Tracie N. Ransom, Assistant Dean for Equity, Diversity & Inclusion for Tulane Law School.

The distinguished panelists closed the two-hour program with advice on how lawyers can leverage their legal experience to contribute to the educational arena and ensure that diversity and inclusion are honored in education and legal education. A recording of the CLE can be found here:

<https://www.laed.uscourts.gov/news/2024-womens-history-month-celebration-0>



Judge Douglas sharing her legal experience over lunch with attendees.

Lunch with the Court | Judge Dana Douglas

By Alexis Rose Topel – Juris Doctor Candidate, Loyola New Orleans College of Law

The New Orleans Chapter of the Federal Bar Association kicked off 2024 with its first installment of “Lunch with the Court,” featuring Judge Dana Douglas of the United States Court of Appeals for the Fifth Circuit.

FBA YLD Board Member Kristen Amond led the round-table discussion and lunch, held in the Fifth Circuit *en banc* conference room. Amond's questioning focused on Judge Douglas' rearing in New Orleans, her family's background in law enforcement, her college and law school journey and her ultimate crescendo as the first African American female judge appointed to the U.S. Fifth Circuit. Attendees learned that Judge Douglas was born and raised in New Orleans and that many in her family have been in law enforcement. After graduating from Miami University in Ohio, Judge Douglas attended Loyola New Orleans College of Law, and clerked for U.S. District Judge Ivan L.R. Lemelle. Judge Douglas then worked for Liskow & Lewis for 18 years before becoming a U.S. Magistrate Judge and, eventually, being appointed to the Fifth Circuit by President Joe Biden.

Judge Douglas said she was inspired to go into law during her mother's time working in the Orleans Parish Civil District Court, where she would spend her summers working as well. Her St. Mary's Academy High School senior yearbook reflects that she aspired to be a Juvenile Court Judge. Judge Douglas noted that it was those judges she perceived to have tremendous impact on the lives of her peers at the time.

The lunch concluded with a question-and-answer, led by Amond, focused on appellate advocacy, professionalism, and career planning. The FBA thanks Judge Douglas for her time.



Judge Ashe with lunch attendees.

Lunch with the Court | Judge Barry Ashe

By Jose R. Ruiz, Deutsch Kerrigan, L.L.P.

On February 28, United States District Court Judge Barry Ashe invited practitioners into his courtroom as part of the FBA's Lunch with the Court program. Over the course of the hour, Judge Ashe and his law clerks, Megan Dupuy and Avery Austin, provided insight into the operations of Section M. It was a memorable and insightful afternoon, and the FBA is grateful for Judge Ashe's hospitality.



Lunch with the Court | Magistrate Judge Michael North

By Emma K. Schwab, Irpino Avin Hawkins



Magistrate Judge North with lunch attendees.

Magistrate Judge Michael North hosted the Younger Lawyer's Division Lunch with the Court on Thursday, April 4, 2024. Judge North discussed how practitioners can improve their written and oral advocacy skills by removing general objections in written discovery and eliminating speaking objections in depositions. Judge North provided situations and examples that warrant contacting his chambers during a deposition. Judge North also discussed settlement conferences in the Eastern District and candidly answered questions about how he handles them. The FBA offers its sincere thanks to Judge North and his staff for their time in making this Lunch with the Court another success.

Cocktails with the Court

The legal community gathered for cocktails with members of the judiciary on March 12, 2024 at The Eliza Jane Hotel.



Scenes from a well-attended Cocktails with the Court.



TRIALS & TRIBULATIONS

By Colin Cambre, Phelps Dunbar

CIVIL – MARITIME

Gulf Island Shipyards v. LaShip, et al.

Following Hurricane Ida, Plaintiff Gulf Island Shipyards and Defendant LaShip suffered ship breakaways along the Houma Navigational Canal. The parties' facilities were located opposite one another on the Houma Navigation Canal and Plaintiff alleged that Defendant's breakaway ships caused their moored ships to break away and suffer damages. Defendant asserted a counterclaim alleging it was Plaintiff who negligently moored its ships, that everybody's ships independently broke away due to the storm, and that once adrift, Plaintiff's breakaway ships caused damage to one of the Defendant's breakaway ships and that plaintiff was thus liable.

The Court found both parties negligent in their mooring arrangements, that the ships independently broke loose, and that following the breakaways, one of Plaintiff's ships and one of Defendant's ships collided causing damage to one another. The Court found Plaintiff 65% at fault and Defendant 35% at fault and thus Plaintiff was liable to Defendant in the amount of \$559,130.65 and Defendant was liable to Plaintiff in the amount of \$176,095.68.

Case No. 22-154 L(4) (Non-Jury trial held before Judge Eldon E. Fallon on December 11-12, 2023).

CIVIL; DECLARATORY JUDGMENT; INSURANCE

AIG Specialty Ins. Co. v. Agee, et al.

In 2014, the two Defendants Agee and Harrelson were employed by a company that is now defunct and which was insured by AIG Specialty. They were wrongfully terminated in 2014 and sought compensation purportedly owed to them under their employment contracts, ultimately suing the company in state court and winning a judgment in December 2022 awarding Agee just over \$1 million and Harrelson just over \$2 million in owed compensation. Because the company is defunct, AIG Specialty filed suit seeking a declaratory judgment that they need not pay the state court judgment on behalf of the defunct company.

Defendants Agee and Harrelson asserted a counterclaim alleging that AIG Specialty does in fact provide coverage for this loss.

The Court found that the insurance policy's exclusion that barred coverage for losses relating to a breach of contract operated to bar coverage in this case because the underlying state court judgment was for a breach of contract claim and Louisiana Wage Payment Act claim.

Case No. 22-5410 L(2) (Non-jury trial held before Judge Eldon E. Fallon on December 4, 2023).

PERSONAL INJURY

Nette, et al. v. Omater Trucking, LLC

Plaintiff is a railroad engineer at Norfolk Southern Railway Company. On March 11, 2022, a train to which the Plaintiff was assigned collided with an 18-wheeler operated by the Defendant at a railroad crossing in Arabi. Cab video showed that Defendant's truck driver was Face-Timing with his family at the time he crossed the railroad with the train bearing down. Plaintiff testified that he was flung off the train ladder upon impact and claimed injury to his left knee and a SLAP (labral) tear in his right shoulder, ultimately requiring shoulder surgery. Defendant stipulated to the negligence of its driver and that it was vicariously liable for its driver's actions but disputed that the accident caused the Plaintiff's injuries.

Plaintiff had a lengthy history of prior train collisions, auto accidents, and workplace injuries. Defendant argued that the Plaintiff's shoulder injury was a preexisting condition not caused by the accident. Defendant's expert witness, an orthopedic surgeon, testified that MRI imaging taken in 2018 showed the SLAP (labral) tear in Plaintiff's right shoulder. Plaintiff's orthopedic surgeon testified that the 2018 MRI imaging did not show a SLAP tear, thus the tear was caused by the accident and that surgery was necessary for the Plaintiff to fully recover.

After one hour of deliberation (including lunch), the jury rendered a verdict in favor of the Defendant, finding that the Plaintiff did not prove that his injuries were caused by the Defendant.

Case No. 22-cv-3949 D (Jury trial held before Judge Wendy B. Vitter on March 4-5, 2024).

FLSA WAGE DISPUTE

Shaw, et al. v. Alpha Air Heating & Conditioning, et al.

Plaintiffs worked as HVAC installers and laborers for Defendants Alpha Air Heating & Conditioning, LLC and Derek Granger, the sole owner of Alpha Air. Plaintiffs claimed that they were never paid overtime wages for the time they worked at Alpha Air and were not paid their straight wages for the last several weeks of their employment before ultimately resigning.

Plaintiffs brought suit under the federal Fair Labor Standards Act ("FLSA") and Louisiana Wage Payment Act ("LWPA") against the Defendants to recover unpaid wages. Prior to trial, the Court determined on summary judgment that the Plaintiffs qualified as employees under the FLSA and that the FLSA otherwise applied.

At trial, the Plaintiffs provided evidence of their hours worked each week and the wages they earned.

The Court found the Defendants liable to the Plaintiffs under both the FLSA and LWPA for failure to pay minimum wages, overtime wages, and straight wages.

Case No. 22-cv-3953 D (Non-jury trial held before Judge Wendy B. Vitter on January 22, 2024).

TORT – NEGLIGENCE AND BREACH OF CONTRACT

St. Augustine High School, Inc., New Orleans, Louisiana v. Covington Flooring Co., Inc., et al.

St. Augustine High School contracted with Covington Flooring Co., Inc. to replace the hardwood floors in the gymnasium that were damaged during Hurricane Ida. Shortly after the flooring workers left for the day on November 25, 2021, a fire was discovered in the gymnasium.

The fire originated within rags that were left in a five-gallon bucket in the northeast portion of the gymnasium. The fire was caused by self-heating, also referred to as spontaneous combustion, of the rags that contained fatty acids and mineral spirits. The rags were not disposed of in compliance with manufacturer instruction or the City of New Orleans Fire Prevention Code.

At the time of the fire, the gymnasium was leased by St. Augustine High School and Covington Flooring Co., Inc. was insured by The Charter Oak Fire Insurance Company and Travelers Property Casualty Company of America.

After five hours of deliberation, the jury found (1) that Defendant Covington Flooring Co., Inc. was negligent; (2) that Covington Flooring Co., Inc.'s "independent contractor" was negligent; (3) that Covington Flooring Co., Inc. is vicariously liable for the actions of its "independent contractor"; and (4) that Covington Flooring Co., Inc. breached a contract with St. Augustine High School.

The jury also found comparative fault, apportioning 99% to Covington Flooring Co., Inc., and 1% to the independent contractor.

The jury awarded St. Augustine High School \$6,396,096.00 for property damages sustained in the gymnasium.

Case No. 23-371 G (Jury trial held before Judge Nannette Jolivette Brown March 11-14, 2024).

MEMBER SPOTLIGHT

ROBIN CASSEDY



Robin Cassedy is an attorney at **Strauss, Massey, Dineen, LLC**, where she focuses her practice in automotive insurance defense and property insurance, with particular emphasis on matters involving allegations of bad faith or questions of coverage. She also has experience defending insurers participating in the National Flood Insurance Program, and experience in general commercial litigation and maritime law. Her first experience in a courtroom was as a student attorney for the Tulane University Law School's Domestic Violence Clinic, advocating on behalf of survivors of domestic violence.

We hope you enjoy getting to know Robin!

HOW HAS BEING A MEMBER OF THE FBA ENHANCED YOUR CAREER / BENEFITTED YOU PERSONALLY OR PROFESSIONALLY?

FBA Programming was an invaluable resource to me when I began my legal career for programming (especially the Malcolm Monroe Federal Practice Seminar) and for connecting with more experienced attorneys. These two elements helped me further advance and develop my legal career at an accelerated rate, much more so than if I was just to start working without the advantages that the FBA offered.

WHAT IS YOUR BIGGEST STRENGTH AS AN ATTORNEY AND WHY? (e.g., legal writing, oral advocacy, marketing yourself and your firm).

My legal writing; in particular my ability to streamline complex cases into succinct and persuasive written arguments. Due to the nature of the insurance practice, many cases end up in the appellate courts, which plays well into my strength as a writer.

WHAT IS YOUR FAVORITE PART ABOUT BEING AN ATTORNEY AND WHY? I am fortunate to work with an amazing group of attorneys in a practice area that is constantly evolving. I love that my job gives me new and unique problems and issues on which to assist my clients. My practice in insurance law often involves new and unique interpretations of insurance policy contracts and legal principles. This aspect of the job continues to test our limits and challenge us as attorneys.

WHAT IS ONE THING YOU WISH YOU WOULD HAVE KNOWN BEFORE BECOMING AN ATTORNEY AND WHY? The most effective lawyers avoid legalese and overly-complex phrases; instead, they explain their position in a simple, common-sense manner. Over the years, I have seen lawyers win difficult cases because they were able to take hugely complex issues and distill them down to allow anyone to understand them. By contrast, I have seen lawyers lose cases when their arguments, though impressive sounding, were too difficult to follow.

WHAT IS THE BEST ADVICE YOU HAVE EVER RECEIVED IN THE LEGAL PROFESSION? Work with people whom you like and respect. This is a guiding principle at my firm, and it results in a more pleasant, collegial office environment – a huge benefit in the sometimes frantic and stressful litigation world.

WHERE ARE YOU FROM AND HOW DID YOU END UP IN NEW ORLEANS? I am originally from Colorado. I moved down to New Orleans to attend law school after spending a year teaching high school students English in the French Alps. I thought I would leave after three years when I graduated law school. Eleven years later, I am still here and firmly rooted in the New Orleans community and culture!

WHERE DID YOU GO TO LAW SCHOOL? Tulane University

NAME ONE THING YOU COULD NOT LIVE WITHOUT AND WHY? Access to a kitchen. I love to cook, and it helps me de-stress.

WHAT WOULD YOU DO PROFESSIONALLY IF YOU WERE NOT AN ATTORNEY AND WHY? I briefly worked as a hotel manager and receptionist in college. I really enjoyed organizing logistics and problem-solving for the hotel guests.

OTHER THAN YOUR CAREER, WHAT ARE YOU PASSIONATE ABOUT AND WHY? Animal welfare is a cause near and dear to my heart. There are many great animal rescue organizations in the New Orleans area that need support. I am a proud supporter of the Tomato Foster Club, a volunteer animal rescue specializing in neonatal, critically sick or special needs cats. I am also a sports fan, especially of professional tennis and the Liverpool Football Club. You can typically find our local chapter of Liverpool supporters watching matches at Finn McCool's Irish Pub during the season.

FAVORITE NEW ORLEANS DISH AND RESTAURANT? The Tuscan Panini from Stein's Deli

YOU GET ONE SUPERPOWER. WHAT IS IT AND WHY? Time travel. Visiting past places and historical events would be so cool.

WHAT IS A RECENT "SUCCESS" YOU'VE HAD, EITHER PROFESSIONAL OR PERSONAL, AND HOW DID YOU MAKE IT HAPPEN?

My team recently won a major motion in a Hurricane Ida lawsuit, which was a major success for my team and my client in a difficult litigation environment. The process for preparing this motion started months before a word of the motion was ever written. I articulated a strategy for introducing the evidence to support our motion, and then my team and I executed that strategy through taking and defending depositions and working with multiple expert witnesses. The motion itself was the result of hours of carefully piecing together the evidence into a coherent and persuasive story.

THE FEDERAL BAR ASSOCIATION WELCOMES ITS NEW MEMBERS

David Browne
Rachael Buckley
Spencer Chism
Robert Frederick Cerise
Elizabeth Lenore Cowan
Shelby Dawson
Crystal Domreis
Alexandra Drago
James Dugan
Nicole A. Eichberger
Brittany Flanders
Kevin Flynn
Katie Leigh Fox

Peyton Friedlander
Huey Lagarto Rey Fischer
Evan Gaudet
Brodie Glenn
Makala L. Graves
Annalyn Hoffpauir
Scarlett Holton
Lisa Simpson Hoover
Sarah Houston
Varun Hukeri
Kristin Ivey
Shermin S. Khan
Stephen R. Klaffky

Williard O. "Trey" Lape
Laura Lehrfeld
Shannon E. Lundin
Andre' Mailho
Kiley Maher
Kathryn McHugh
Chad J. Mollere
Jean-Paul J. Morrell
John W. Myles, Jr.
Matthew Payne
Hannah Quicksell
Brittany L. Reed
Devin C. Reid

Kate Reissig
Carol W. Reisman
Nicole Roca
Sarah Smith-Clevenger
Meera Sossamon
Jeannette M. Delise Spegele
Sally Stanley
Charles J. Stiegler
Chandler Thornton
John F. Ward, IV
Richard W. Westling
Lee Davis Williams

If you would like to become a member of the FBA, please call Debbie Skrmetta, Executive Director at (504) 589-7990 for more information.

READY TO JOIN? HERE'S HOW TO BECOME AN FBA MEMBER

MEMBERSHIP APPLICATIONS ARE MANAGED BY THE NATIONAL FBA ORGANIZATION.

THE DUES YEAR BEGINS OCTOBER 1ST

Dues are pro-rated should a member join after the universal renewal date in October. Therefore, the best way to join is online, so dues can be properly calculated.

A membership link can be found on our website: www.nofba.org
The direct link to National is: www.fedbar.org/membership/join
The QR Code below links directly to the National membership page.



A Few Reminders...

- Enter all required data, such as bar admission information.
- Be sure to select the New Orleans Chapter to take advantage of our chapter benefits.

New Member Special

National is offering a dues discount for new members. Join now to take advantage of this special!

- Use discount code at checkout = **FBASAVE20**
- Administrative Reminders: Code is case sensitive. *Be mindful of extraneous spaces when entering code*

FREQUENTLY ASKED QUESTIONS ABOUT FBA MEMBERSHIP

HOW DO I BECOME A MEMBER OF THE NEW ORLEANS CHAPTER OF THE FBA?

The New Orleans Chapter of the Federal Bar Association is an affiliate of the national Federal Bar Association dedicated to improving the professional lives of members of the bench and bar in the Eastern District of Louisiana. To join our membership for the first time, please go to www.fedbar.org and create an account, then click "Join the FBA" and follow the associated instructions. Under the "Chapter Membership" drop-down list, please be sure to select "New Orleans Chapter Dues," for which you will be charged an additional \$10, to become a member of our local chapter.

HOW MUCH DOES FBA MEMBERSHIP COST?

Membership dues vary based on an attorney's status or number of years in practice. Dues for attorneys in private practice are \$300/year, with a discounted dues of \$155/year for attorneys admitted to practice for 5 years or less, solo practitioners, public sector attorneys, and retired attorneys. Joining or renewing your membership in the New Orleans Chapter is only an additional \$10/year. From time to time, our national organization runs dues and membership specials, like the one going on now.

The FBA offers complimentary (free!) membership to law students actively enrolled in an accredited law school, as well as to term law clerks of any judge of the federal courts, including bankruptcy and magistrate judges, during the term of their clerkship.

CAN MY OFFICE PAY FOR ALL ITS ATTORNEYS WITH A SINGLE PAYMENT?

Yes! If you are interested in "Firm Billing," email membership@fedbar.org for details, and please be sure to mention that your organization's attorneys would also like to be members of the New Orleans chapter. The national FBA will need the names of all attorneys who are either renewing their membership or joining for the first time, and the FBA will create a renewal packet for your organization's office liaison.

WHEN CAN I RENEW MY FBA MEMBERSHIP?

The FBA offers annual membership. The membership cycle runs from October 1 to September 30 every year, regardless of when any member has paid their annual membership dues. For example, if a lawyer joins the FBA in June, the lawyer will need to renew their membership for October 1 of the same year. Pro-rated dues are offered to any member who joins after October 31. Invoices for dues for the coming year will be mailed and emailed in late August to early September.

WHEN DOES MY FBA MEMBERSHIP EXPIRE?

The FBA offers annual membership. The membership cycle runs from October 1 to September 30, regardless of when any member has paid their annual membership dues. For example, if a lawyer joins the FBA in June, the lawyer will need to renew their membership for October 1 of the same year.

WHAT BENEFITS WILL I GET AS A MEMBER OF THE FBA?

The benefits of membership in the national FBA include member and law clerk directories, attorney networking and business development events, and an endless supply of articles, scholarship, and practice pointers to aid in developing your legal skills. The New Orleans Chapter also offers free CLEs to chapter members all year long, among other social events and networking programming with lawyers and judges such as: **Lunch with the Court • Cocktails with the Court • The Jerry A. Brown Bankruptcy Symposium • Federal Practice Series • Morning at the Courthouse • Justice Camp • Rubin Symposium • Federal Judges Reception • "It is literally impossible to be a Woman [Lawyer]" - a Professionalism CLE**

WHAT INFORMATION DO I USE TO LOG IN TO THE NATIONAL FBA'S WEBSITE?

Unfortunately, we can't answer this question for you! Your login information for the national FBA's website is an email and password of your choosing; the New Orleans Chapter of the FBA is not in charge of this information. If you know your email address, but cannot remember your password, try using the "Forgot your password?" link on the Login page. If you don't recall the correct email address, or if you receive the error message, "E-mail address not found in database. Please enter a valid email address or contact us for assistance," it may be that you never created a national FBA account, and you should use the "Create an Account" link on the Login page.

FEDERAL BAR ASSOCIATION NEW ORLEANS CHAPTER

c/o Brian Capitelli
Chapter President
500 Poydras St., Room B-245
New Orleans, LA 70130

www.nofba.org

INTERESTED IN BECOMING A MEMBER OF THE FEDERAL BAR ASSOCIATION?

Contact:

Federal Bar Association
1220 North Fillmore St., Suite 444
Arlington, VA 22201
(571) 481-9100 | Fax (571) 481-9090

www.fedbar.org

or

Membership Chair, Kathleen Gasparian
c/o Attorney Conference Center
500 Poydras Street, Room B-245
Hale Boggs Federal Building
New Orleans, LA 70130
(504) 589-7990

Membership fee includes both national and chapter membership in the FBA. You can apply online at www.fedbar.org

2023-2024 EDITORIAL BOARD:

Diana Surprenant (Co-Chair),
Scott Sternberg (Co-Chair),
Matt Almon, Brian Ballay, Vanessa Beary,
Colin Cambre, Melanie Derefinco (YLD),
Camille Gauthier (YLD), Catherine Giarrusso,
Stephen Haedicke, Palmer Lambert,
Kelly Legier, Peter Mansfield, Kevin McGlone,
Carey Menasco, Amanda Plaiscia,
Karen Shipman, Judge van Meerveld

Please contact us at:

fbaneuorleans@gmail.com

Presorted Standard

U.S. Postage

PAID

New Orleans, LA

Permit No. 385



SAVE THE DATE FOR THE UPCOMING EVENTS & CLEs



Additional information regarding these events and how to register for these events will be published in our weekly email newsletter, social media platforms, and on our website www.nofba.org/events-one.

For more information contact our Executive Director, Debbie Skrmetta at dskrmetta@nofba.org.

MAY 30 | COCKTAILS AND CAREER CONVERSATIONS - MIEL BREWERY AND TAPROOM

JUNE 6 | EVENING WITH THE FBA - HELIS FOUNDATION JOHN SCOTT CENTER TOUR

JUNE 12 | MORNING AT THE FEDERAL COURT

JUNE 26 | FROM BEHIND BARS TO TAKING THE BAR: A JAILHOUSE LAWYER'S JOURNEY THROUGH LOUISIANA'S CRIMINAL JUSTICE SYSTEM

JUNE 24 - 28 | JUSTICE CAMP

AUGUST 7 | FIFTH CIRCUIT CLE AND RECEPTION

AUGUST 12 | ANNUAL DAY OF SERVICE

AUGUST 22 | ANNUAL MEETING

NOVEMBER 14 | FEDERAL JUDGES RECEPTION

**MORE EVENTS BEING ADDED
ALMOST EVERY WEEK!**

FOLLOW US ON SOCIAL MEDIA

