

# THE ADVOCATE

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FEDERAL BAR ASSOCIATION  
NEW ORLEANS CHAPTER

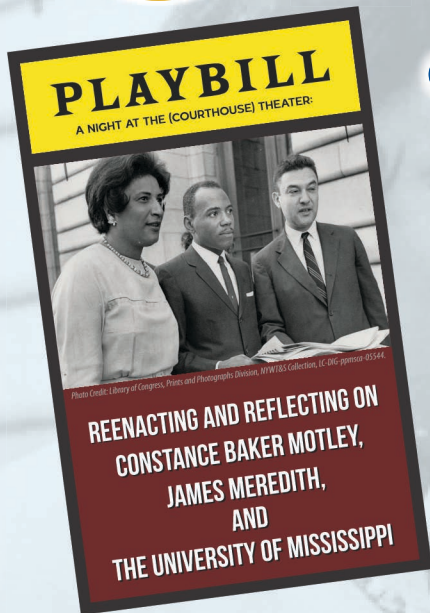


WINTER EDITION 2024

VOL. 33, No.2

## A NIGHT AT THE (COURTHOUSE) THEATER: REENACTING AND REFLECTING ON CONSTANCE BAKER MOTLEY, JAMES MEREDITH, AND THE UNIVERSITY OF MISSISSIPPI

By Chrissy Calogero, Assistant U.S. Attorney, EDLA, Peter Mansfield, Assistant U.S. Attorney, EDLA, Alysson Mills, Alysson Mills LLC, and Hon. Judge Janis van Meerveld, EDLA



**“Clearly the best CLE  
I’ve ever attended”** was

the sentiment expressed by an attendee of the 32nd annual Alvin B. Rubin symposium, the marquee CLE event of the New Orleans Chapter of the Federal Bar Association. On November 16, 2023, over 150 people

packed the en banc courtroom of the Eastern District of Louisiana and an overflow courtroom across the hall, with more than 50 others joining via Zoom, all to witness a historic courtroom theater reenactment of plaintiff James Meredith and attorney Constance Baker Motley’s contentious suit to desegregate the University of Mississippi. Joining local practitioners, students, and judges were several VIPs in attendance, including: Dr. Judith and James Meredith; Dr. Jeffrey Vitter, former chancellor of Ole Miss; and relatives of the late Judges Rubin and James Skelly Wright, both civil-rights proponents and authors of important desegregation decisions.

The two-hour program delivered riveting live courtroom drama, multimedia displays of historic images, didactic discussion of ethics-and-professionalism issues, a first-person reflection from the plaintiff-protagonist in the historic case, and, of course, two hours of CLE credit for ethics and professionalism. *Cont’d on page 2.*



Federal Public Defender Claude Kelly stars as Gov. Ross Barnett (and Dugas Shands).



James Meredith receives a standing ovation.

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# A NIGHT AT THE (COURTHOUSE) THEATER: CONT'D



U.S. Attorney Duane Evans, who played James Meredith, meets the real one!



Federal Public Defender Claude Kelly, Judge Dana Douglas, and Eva Dossier lead a panel on ethics and professionalism.

Under the direction of United States Magistrate Judge Janis van Meerveld and performing a script co-authored by United States Second Circuit Judge Denny Chin and his wife Kathy Hirata Chin, a cast of federal judges and other distinguished guests reenacted the historic court proceedings involved in James Meredith's quest to become the first Black student admitted to the University of Mississippi in the 1960s. Represented by Constance Baker Motley (played by Fifth Circuit Judge Dana Douglas) and the NAACP Legal Defense and Education Fund, Meredith (United States Attorney Duane Evans) sued in federal court in Mississippi, alleging that the University denied him admission because of his race. The play depicted the ensuing legal battle, which involved obstructionist tactics by Mississippi's attorney Dugas Shands (Federal Public Defender Claude Kelly), questionable rulings by Judge Sidney Mize (United States Magistrate Judge Donna Phillips Currault), and repeated trips to the Fifth Circuit Court of Appeals. Using real excerpts from transcripts and accompanied by slides of historic photographs, viewers were transported back in time to what Judge John Minor Wisdom (United States Chief District Judge Nannette Jolivette Brown) described as "the eerie atmosphere of never-never land." Compelling, historic, thought-provoking, infuriating, and timely, the performance received a standing ovation, as did Mr. Meredith when he was introduced to the audience.

Next, Kelly and Judge Douglas shed their adversarial roles from the play to team up on an ethics-and-professionalism panel with fellow cast member Eva Dossier, who had an active ethics practice before her recent appointment to the magistrate-judge division left vacant by Judge Douglas's confirmation to the Fifth Circuit Court of Appeals. Dossier observed that the State of Mississippi's lawyers' conduct reenacted in the script probably didn't sit well with the audience, but wasn't necessarily a violation of an objective ethical rule. For instance, while ABA Model Rule 8.4(g) prohibits racial harassment and discrimination in the practice of law, the State of Louisiana hasn't (yet) adopted that provision, nor has Mississippi. Kelly agreed, finding that the cross-examination techniques of Assistant Attorney General Shands, while likely designed to intimidate and provoke, didn't fall outside typical strategies employed in high-stakes civil or criminal litigation.

The panel tackled other thorny issues implicated in the courthouse theater. How do lawyers balance their professional obligations to acquiesce to reasonable requests for extensions of time against their duties to clients to expedite litigation? And, even more confounding, what legitimate options may a lawyer pursue if an opposing party openly defies final court orders? On that latter point, the panelists explained how the executive and judicial branches complement, and at times rely upon, each other's jurisdiction and power to enforce controversial judgments. In the *Meredith* case, the courts required executive enforcement against an intransigent party, while the Fifth Circuit's judgment gave President Kennedy cause to activate the National Guard despite contrary public opinion from Southern Democrat segregationists. Finally, the panelists also explored Motley's skillful, restrained, and persistent advocacy in the face of a hostile adversary, predisposed fact finder, and a rogue Fifth Circuit judge unwilling to allow the desegregation of Ole Miss without a fight.



Former Ole Miss Chancellor Jeff Vitter sits with James and Dr. Judy Meredith

The program concluded with remarks from James Meredith himself. Mr. Meredith and his wife Dr. Judith Meredith first shared a short video that reflects on his life's work and is part of a larger forthcoming documentary. Mr. Meredith then addressed the courtroom from a seat at counsel's table where, just a few minutes prior, U.S. Attorney Evans in the role of Meredith had just intoned confident and compelling testimony from his 1961 deposition transcript. A rapt audience listened in silence while Mr. Meredith, wearing a suit and "New Miss" cap, shared, among other things, his life's great missions, which include breaking the bonds of white supremacy by integrating Ole Miss specifically and, more generally, confronting the fear Black Americans face in the exercise of their civil rights.

After the program concluded, the Merediths, along with the cast, joined the audience in the lobby of the courthouse for a post-program reception. The Merediths visited with attendees, posed for pictures, and signed copies of James Meredith's published works, including his 1966 memoir *Three Years in Mississippi* and 2012 exhortation *A Mission from God*.

Unsurprisingly, attendees gave the 32nd Annual Rubin Symposium excellent reviews across the board.

- *"That was just amazing! I found myself moved, entertained, inspired."*
- *"[T]oday's presentation . . . was excellent and so profoundly relevant. It was a thoughtful and emotional reminder of our country and this circuit's sometimes painful history."*
- *"My wife and I both thought the presentation was extremely compelling and informative. The play was clearly the best CLE I've ever attended."*
- *"I don't think we[ve] ever cried during a CLE before. Bravo!"*
- *"I have not been to a better CLE in Louisiana.\*\*\*This CLE was educational, socio-politically important, ethically important, and very meaningful."*
- *"I thought the presentation was great and made even more impactful by reading directly from the transcripts of the proceedings."*
- *"This was SUCH a great CLE! I loved the reenactment – such a great and memorable way to deliver information. The panel and the comments by Mr. Meredith were excellent also."*

The FBA intends to hold future Rubin Symposia in the fall and regularly offer two hours of programming to fulfill annual ethics-and-professionalism CLE requirements for the State of Louisiana.

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**For further resources on Meredith, Motley, and desegregation, please see the following:**

- Hon. Denny Chin & Kathy Hirata Chin, *Constance Baker Motley, James Meredith, and The University of Mississippi*, 117 Colum. L. Rev. 1741 (2017)
- James Meredith, *Three Years in Mississippi* (Univ. Press of Miss. 2d ed. 2019)
- James Meredith (with William Doyle), *A Mission from God* (2012)
- William Doyle, *An American Insurrection: James Meredith and the Battle of Oxford, Mississippi 1962* (2003)
- Tomiko Brown-Nagin, *Civil Rights Queen: Constance Baker Motley and the Struggle for Equality* (2022)
- Jack Bass, *Unlikely Heroes* (1990)
- Adam Fairclough, *Race and Democracy* (1999)
- *Walk Against Fear: James Meredith* (Smithsonian Channel 2020) (documentary film)

For free information on other plays based on important civil-rights events, including the trials of the Amistad, Ethel Rosenberg, Susan B. Anthony, and Fred Korematsu, visit <https://justiceforall.ca2.uscourts.gov>.

For access to the video presentation and additional photos, visit <https://bit.ly/CourthouseTheater>.



Chief Judge Nannette Jolivette Brown and Judge Marina Marmolejo (SDTX) chat with Mr. Meredith at a reception.

# President's Message

By

**BRIAN CAPITELLI**

Capitelli & Wicker



As our Chapter closed the books on 2023, we bid farewell to our Executive Director, Elena Perez. Elena was instrumental during her tenure in advancing our Chapter's social media presence and assisting our Board of Directors. Thank you, Elena; we truly appreciate your time and dedication to our organization.

On a sad note, this past December, our Chapter lost a cherished board member. We mourn the tragic loss of Sean Brady. Sean's creativity and enthusiasm were critical in making our Justice Camp a success. He will be missed. I encourage you to read the tribute in this edition to Sean's life, one taken too soon.

As I reflect on this past year, we had a full calendar of events. Our Federal Judges' reception was held at the Four Seasons with a tremendous turnout. A special thanks goes to Kelly Theard for making this event such a success, and we separately thank our sponsor firms for their contributions. Through the efforts of Board Members, Chris Zainey and Cayce Peterson, we served meals during the holidays at the Rebuild Center. This service was a rewarding experience and a great volunteer opportunity. I look forward to the future opportunities that Chris and Cayce are planning for our membership.

We also celebrated an inaugural event for our Chapter – a play. The Rubin Symposium was a unique CLE, in which members of our Chapter reenacted transcripts from James Meredith's legal battles to become the first African American student to attend the University of Mississippi. Magistrate Judge "a.k.a. Director" Janis van Meerveld did a masterful job of putting together a terrific cast for the CLE. Peter Mansfield, Alysson Mills, and Chrissy Calogero also contributed to the success. Mr. Meredith was in attendance at the CLE, and it was inspiring to hear from him as a full *en banc* courtroom hung on to his every word. The struggles that Constance Baker Motley, Mr. Meredith's lawyer, encountered in representing Mr. Meredith are a reminder to never give up when you are on the side of right.

Looking forward to 2024, it is my pleasure to announce that Debbie Skrmetta will be taking the reins as our new Executive Director. She is excited to start in her new role and meet our membership. I know she will continue the success of our former Executive Directors, and I look forward to working with Debbie.

A handwritten signature in blue ink that reads "Brian Capitelli". The signature is fluid and cursive, with a period at the end.

**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



# BRANDON S. LONG JOINS EASTERN DISTRICT AS NEWEST DISTRICT JUDGE



The U.S. Senate confirmed Brandon S. Long as the newest Judge of the Eastern District of Louisiana on December 14, 2023. He was sworn in on December 22, 2023.

Judge Long now serves in Section O. He was nominated upon the death of Judge Martin Feldman.

Judge Long comes to the Eastern District with a long resume of government and prosecutorial experience. He began his career at King & Spalding in Washington, D.C. and then moved to the U.S. Attorney's Office in the District of Columbia. He was an assistant U.S. attorney in the U.S. Attorney's Office for the Eastern District of Louisiana for nearly 10 years, from 2014-2023. From February 2020 to July 2021, Long was detailed to serve as the deputy chief of staff to the FBI Director in Washington, D.C.

Judge Long received his J.D., *cum laude*, from Duke University School of Law in 2005. He attended the University of Texas at Austin, graduating in 1999. Judge Long is a native of Metairie and a 1995 graduate of Jesuit High School in New Orleans. Judge Long and his family live in New Orleans.

## U.S. DISTRICT JUDGE SARAH S. VANCE TAKES SENIOR STATUS

Eastern District Judge Sarah Vance announced she will take senior status effective January 16, 2024. Her decision to transition to the senior role creates an opening on the Court that may be filled by Presidential appointment.

Judge Vance served as an active District Judge for three decades. She was nominated by President Bill Clinton in 1994 after a career as a litigator at the New Orleans law firm of Stone Pigman. She was confirmed in September of that year and went on to serve as Chief Judge of the Eastern District of Louisiana from 2008 to 2015. Judge Vance was also the 2015 President of the New Orleans Chapter of the Federal Bar Association.

Judge Vance has spent much of her judicial career not only administering justice but improving it through her service on numerous boards and committees throughout the United States. She has been a member of the Executive Committee of the Judicial Conference, Chair of the U.S. Judicial Panel on Multidistrict Litigation, and a member of the Federal Judiciary Workplace Conduct Working Group, among numerous other contributions.

For her service, she has been honored by numerous local and national organizations. In 2022 the American Bar Foundation honored her with its Edward J. Devitt Distinguished Service to Justice Award, an award created to "honor the unsung heroes of the American judiciary," epitomizing the "highest standard of the federal bench." Among other honors, the Louisiana Bar Foundation made her its Distinguished Jurist in 2015.

Judge Vance will continue to serve as a senior District Judge, a role which allows her to maintain her chambers with a reduced caseload.



# *In Memoriam*

## SEAN P. BRADY

FLANAGAN PARTNERS, LLP



*Sean Brady with his wife, Amanda, and children, Lillian, Henry, and Silas*



*Sean Brady was a devoted musician in his free time.*

The Federal Bar Association New Orleans Chapter and the New Orleans legal community lost one of its leading lights when 45-year-old Sean P. Brady tragically died in an accident on December 17, 2023.

Sean was a partner with Flanagan Partners LLP and began his legal career at Liskow & Lewis, where he maintained many friendships. He was a longtime volunteer and Board Member of the Federal Bar Association, most recently serving as a co-chair of Justice Camp. He was particularly loved for his dedication to teamwork and good deeds, in addition to a tenacious work ethic.

Sean was raised in Metairie, Kenner, and Memphis. He returned to Louisiana from Memphis for college and graduated *magna cum laude* from Louisiana State University. In 2006, he fulfilled a lifelong dream and earned his law degree, *magna cum laude*, at Tulane Law School.

Sean had decided to attend law school almost 20 years earlier. In the fourth grade, Sean announced to his class that he wanted to be an attorney to “defend people.” And he did so, maintaining an active pro bono docket and never turning away anyone beset by misfortune. One of his last acts as a lawyer, during the Christmas hustle, was obtaining a full recovery for a family of modest means. He did not charge a fee.

Sean was dedicated to his family and being an active father and husband. He was married to Amanda Allbritton Brady. They have three children, Lillian (12), Henry (10), and Silas (7), whose smiling faces were always on large photographs in his office.

Sean was respected for his intelligence and work ethic, but even more so for his empathy, compassion, and mentoring. Despite the pressures of the profession, Sean was calm and contemplative—maintaining an even keel of respect for colleagues and opposing counsel alike.

Harold Flanagan, Sean's mentor and a lawyer with whom Sean worked throughout his entire career, emphasizes Sean's selflessness.

“Sean would never turn anyone away who asked for help whether a law partner, a friend, or a desperate litigant who could not afford legal services,” Flanagan said. “But—despite consistently being one of the firm’s top billers—he would actively seek out opportunities to help others. He often solved other peoples’ problems without even being asked to.” Exemplifying his generous nature, one of Sean’s last emails to his partners was one complimenting the oral argument of his colleague on a complex motion in a major case.

Never one to pass up an opportunity to give back, Sean mentored younger lawyers. He took great pride in mentoring, counseling, and giving them opportunities to excel.

Gabrielle Ball, an attorney who worked with Sean, was a beneficiary of Sean’s direct mentorship. Of her lessons learned, she says: “The ‘Sean Brady’ characteristic I most admire was his unwavering pursuit of excellence—as a lawyer and as a person. In our cases, he tirelessly ensured that every single brief or letter was worth having our name on (even if that meant staying up late to get the job done himself). And no matter what was on his docket, he found time to support his people and share his diverse wealth of knowledge, wisdom, and insight.”

Sean was well-known and perennially honored as a Super Lawyer and other compilations of prominent attorneys, including the Best Lawyers in America. He was admired as a lawyer unafraid to take on the most complex, high-dollar cases. His practice, which ranged from insurance and construction to business and commercial litigation, saw him trying cases and arguing appeals before the U.S. Fifth Circuit and the Louisiana Supreme Court, among others.

Cheryl Kornick, who worked with Sean in his early years at Liskow & Lewis, said that Sean was “the best of the best. Not only was he extremely smart, but his professionalism was unmatched. This is a loss to all of us in the legal profession who had the privilege of knowing and working with him.”

Sean was a long-time member of the NOFBA’s board of directors and a frequent lecturer on insurance coverage and litigation. Chief Judge Nannette Jolivette Brown echoed those words of praise for Sean:

“The Court will be forever grateful to Sean for his deep and unwavering commitment to civics education as demonstrated through his work with the FBA and the Court’s Justice Camp: a summer program intended to educate high school students about the law and justice system and encourage them to pursue careers in the law. We thank Sean’s family for being so supportive and allowing him to devote so much time to the Court and our Sean’s warm and engaging spirit will be truly missed.”

Sean loved summers at FBA’s Justice Camp, where he brought passion and acting chops to the teenage participants learning about the justice system. He was named co-chair this year, after several years of volunteering and service.

U.S. Magistrate Judge Janis van Meerveld, who has co-chaired Justice Camp since its inception, has fond memories of the passion—and acting chops—Sean brought to it, connecting with the teen participants on a level they could relate to. As “Kyle Baskin,” Sean became the star of the camp’s final-day mock trial.

“Sean brought the house down every year in the mock trial, playing an Alabama fan mauled by Joe Eccentric’s tigers at an LSU truck stop/roadside zoo, complete with face paint and claw marks. He then took the role play to the next level, cutting a fake and hilarious Tik Tok video of Kyle playing video games despite an allegedly injured hand.”

Outside of the law, Sean’s focus was on his family. He was devoted to his wife, Amanda, and the faces of his three beautiful children appear in large photographs behind Sean’s desk. He was deeply involved in his children’s activities, including music, Cub Scouts, and sports.

Sean was not just a lawyer at the top of his profession. He was an accomplished musician. He took great pride in teaching his daughter to play music by ear. He was an avid Saints fan and a serious cook, activities he shared with his friends and family.

Sean’s skill, commitment, and selflessness should serve as an example for all. He was active, attentive, and full of life before he was tragically taken from his family and friends. He will be sorely missed. The FBA sends its condolences to his friends, his family, and his colleagues. Rest in peace, Sean.

Sean’s funeral was held December 27, 2023. His family has asked that, in lieu of flowers, donations be made in his name to The Roots of Music. An online guestbook is available at [www.lakelawnmetairie.com](http://www.lakelawnmetairie.com).



# YLD CHAIR MESSAGE

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

As we head into the new year, our FBA chapter—especially its younger lawyers division—is as strong as ever!

In December 2023, we welcomed about one hundred new members at our annual Malcolm Monroe seminar. With encouragement from Chief Magistrate Judge Michael North and Eva Dossier, many of our younger members also registered to be a part of the Eastern District's Civil Pro Bono Counsel Panel.

Did you know that Rule 6.1 of Louisiana's Rules of Professional Conduct says that every lawyer should *aspire* to provide at least 50 hours of pro bono services each year? How many of us truly aspire to fulfill this need—let alone actually provide pro bono services each year?



Established in 2014, the court's Pro Bono Counsel Panel is approaching its 10th anniversary. So now is an especially great time for lawyers of all ages to join. For more junior attorneys, pro bono representation is an easy way to learn different subject matters, develop an experiential skill set, and earn early credibility with judges that would take years in traditional private practice. For more senior attorneys, pro bono service provides new intellectual challenges and encourages creative thinking to help solve real-world problems. Panel registration does not result in involuntary appointment; it merely allows Panel attorneys the opportunity to receive more information about pending pro se matters that judges have already determined deserve appointment of counsel.

The FBA also provides plenty of other opportunities to engage with our community. Board members Chris Zainey and Cayce Peterson recently organized a Day of Service at St. Joseph's Rebuild Center (just a five-minute drive from downtown New Orleans), during which they shared the Peterson family's famous jambalaya and learned more about the Rebuild Center's important work. And, led by Magistrate Judge Janis van Meerveld, planning for our 2024 "Justice Camp"—an immersive program for high school students interested in learning about the law—is already underway.

Sean Brady served as co-chair of Justice Camp, and our organization will continue to mourn his loss. Sean regularly embodied the selflessness that the rest of us only aspire to. As a devoted husband and father to three children, Sean no doubt had a very busy personal and professional life. Yet he regularly devoted his time to pro bono causes—and was a better lawyer for it. Having recently experienced Sean's friendship and mentorship, I'm a better lawyer for it too.

So my new year's resolution is to try to follow in Sean's footsteps. I'm going to look for more ways to help others—whether by taking on a new pro bono matter, sharing knowledge with the next generation of lawyers, or engaging in community programs. I hope you'll do the same.

*Chloé M. Chetta*



# FROM TULANE LAW TO THE FEDERAL BENCH: CHIEF JUDGE BROWN'S VISIT TO HER ALMA MATER INSPIRES THE NEXT GENERATION OF LEGAL MINDS

*By Breanna Obando, Tulane Law School, 2025 J.D. Candidate and current Tulane Law FBA President, and Varun Hukeri, Tulane Law School, 2026 J.D. Candidate*

On November 8, 2023, the Tulane Law Federal Bar Association and Deutsch Kerrigan LLP hosted the Honorable Nannette Jolivette Brown, Chief Judge of the U.S. District Court for the Eastern District of Louisiana, as part of its Distinguished Alumni Panel Series.

Through this collaboration, Tulane Law students had the opportunity to hear Chief Judge Brown recount her experiences as a practitioner of law and a judge on the federal bench. She was joined by two of her former law clerks, Lydia Wright and T.C. Wicker, who offered Tulane Law students unique insights on their federal clerkship and service under Judge Brown. Jose Ruiz, a partner with Deutsch Kerrigan in New Orleans, moderated the panel.

Born and raised in rural Louisiana, Chief Judge Brown's experience with the federal judiciary began when she clerked for the Honorable Veronica Wicker, the first female United States District Judge in Louisiana. Judge Wicker provided Judge Brown guidance and instilled in her the drive that laid the foundation for her success as a federal judge. Now, Judge Brown imparts those same values to the next generation of attorneys and judges.

During the panel, Chief Judge Brown spoke to the importance of building relationships. No matter your work environment, she noted that how people view you is paramount to professional growth. While it is common to disagree on an issue, Judge Brown advised students to maintain a balanced perspective and find value in opposing arguments. She emphasized that doing so allows attorneys to discover the weaknesses in their cases and use that knowledge to strengthen their position, in turn earning the respect of their clients and colleagues.

Chief Judge Brown also shared how her passion for public service has informed her career as a federal judge and her perspective on justice in our community. Moreover, Wright and Wicker spoke about their experience clerking for Judge Brown and witnessing her dedication to equal representation for everyone who goes through the justice system, especially incarcerated individuals. They added that the lessons they learned during their clerkship, such as maintaining an objective stance and advocating for the under served, remain with them today.

The panel concluded by offering students advice about the practice of law and the work ethic it takes to be a successful legal professional. Law school is just one part of the equation, the panel said, further remarking that students should seek experiences outside their comfort zone and lend time to endeavors that foster leadership and community engagement.

"Remember that we are a service-oriented profession," Chief Judge Brown said, "so no matter what you concentrate on, always leave room to give."



*Chief Judge Brown and Breanna Obando, Tulane Law FBA President*



*From L to R: Lydia Wright, Chief Judge Brown, and T.C. Wicker/ Photo Courtesy of Tulane Law School*

# Debbie Skrmetta Joins FBA as Executive Director

**Debbie Gibson Skrmetta** has assumed the position of Executive Director of the Federal Bar Association – New Orleans Chapter. She follows Elena Perez, who left the FBA in December for a new position in the private sector.

Skrmetta is the oldest of three children and spent her younger years in Texas and moved to New Orleans in middle school. She attended college at Trinity University in San Antonio, Texas. She returned to Louisiana and spent the next two decades working in Louisiana political affairs, event planning, fundraising, campaign management, social media and public relations.

She is a proud mother of two amazing young adults: her daughter, Elizabeth, is a graduate of Southern Methodist University and is currently a second-year law student at Pepperdine University's Caruso School of Law. Her son, Race, is a junior at Pepperdine studying sports administration and business—he also plans to attend law school and hopefully pursue a career in sports.

Skrmetta is thrilled to be working with the FBA and spends her free time listening to audio books, spending time with her friends and family and volunteering in the community. She says that she is getting into “binge-watching” and welcomes recommendations (and book suggestions!) anytime.

Please welcome Debbie! You can contact her at [dskrmetta@nofba.org](mailto:dskrmetta@nofba.org).

## FIFTH CIRCUIT COURT OF APPEALS Assisting the Appellate Practitioner

*By Lyle Cayce, Clerk*

Practicing in the Fifth Circuit can be intimidating for many reasons, including the many technical pleading requirements imposed by the Federal Rules of Appellate Procedure, Fifth Circuit Local Rules, and our Internal Operating Procedures. Obviously, the requirements serve important purposes, and attorneys must comply. But justice is better served when counsel can focus on the substantive legal issues in an appeal rather than administrative and technical details. I summarize below tools we offer that are intended to make practice in our court easier, so that attorneys can spend more time focusing on the substance of the appeal.

### DISPLAYING UPCOMING DEADLINES

To help attorneys track their work in our court, we provide a convenient summary of all pending deadlines when a practitioner logs in to CM/ECF. This helps attorneys manage their workload.

### EROA DOWNLOAD

We permit any attorney who entered an appearance in an appeal to download a free copy of the Electronic Record on Appeal (EROA), for use while drafting the brief, as citations to the record are required.

CLERK'S  
CORNER



## **BRIEF TEMPLATES**

We offer brief templates to make it easier for attorneys to comply with the many different requirements for pleadings. The templates are in Microsoft Word and are formatted to comply with court rules, customized for the type of brief the party is required to file. Each template is tailored to the filer and contains the proper caption, specific to the filer's case, as well as an outline of all the necessary sections required in the briefs in the proper sequence. Even if a practitioner does not use the template to draft the brief, we recommend it be used as a comparison to ensure the actual brief has all required sections and certifications.

## **QUALITY CONTROL CHECKS**

Once a draft brief is prepared, we offer a Quality Control (QC) check to identify issues that could cause the brief to be rejected. This is an incredibly useful tool, as it produces a report that lists, with specific corrective details and references, both "Critical" or "Minor" compliance issues. Critical issues normally result in a rejected briefing, while minor issues, such as typographical errors, are noted but will not cause rejection. An attorney who corrects critical errors at this time avoids later rejection of the brief, and saves themselves, clients, and the court the time and expense associated with a corrected pleading.

## **RECORD EXCERPTS**

The Fifth Circuit requires appellants to file a separate document called "Record Excerpts" with a brief. Recognizing that it was time consuming (and somewhat redundant) to require attorneys provide us a PDF file containing documents we already possessed in the EROA, we created a program to simplify that process for filers. The program automatically selects the portions of the EROA required by the rules, and then lets an attorney select additional desired contents. Once the documents are identified, the program saves the file, in the proper PDF format, with the appropriate cover page, table of contents, and required certifications. This is delivered to the attorney, ready for filing with the brief, saving substantial time and effort.

## **HYPERLINKS AND ATTORNEY TOOLBOX**

When a brief or other pleading is filed in our court, an internal program scans the document and inserts code to create hyperlinks, both to legal authority and to the EROA. The links point to the official EROA on court servers, or, in the case of legal authority, to Westlaw or Lexis, based upon the user's preferred search engine. Inside the court, when someone reading the brief clicks on a hyperlink, the person is directed immediately to the record or legal authority. Attorneys have long requested we provide litigants access to hyperlinks, but we were unable to do so for several reasons. The Toolbox overcomes these obstacles, and an attorney can see the same hyperlinks by "dragging and dropping" a PDF copy of a pleading into the Toolbox.

An attorney can drag a PDF copy of their draft brief into Briefcase, and the QC program will identify possible deficiencies the attorney could correct before filing. And the attorney can check the record citations by clicking on each EROA citation and viewing the linked page, verifying that the hyperlink pointed to the page the attorney intended to cite. Similarly, dragging the PDF file of the opponent's brief (downloaded through PACER) into the Toolbox permits an attorney to easily review an opponent's citations to the record or legal authority.

There are two limitations regarding the Toolbox's hyperlink feature. First, an attorney can only access EROA hyperlinks while logged into the Fifth Circuit CM/ECF. That is true because the EROA hyperlinks created by the program point to a copy of the EROA on an internal court server, accessible only while an attorney is logged in to CM/ECF.

Second, while an attorney does not need to be logged in to CM/ECF to access hyperlinks to legal authority, the attorney must designate either a legal search engine, such as Westlaw or Lexis, or a public search engine, such as Bing, Google Scholar, or Yahoo. If an attorney uses Westlaw or Lexis, the attorney will be prompted to log into their respective legal research account to view the matter. Bing, Google Scholar, and Yahoo are free, but may not always find the indicated source. The Attorney Toolbox is merely our latest attempt to improve processes to make it easier to practice in our court, and we welcome comments regarding how we might do this in all areas. If you have feedback, please send a message to [Webmaster\\_ca5@ca5.uscourts.gov](mailto:Webmaster_ca5@ca5.uscourts.gov).

# Annual Federal Defender & CJA Panel CLE Program: Sessions 1 & 2

By Samantha Oppenheim, Jones Walker LLP

On October 26, 2023, the New Orleans Chapter of the Federal Bar Association and the Eastern District of Louisiana's Federal Public Defender's Office presented the Annual Federal Defender & CJA Panel CLE Program at the offices of Jones Walker. The program featured seven hours of continuing legal education on ethics, professionalism, and recent developments in federal criminal law, with a focus on defending clients in federal criminal cases.

## **Session #1: Are You Stuck in the Waiting Place? How to Keep Things Moving (and Maybe Even Win Release) for Your Incompetent Clients**

Jaclyn L. Tarlton and Joseph H. Craven, Assistant Federal Public Defenders from the Eastern District of North Carolina, kicked off the morning with an ethics presentation on the representation of incompetent clients. Focusing on how defense lawyers can move these cases along, the presentation addressed the professional duties of competence, diligence, and expediting litigation. Ms. Tarlton and Mr. Craven walked through the governing statute, 18 U.S.C. § 4241, and offered practical, real-world tips for defense lawyers who may find themselves with incompetent clients when handling revocations, misdemeanors, and felonies. During this fact-packed, engaging presentation, attendees learned how to navigate their clients through competency evaluations and hearings and how to be proactive at each stage of the process.



*Joseph H. Craven and Jaclyn L. Tarlton*

## **Session #2: Don't Bruen This for Me! Navigating Challenges to Federal Firearm Prosecutions in the Era Post-Bruen, Rehaif, and Wooden**

Joining us remotely, Adeel Bashir, Assistant Federal Public Defender and Appellate Supervisor for the Office of the Federal Public Defender of the Middle District of Florida, delivered a presentation on a rapidly-changing area of the law—the defense of federal firearm prosecutions. After providing a refresher on the *Bruen* and *Rehaif* decisions, Mr. Bashir surveyed recent challenges to federal firearm offenses. The presentation culminated in practice pointers for the defense of federal firearm cases. Specifically, Mr. Bashir identified arguments that defense lawyers should expect the Government to raise in federal firearm cases and recommended action items for defending these cases.



# Annual Federal Defender & CJA Panel CLE Program: Sessions 3, 4, 5, & 6

*By Sara A. Johnson, Sara A. Johnson, Attorney at Law, LLC*

## **Session #3:**

### **Immigration Law that Criminal Defense Lawyers Need to Know**

NOFBA Board Member and Membership Chair, Kathleen Gasparian, together with Roman Maney, Deputy Chief Counsel, U.S. Department of Homeland Security, provided practitioners with an overview of how immigration issues impact criminal clients, including detention and removal issues, understanding immigration documents and status, and information on local processes and procedures.

## **Session #4:**

### **When Your Client is Also a Victim**

Tulane Law Clinical Assistant Professor, Stanislav "Stas" Moroz, addressed situations when clients are survivors of intimate partner violence, sexual violence, or trafficking and are prosecuted for actions they took because of abuse or coercion. This hour focused on representing those clients and discussed how an understanding of the dynamics of abuse and coercive control helps a defense attorney represent criminalized survivors, with a focus on client interviewing, investigation, consulting with expert witnesses, developing a case theory, addressing seemingly "bad facts," and negotiating with prosecutors.

## **Session #5:**

### **But I'm Not a Social Worker: Release Planning in Public Defense**

Mick Kliger, Facilitator with the Center for Restorative Approaches, and Wan Qi Kong, Senior Client Advocate at the Orleans Public Defenders Office, presented this useful and practical panel on the why and how of release planning with incarcerated clients, including assessing clients for underlying issues; collaborating with clients to determine their needs/priorities; identifying appropriate community resources; making referrals; using plans for release advocacy with system actors; and facilitating release/following up with clients. They emphasized relevant supportive services in the Greater New Orleans area and provided a helpful guide of contacts.

## **Session #6:**

### **What's New in the 2023 Amendments to the Sentencing Guidelines and a Fifth Circuit Sentencing Update**

Alan Dorhoffer, Director, Office of Education and Sentencing Practice, United States Sentencing Commission, gave his presentation in December after flight delays postponed his arrival in New Orleans. This important and perennial favorite presentation covered the 2023 Amendments to the Sentencing Guidelines and an update to sentencing in the Fifth Circuit to help practitioners learn and apply the 2023 Guideline Amendments to their cases.

This program was well attended with more than 50 attendees who gave excellent reviews. The NOFBA and the Federal Defender's Office are grateful for the opportunity to organize these speakers for lawyers serving indigent defendants in federal court.



# SECOND ANNUAL JUDGE JERRY BROWN SYMPOSIUM: FAMILY LAW ISSUES IN BANKRUPTCY

*By Carol Michel, Clerk of Court, EDLA*

On December 14, 2023, Alicia M. Bendana, of the Lugenbuhl, Wheaton, Peck, Rankin & Hubbard law firm, and Fernand L. Laudumiey, IV, of Chaffe McCall, LLP, spoke to an audience of predominantly non-bankruptcy practitioners and presented a CLE program highlighting the intersection of divorce and community property. The event took place in the courtroom of Eastern District of Louisiana Bankruptcy Judge Meredith Grabill. Throughout the CLE, Judge Grabill shared her own insights and advice on the interplay between these two legal practice areas. Attendees earned either one hour of CLE credit or Family Law credit. A reception followed in the conference room adjoining the courtroom.

Both seasoned bankruptcy litigators, Ms. Bendana and Mr. Laudumiey, emphasized that family law attorneys should always take into consideration the impact a bankruptcy filing will have on spousal and child support, community property, and the management of marital property. Similarly, bankruptcy attorneys representing debtor clients in all stages of divorce proceedings, including those preparing to file for divorce, in the midst of a divorce proceeding, and recently divorced, serve their clients' best interests in recognizing the effects those divorce proceedings have on their clients' bankruptcy cases.

In addition, the presenters discussed the effect of a spouse or former spouse's bankruptcy on the entire community or unpartitioned former community property. They also discussed how immovable property located outside of Louisiana owned by married spouses is treated. They also raised a trap for the unwary—preferential and fraudulent transfers. They discussed how the Bankruptcy Code allows a trustee to avoid or “claw back” specific “preferential” transfers of property made by the debtor prior to filing bankruptcy to equalize treatment for creditors that are similarly situated and discussed the timeframes for avoiding such transfers. The presenters cautioned that separate property agreements appear suspicious as well as payments to or transfers of ownership from one former spouse to another, even as part of a community property settlement. However, they also explained how trustees cannot avoid bona fide payments of domestic support obligations in domestic cases.

The presenters also discussed the impact of domestic support obligations in the bankruptcy context and how they receive the highest claims priority under 11 U.S.C. § 507(a)(1), special treatment in Chapter 11, 12, and 13 cases, and are non-dischargeable in Chapter 7, 11, 12, and 13 cases. The Bankruptcy Abuse and Prevention Act of 2005 increased protection and enforcement rights of domestic law creditors and also expanded family court jurisdiction to adjudicate domestic creditors in cases proceeding concurrently in family court and bankruptcy court.

Additionally, Ms. Bendana and Mr. Laudumiey covered several other topics, including: defining the property of the bankruptcy estate and community property; addressing alimony and child support obligations, including whether spousal and child support can be seized by creditors; the Louisiana homestead exemption and who can claim it under what circumstances; the sale of marital property in the context of bankruptcy proceedings; segregation of community and separate bankruptcy estates; classification of obligations as community and separate; trying partition proceedings in bankruptcy court; liquidation of insolvent community estates; abstention of bankruptcy court from community property issues; reimbursement, contribution, damage, and equalizing claims of spouses; and the trustee's power to sell community and co-owned property.

Because there are many nuances when divorce-related cases and bankruptcy cases converge, Ms. Bendana and Mr. Laudumiey both agreed that consultation with experienced bankruptcy practitioners is extremely beneficial to those who practice domestic and family law when there is a possibility of bankruptcy filing by one of the divorcing spouses or when one of the spouses has already filed a bankruptcy petition. As they demonstrated in their insightful and comprehensive presentation, being informed of the fundamental ways in which a divorce case, with all of its adjunct proceedings, will be treated in bankruptcy proceedings is both practical and essential to provide the best outcome for the client.

# MALCOLM MONROE FEDERAL PRACTICE SEMINAR



*Catherine Schroeder, Gianluca Cocito-Monoc, and Chloé Chetta present*



*Judge van Meerveld speaks on Implicit Bias*

On December 6, 2023, the Federal Bar Association's Younger Lawyers Division held its annual young lawyer-focused Malcolm Monroe Federal Practice Seminar.

The Seminar began with a panel moderated by Catherine Schroeder discussing tips and advice from former federal law clerks, Jordan Redmon, Emily LaCerte, Gianluca Cocito-Monoc, and Margaret Manning. These former federal law clerks provided insight and helpful tips about the judges they clerked for, as well as a discussion of procedures specific to certain courts.

Valerie Fontenot then moderated a panel discussing law practice management with assistance and advice from Markita Hawkins, Camille Gauthier, and Carlos Benach. This panel focused on time management, prioritizing various assignments, client relations, billing, and tips for managing a file.

U.S. Magistrate Judge Michael North, Eva Dossier, and attorney and former federal clerk Chloé Chetta then led a panel regarding pro bono representation. The panel discussed the ethics and importance of pro bono work, and provided an overview of EDLA's Civil Pro Bono Program. Attendees received a QR code allowing them to register to receive notifications about civil cases in need of pro bono counsel.

The final presentation to the group was a fascinating and interactive discussion on implicit bias in the workplace. Led by U.S. Magistrate Judge Janis van Meerveld, the presentation emphasized thoughtful consideration of and recognizing and addressing your own implicit biases.

The Seminar ended with Chief Judge Nannette Jolivette Brown swearing the attendees into the bars of the Eastern, Middle, and Western Districts of Louisiana, as well as the U.S. Fifth Circuit Court of Appeal.

The Seminar brought in 118 attendees and 98 new members to the FBA New Orleans Chapter. Attendees finished the evening at the FBA's annual holiday party in the Great Hall of the Fifth Circuit for cocktails, food, and networking.

The seminar was a great success, and the organizers wish to thank all of the speakers, volunteers and attendees who participated or contributed to this long-running, hallmark FBA program.



*Chief Judge Brown administers the oath to new admittees*

# ENDING 2023 WITH MENTAL HEALTH AND WELLNESS

By Jeff Gelpi, Kean Miller, LLP and Amy McIntire, Chaffe McCall, LLP



Sheila M. Wilkinson, SMWPLC

On December 11, 2023, the New Orleans Chapter of the Federal Bar Association hosted its second mental health and wellness CLE. Back by popular demand after last year's inaugural mental health and wellness CLE, this year's program was titled "Practical and Intentional Strategies: Managing Unreasonable Expectations to Improve Your Wellness and Increase Your Competency" and focused on balancing and managing expectations in attorneys' professional and personal lives. The CLE was presented by Sheila M. Wilkinson, LMSW, Esq, and was approved for 1 hour of professionalism.

In the CLE, Ms. Wilkinson guided the participants through an inquisitive and interactive primer on mental health and wellness, and she discussed the relationship between lawyer well-being and the foundations of professional competency outlined in the Rules of Professional Conduct. She discussed the ease at which

attorneys may become overwhelmed by high expectations as professionals. CLE participants also shared their own experiences and challenges in balancing their professional and personal lives. Guided by Ms. Wilkinson, participants identified particularly challenging areas requiring balance and set goals for managing those areas going forward. Ms. Wilkinson shared her own experiences as a professional and urged the participants to set reasonable boundaries in and out of the workplace. Each individual's boundaries are personal, but examples include taking time for family activities, meal prepping, or working out for physical and mental health. Ms. Wilkinson also provided tips for managing and meeting expectations and emphasized the importance of carving out time for meaningful personal tasks (however small)! In addition to guiding the participants through reflection and interactive exercises, Ms. Wilkinson also provided the participants with a wide range of resources and suggestions on how to achieve wellness and balance in their personal and professional lives.

The CLE Programming Committee thanks Sheila Wilkinson for her time and participation in what was truly a unique and eye-opening presentation. It was the perfect way to reflect on 2023 and prepare for the new year!

*"it is*  
LITERALLY IMPOSSIBLE  
*to be a*  
WOMAN [LAWYER]"

*- America Ferrera, as Gloria, in "Barbie"*

**WHEN:**

*Tuesday, February 27, 2024*

*CLE from 4:00-5:00 pm*

*Social Hour from 5:00-6:00 pm*

**WHERE:**

*Eastern District of Louisiana*

*Judge van Meerveld's*

*Courtroom (B345)*





# MEMBER SPOTLIGHT

## LOUIS COLLETTA



Louis Colletta is an attorney at Lugenbuhl, Wheaton, Peck, Rankin & Hubbard with more than 20 years of legal experience representing large transportation authorities, governmental entities, and private corporations. His litigation practice focuses on corporate law, employment law, railroad law, environmental and toxic tort insurance coverage, and commercial property & homeowner's property insurance coverage. Louis also serves as President of the Touro Bouligny Neighborhood Association and is involved in Project H.E.L.P.

We hope you enjoy getting to know Louis!

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

I think my biggest strength as an attorney is my work ethic. I certainly may not be the smartest person in the room, but I will work harder than my opponents to achieve an outcome that is desirable for our clients.

**WHAT IS YOUR FAVORITE PART ABOUT BEING AN ATTORNEY AND WHY?**

Being able to help our clients. I like being able to make a difference and being an active part of the solution.

**WHAT IS ONE THING YOU WISH YOU WOULD HAVE KNOWN BEFORE BECOMING AN ATTORNEY AND WHY?**

Living my work life in six-minute increments. While billing time is necessary, as a profession, we need to start looking at alternative billing methods that make sense.

**WHAT IS THE BEST ADVICE YOU HAVE EVER RECEIVED IN THE LEGAL PROFESSION?**

It sounds parochial, but I had a mentor that taught me that there is no such thing as a stupid question and to always ask questions and be curious. You never know what you may find.

**WHERE ARE YOU FROM AND HOW DID YOU END UP IN NEW ORLEANS?**

I grew up in Lake Charles, Louisiana and moved to New Orleans in the mid 1990's after college and have never looked back. New Orleans is a nice place to practice, and I have met and worked with a number of really smart lawyers who have helped me develop into a better person and a better lawyer.

**WHERE DID YOU GO TO LAW SCHOOL?**

Tulane School of Law

**NAME ONE THING THAT YOU COULD NOT LIVE WITHOUT AND WHY?**

My family - they give me the strength and support to succeed.

**WHAT WOULD YOU DO PROFESSIONALLY IF YOU WERE NOT AN ATTORNEY AND WHY?**

Investigator. I'm a pretty curious person and I love asking questions, solving problems, and puzzles. Maybe something in law enforcement.

**OTHER THAN YOUR CAREER, WHAT ARE YOU PASSIONATE ABOUT AND WHY?**

Certainly, my family first. Watching our son grow and develop makes me very happy. I also love golf, which I picked up only a few years ago. I just wish I had more talent.

**FAVORITE NEW ORLEANS DISH AND RESTAURANT?**

This is a tough question as there are so many great restaurants in New Orleans and my tastes are constantly changing. I suppose one of the constants is turtle soup from Commander's Palace.

**YOU GET ONE SUPERPOWER. WHAT IS IT AND WHY?**

The ability to read minds - it would make taking depositions so much easier.

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

I am president of our neighborhood association. We recently conducted a neighborhood cleanup project purely with the help of volunteers. We were able to recruit over 20 volunteers and pick up trash and garbage in our entire neighborhood keeping it clean and safer by being active. Working collaboratively with City Council District B and the sanitation department, all of the debris we picked up was collected by the City on the same day. It was a very successful project and it was very rewarding to help organize.



# 2023 FEDERAL JUDGES RECEPTION

*By Breanna Obando, Tulane Law School, 2025 J.D. Candidate and current Tulane Law FBA President, and Varun Hukeri, Tulane Law School, 2026 J.D. Candidate*

On November 9, 2023, the New Orleans Chapter of the Federal Bar Association held its annual Federal Judges Reception. More than 100 attorneys and judges from Louisiana federal district courts and the U.S. Fifth Circuit Court of Appeals gathered at the Four Seasons Hotel. A select number of FBA student members from Loyola Law and Tulane Law also had the privilege to attend and network with invitees. Friends and colleagues enjoyed an evening of conversation over hors d'oeuvres and cocktails at the hotel's premier ballroom, featuring a balcony view of the city.

The night was dedicated to honoring the numerous contributions of the Louisiana federal judiciary. The Chapter's Executive Director, Elena Perez, led the event's planning efforts in conjunction with Chapter members and other community stakeholders. Nearly 50 local law firms sponsored the event. The Chapter thanks its partners for their generous contributions that helped make the reception successful!

## SCENES FROM A WELL-ATTENDED JUDGES RECEPTION





# Federal Bar Association

## New Orleans Chapter

### SPONSORS OF THE 2023 FEDERAL JUDGES' RECEPTION

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# 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](mailto:NOFBAJurisprudence@gmail.com)

**Dear Jurisprudence:** I represent a defendant in federal district court. After reviewing the complaint, I don't think the plaintiff has stated a valid claim. I want to file a Rule 12(b)(6) motion to dismiss. But I keep seeing recent cases that say 12(b)(6) motions are “disfavored” and “rarely granted”—surely this can't be true? My client doesn't belong in this lawsuit, and discovery will be incredibly expensive! Help!

—Dumbfounded About Disfavored

**Dear Dumbfounded:**

You're not alone in wondering why recent cases claim that Rule 12(b)(6) motions are viewed with “disfavor.” And in my humble opinion, this language is a relic that must be removed from modern caselaw.

To fully unravel this conundrum, we must begin at the beginning—or at least the early 1980s. In *Sosa v. Coleman*, the “Mammoth Fifth” (then spanning from Texas all the way to Florida) explained that “the allegations of the complaint should be construed favorably to the pleader,” a familiar refrain that remains true today. 646 F.2d 991, 993 (5th Cir. Unit B June 1981). But the court added that “[b]ecause of the liberal pleading standard prescribed by . . . Rule 8(a), dismissal for failure to state a claim is viewed with disfavor, and is rarely granted.” *Id.*

At the time, this may have been true. Harkening back to *Conley v. Gibson*, 355 U.S. 41 (1957), in which the Supreme Court considered whether the district court had correctly dismissed the petitioners' complaint, the Court explained: “In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove *no set of facts* . . . which would entitle him to relief.” *Id.* at 45–46 (emphasis added).

As is often the case, the rule in 1957 is no longer a rule today. For 50 years, *Conley's* “no set of facts” language “puzzl[ed] the profession,” – and the U.S. Supreme Court in *Bell Atlantic Corp. v. Twombly* articulated the current “plausibility” standard. 550 U.S. 544, 562–63 (2007). Analyzing allegations of antitrust conspiracy, the Supreme Court held that even a “plain statement” under Rule 8 must “possess enough heft to show that the pleader is entitled to relief,” crossing the line from possibility into *plausibility*. *Id.* at 557 (cleaned up). Though a complaint “does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions.” *Id.* at 555 (cleaned up). There must be enough facts, assumed true, “to raise a right to relief above the speculative level.” *Id.* The *Twombly* plaintiffs had not pleaded “enough facts to . . . nudge[] their claims across the line from conceivable to plausible.” *Id.* at 570.

Nowhere did the Court in *Twombly* say that pleading-stage dismissal is disfavored. On the contrary, the test of plausibility and sufficiency under Rule 12(b)(6) serves an important purpose, “lest a plaintiff with a largely groundless claim be allowed to take up the time of a number of other people.” *Id.* at 558. “So, when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should be exposed at the point of *minimum expenditure* of time and money by the parties and the court.” *Id.* (cleaned up) (emphasis added). Put simply, district courts must insist on “some specificity in pleading before allowing a potentially massive factual controversy to proceed.” *Id.*

Two years later, in *Ashcroft v. Iqbal*, the Supreme Court reiterated that the plausibility standard applied to *all* complaints, not just antitrust claims. 556 U.S. 662 (2009). Rule 8 “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 678. The plausibility standard requires “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged”—something “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* Just like in *Twombly*, the Court in *Iqbal* concluded that the plaintiff had not stated a plausible claim for relief. *Id.* at 680.

Here, too, the Court said nothing about disfavoring pleading-stage dismissals. Instead, district courts are “to draw on [their] judicial experience and common sense” in reviewing complaints and to identify any allegations that, “because they are no more than conclusions, are not entitled to the assumption of truth.” *Id.* at 679. And the Court once again rejected that a plaintiff without a plausible claim for relief should be allowed discovery: “the question presented by a motion to dismiss a complaint for insufficient pleadings does not turn on the controls placed upon the discovery process.” *Id.* at 684–85. Rule 8 “does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions,” and when a “complaint is deficient under Rule 8, [the plaintiff] is not entitled to discovery, cabined or otherwise.” *Id.* at 678–79, 686.

The first several Fifth Circuit cases after *Twombly* and *Iqbal* are unremarkable. Then came *Turner v. Pleasant*, and herein lies the mistake. In articulating the Rule 12(b)(6) standard, *Turner* overlooked the last several years of Supreme Court precedent and asserted that “a motion to dismiss . . . is viewed with disfavor and is rarely granted.” 663 F.3d 770, 775 (5th Cir. 2011). To support this assertion, the court cited itself, citing itself, citing itself again—dating all the way back to 1982. *Id.* (quoting *Harrington v. State Farm Fire & Cas. Co.*, 563 F.3d 141, 147 (5th Cir. 2009) (quoting *Gregson v. Zurich Am. Ins. Co.*, 322 F.3d 883, 885 (5th Cir. 2003) (quoting *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (quoting *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir. 1982)).

It comes as no surprise, then, that we see other post-*Twombly* and *Iqbal* cases citing this pre-*Twombly* and *Iqbal* language as if it were the prevailing standard. See, e.g., *Leal v. McHugh*, 731 F.3d 405, 410 (5th Cir. 2013) (quoting *Turner*, 663 F.3d at 775); *Brown v. Phoenix Life Ins. Co.*, 843 F. App'x 533, 538–39 (5th Cir. 2021) (quoting *Leal*, 731 F.3d at 410). But just recently, the Supreme Court again described the Rule 12(b)(6) motion as an “important mechanism for weeding out meritless claims.” *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014). Far from disfavoring the practice, the Court explained that a Rule 12(b)(6) motion “requires careful judicial consideration of whether the complaint states a claim.” *Id.*

So, dear reader, file your motion! Plead for plausibility. On a Rule 12(b)(6) motion, the only thing we should disfavor is the continued invocation of an incorrect standard. And remember . . . *Good advice is always sustained.*

Yoursever,  
Jurisprudence

***The information provided in this column is not legal advice; instead, all responses are for informational purposes only and may not include the most up-to-date legal or other information. Readers should do their own research on any particular legal matter.***

To ask Jurisprudence your federal and personal queries and conundrums, please email  
[NOFBAJurisprudence@gmail.com](mailto:NOFBAJurisprudence@gmail.com)

# NOFBA BOARD MEETS, EATS, LEARNS AT DRAGONFLY CAFÉ

*By Hon. Janis van Meerveld, U.S. Magistrate Judge, EDLA*

Your NOFBA board went “off-campus” for its December 12, 2023 board meeting for a change of scenery, a terrific meal, and some first-hand exposure to a wonderful local program. Sure, we talked about FBA business, but all the focus was on our delicious lunch--and especially the good work of Raphael Village, which runs the Dragonfly Café. Raphael Village serves differently abled people in becoming fully engaged in life and community.

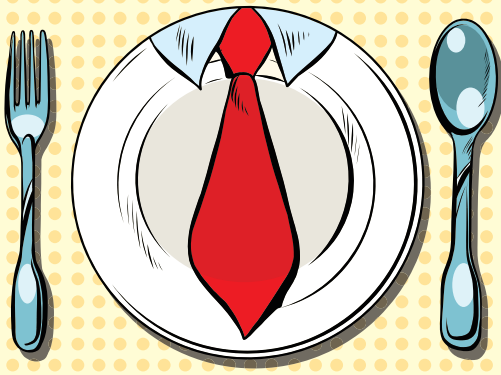
The Dragonfly Café, located in the Town Center, opened in 2021 as its newest social enterprise. The Café creates vocational internships and post-secondary educational opportunities for individuals with exceptionalities. Using the opportunities at the front and back of the house, these individuals can learn skills that could lead to fulfilling work in the food and service industries. Jacqueline Case, Dragonfly Café’s founder and Executive Director, spoke to the FBA about the mission, resources, and history of the organization and the Town Center. Next, EDLA Clerk of Court Carol Michel, who also serves on the NOFBA Board, moved us with her story of raising an autistic son. Her son is now a longstanding member of Raphael Village’s post-secondary training program called The Guild. Following lunch, some stayed for a tour of the Town Center and were impressed by the Fiber Studio containing intricate looming equipment and handmade textiles, an extensive on-site garden that supplies fresh vegetables for the Café, and the Café’s hands-on, full-service regular and catering kitchen.

Located at 530 Jackson Avenue, New Orleans, the café is open Wednesday to Sunday for breakfast and lunch, with a menu that features several vegetarian dishes and some vegan options, too. Coffees, cocktails, mocktails, and local brews are also available. The Café boasts a bakery and market where patrons can preorder delicious baked goods of all shapes and sizes. The offerings include (but are no means limited to): fruit tarts, cakes, pies, a bakery box, croissants, cookies, cupcakes, lemon loaf, and breads.

Finally, Dragonfly Café’s warm and inviting space is available for private events in the evenings, or on days that it is not open for regular business hours. The NOFBA extends its thanks to the Dragonfly Café for hosting the board meeting, serving a delicious meal, and providing a lesson on yet another gem available in this city, this one doing incredibly good work. What a win-win. You can learn more at [www.Dragonflynola.com](http://www.Dragonflynola.com) and [www.RaphaelVillage.org](http://www.RaphaelVillage.org).



*FBA Board Members gather for board meeting at Dragonfly Café.*



# Lunch with the Court: Judge Papillion

*By Kristen Amond, Kristen Amond LLC*

The FBA YLD recently hosted its Lunch with the Court program with Judge Darrel Papillion. The event drew an impressive turnout, showing young lawyers' eagerness to meet the EDLA's newest judge.

Judge Papillion shared his journey to the bench and gave attendees an inside look at the nomination and confirmation processes that brought him from private practice in Baton Rouge to the EDLA. The conversation then moved to Judge Papillion's first six months on the bench, which he said have been full of learning experiences and profound insights. He noted the steep learning curve inherent in certain aspects of being a federal judge, but said he loves embracing the challenge and has been tackling his (voluminous) docket with fervor. When asked whether being a judge feels different than being in private practice, Judge Papillion noted his realization of the weight of responsibility that comes with being an arbiter of the law.

Judge Papillion's advice to young lawyers is to burnish and protect their reputations by prioritizing bar service and building networks, and, above all else, always being honest with courts and other lawyers. As Judge Papillion put it, "the street knows."

The FBA YLD welcomes Judge Papillion to the Eastern District and thanks him for spending time with its young lawyers.



*Judge Papillion with lunch attendees*

# FBA'S DAY OF SERVICE

## December 22, 2023

*By J. Christopher Zainey, Jr., Lambert Zainey Smith & Soso*



On Friday, December 22, 2023, the New Orleans Chapter of the Federal Bar Association, in conjunction with the New Orleans Bar Association and the A.P. Tureaud Inn of Court, held its second day of service this year at the Rebuild Center in New Orleans. Once again, the event was a resounding success! While it was anticipated that our group of volunteers would serve lunch to approximately 120-130 guests, we actually served more than 200 guests a delicious jambalaya lunch at the Center on a beautiful and fun-filled winter day!

The jambalaya was again graciously (and deliciously) prepared by FBA Board Member Cayce Peterson's dad, Kirk, in Patterson, Louisiana, and transported to New Orleans hot and fresh by Cayce's mother, Janice. The Petersons prepared such a glorious abundance that we were ready for the larger than anticipated group of guests – with enough left over to be frozen and served for lunch again after the holidays!

Our volunteer turnout was impressive, and the event's success could not have been achieved (at least not nearly as efficiently!) without everyone's contribution. FBA members in attendance included Judge Wendy Vitter (along with her Judicial Assistant Marie Firmin and Career Law Clerk Frannie Ledson), Brian Capitelli, Larry Centola, Stephen and Sarah Myers (as well as their 11-year-old son, Grant), Chrissy Calogero, Raley Alford, Brett Venn, Cayce Peterson, and Chris Zainey. We were also honored to be joined by Louisiana Supreme Court Justice, Piper Griffin, along with members of her staff, as well as Judge Ellen Hazeur of Civil District Court, plus several other esteemed volunteers from all three participating legal organizations.

On this particularly special day of service, guests and volunteers alike got more than they anticipated. Judge Wendy Vitter and her wonderful staff led several games of BINGO for the guests to enjoy while they patiently waited for their meals to be plated and served by volunteers. Additionally, all volunteers



*Volunteers preparing food to serve to the guests*



enjoyed a tour of the entire facility where they saw first-hand the myriad services that guests are provided at the Center nearly every weekday during the year – including the Center’s offices / meeting space, shower facilities, hygiene stations, clean restrooms, and the beautiful and shaded courtyard area for guests to enjoy and escape the elements during the Center’s operating hours. Our volunteers also learned about several other services guests are provided throughout the year at the Center, including the Center providing an opportunity for the guests to both send and receive mail – something many guests otherwise have no opportunity to do. It may seem like such a simple thing that many of us take for granted, but providing the guests with a mailing address is of monumental significance in their lives for things like sending job applications, receiving government benefits, and connecting with lost family.

Our volunteers also learned about volunteer opportunities at the Center. Several lawyers throughout the New Orleans area regularly volunteer their time at the Center by providing pro bono legal and notary services to the guests. Additionally, volunteer social workers are regularly on hand to assist guests in navigating and ultimately obtaining certain government benefits that the guests likely otherwise would not know about, or at the very least, would have no other way of accessing and obtaining. These government benefits are often critical to allow many of these guests to get back on their feet. In addition, the Center regularly provides routine medical exams for guests by volunteer doctors and nurses and serves many other needs for those who could not otherwise obtain such critical assistance in their daily lives.

Among the litany of other services provided above, the Rebuild Center serves lunch Monday through Friday throughout the year and largely relies on private donations as well as the generosity, skills, and time of its volunteers. For those interested in learning more about volunteer opportunities at the Rebuild Center, please contact FBA board member Chris Zainey at [czainey@lambertzainey.com](mailto:czainey@lambertzainey.com) for more information on how you can help.



*Volunteers waiting to begin lunch service for the guests*



*Volunteers serving delicious jambalaya*



*Judge Vitter leading BINGO games for the guests*

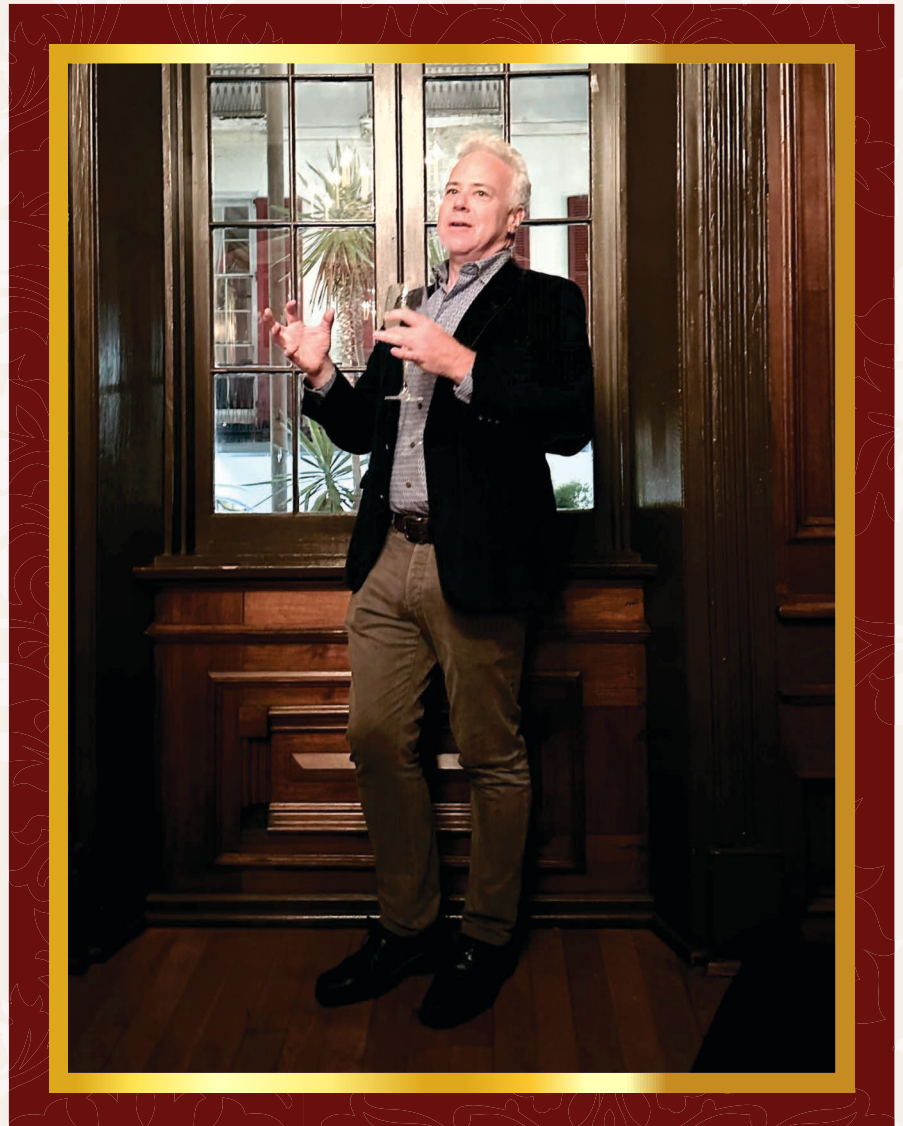
# EVENINGS WITH THE FBA WELCOMES

*New Orleans Food and Dining Writer*  
**IAN McNULTY**

*By: Caroline Donze, Ogletree Deakins*

Food columnist Ian McNulty has dined at some of New Orleans' finest restaurants, but he still won't pass up a solid Chinese takeout spot. While taking questions from local attorneys inside Antoine's, the oldest family-run restaurant in the United States, McNulty expressed that his favorite guilty pleasure in New Orleans dining was grabbing a Chinese dinner from C&A Seafood at the intersection of Norman C. Francis Parkway and Earhart Boulevard (their po-boys also are among the best in town). This and other invaluable inside tips were shared on November 14, 2023, when the New Orleans Federal Bar Association's Younger Lawyers Division hosted "Evenings with the FBA," featuring a speech and Q&A session with McNulty inside Antoine's iconic Red Room.

During his hour-long talk, McNulty covered the career path that took him from his native Rhode Island town (which he compared to growing up on the North Shore) to the Crescent City in 1999. At that stage of his life, McNulty admitted he was not yet a foodie, but had a "big appetite." As a fresh transplant, McNulty was struck by the sheer breadth of the New Orleans dining scene, which "had a scale you can't comprehend." He described his initial missteps with local dining, most notably an "awful" jambalaya at a touristy spot on St. Charles Avenue that reeked of garlic cloves.



*Ian McNulty discussing his career path as a food journalist and the New Orleans restaurant scene.*

Though hard to believe, McNulty's initial beat in New Orleans was covering the banking industry for a business publication. Ultimately, he switched to writing about food and dining, a job he described as the “greatest gig ever,” and a role he has seen evolve from “anonymous food critic” to covering the city's food and dining “as if it were a sports team.”

After a stint writing food and dining articles for Offbeat Magazine, McNulty began working for Gambit in the fall of 2005, where he wrote a weekly column chronicling the recovery of the local restaurant industry during the critical post-Katrina era. McNulty described this mandate as an “epic story,” “the big time,” and the “best finishing school [he] could have asked for” as a New Orleans food writer. McNulty noted that his other milestones in New Orleans food and dining coverage were the aftermaths of the BP Oil Spill in 2010, and the COVID-19 pandemic in 2020. Currently, McNulty is a staff writer for *The Times-Picayune* | [NOLA.com](https://www.nola.com) and a WWNO regular contributor.

McNulty described New Orleans restaurants as irreplaceable bastions for locals and transplants alike. New Orleanians, he said, plan our days, nights, and weekends around food, and we often spend our lunches talking about what we want to eat for dinner. As to the millions of tourists who flock to New Orleans each year, McNulty explained that these folks “don't come here for the elevation or the beaches.” Rather, they come for our food and hospitality, and they all want to eat where the locals eat.

In an ode to the location of the “Evenings” event, McNulty reflected on an article he wrote in 2017, profiling a former Antoine's waiter, Sterling Constant, who retired after an astounding 50 years on the job. McNulty recounted that Constant took customer service to the next level, traveling to the home of a dying regular to serve him one last meal, as his loyal customer was physically unable make the trip to the restaurant.

The crowd peppered McNulty with questions throughout his talk, and many iPhone notes apps were whipped out when one attendee asked McNulty to identify five restaurants he would have added to The New York Times' recent listing of New Orleans' 25 best restaurants. McNulty listed Palm and Pine, on the edge of the French Quarter; the High Hat Café, in the Freret neighborhood; Clancy's, near Audubon Park; Zasu, in Mid-City; and Jewel of the South, in the French Quarter.

Honorable mention went to GW Fins, in the French Quarter, which McNulty said, “sounds like a chain restaurant” but is actually a culinary delight and stocks its kitchen with fish procured from local waters according to the lunar cycle. McNulty also had praise for Almasgoof, an Iraqi restaurant situated at a spot locals would not remotely expect to find such cuisine — the intersection of Transcontinental Drive and West Esplanade Avenue in Metairie.

In describing his process for seeking out new restaurants to profile, McNulty said he looks for places that “radiate good feeling” and where the staff and clientele “looks like New Orleans.”

As to his favorite “Ain't Dere No More” spots, McNulty was quick to identify Restaurant Mandich, which he dubbed “the Galatoire's of the Ninth Ward” and a former haunt of local tax assessors. He also referenced Upperline, which coincidentally served Restaurant Mandich's beloved “Oysters Mandich” dish.

McNulty concluded with his advice for how local attorneys can best support the New Orleans restaurant industry. “Hospitality is a two-way street,” said McNulty, and New Orleanians have a responsibility to support and show our appreciation to those who cook and serve our food. He advised the attendees to take their clients and law firm colleagues to less popular spots that may lack the resources of the well-oiled machines at the top of the business. Patronizing restaurants off the beaten path gives their employees a morale (and financial) boost, said McNulty.

Regardless of where you choose to eat, McNulty stressed that it is vital to acknowledge restaurant staff for anchoring our local economy. He said to be sure to tell them, “we are here because of you.”



# TRIALS & TRIBULATIONS

*By Colin Cambre, Phelps Dunbar*

## CIVIL: BREACH OF CONTRACT

### *Assure Neuromonitoring Louisiana, LLC v. Fairway Medical Center, LLC d/b/a Avala*

In a diversity jurisdiction case, Plaintiff Assure Neuromonitoring Louisiana, LLC (“Assure”) brought claims for breach of contract and detrimental reliance against Defendant Fairway Medical Center, LLC d/b/a Avala (“Avala”). Assure and Avala entered into a contract in 2018 for Assure to provide intraoperative neuromonitoring (“IONM”) services to patients undergoing surgery at Avala’s facility. The contract provided Assure with the exclusive right to directly bill private insurers, like Blue Cross Blue Shield of Louisiana (“BCBSLA”), for its services. After Assure began providing services to Avala in January 2019, BCBSLA denied Assure’s claims and maintained that it already paid Avala for IONM services provided by Assure as part of a bundled payment outlined in BCBSLA’s confidential contract with Avala.

Assure argued that Avala failed to inform it about the provision of the confidential Avala-BCBSLA agreement that prevented Assure from billing BCBSLA directly and that Avala breached the provision of the Assure-Avala agreement that gave Assure the exclusive right to bill BCBSLA. Avala argued that it had not been paid for the IONM services by BCBSLA and that Assure failed to mitigate damages when Assure continued to provide IONM services at Avala until June 2021.

The jury found that Avala was liable for breach of contract and detrimental reliance. It awarded Assure damages in the amount of \$1,250,000. However, the jury also found that Assure failed to mitigate its damages in the amount of \$1,176,000, resulting in a net award of \$74,000 to Assure.

Case No. 21-1489 H (Jury trial held before Judge Jane Triche Milazzo from September 29-October 4, 2023).



## CIVIL – PERSONAL INJURY

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### *Etheridge v. DG Louisiana, LLC d/b/a Dollar General*

In April 2022, Plaintiff visited a Dollar General store in Covington, Louisiana to purchase an Easter basket. While entering the store, Plaintiff tripped on a floor mat, which had a tear where the outer rubber lining meets the carpeted portion of the floor. Plaintiff fell and landed on her knees and wrists. She sought medical treatment but, due to financial and insurance difficulties, she did not undergo the recommended knee surgery. She sued Dollar General alleging negligence under the Louisiana Merchant Liability Statute.

Defendants answered the complaint denying any negligence, arguing that Plaintiff's own negligence caused her injuries.

After deliberating for approximately two hours, the jury returned a verdict in favor of Dollar General, finding that Plaintiff failed to prove by a preponderance of the evidence that Dollar General was negligent with respect to her accident.

Cause No. 23-822 L (5) (Jury trial held before Judge Eldon Fallon from November 13-14, 2023).



## CRIMINAL

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### *United States v. Shiva Akula*

On August 5, 2021, a grand jury returned a 23-count indictment charging Dr. Shiva Akula (“Akula”) with health care fraud in violation of 18 U.S.C. § 1347. Akula owned and oversaw the day-to-day operations of Canon Healthcare, LLC (“Canon”), that provided hospice care to patients in Louisiana and Mississippi. The indictment charged that, as part of a scheme and artifice to defraud, Akula unlawfully enriched himself by submitting and causing the submission of false and fraudulent claims to health care benefit programs, including Medicare. The indictment further charged that Akula instructed Canon employees to improperly bill to maximize reimbursement from health care benefit programs, knowing that those services were not medically necessary. Broadly, the indictment alleged that, from January 2013 to December 2019, Canon billed Medicare over \$62 million and was paid over \$47 million.

After deliberating for approximately 2 hours, the jury returned guilty verdicts as to all 23 counts.

Case No. 21-cr-981 (Jury trial held before Judge Lance Africk from October 30, 2023–November 6, 2023.)



# JUDGE MARTIN FELDMAN FEDERAL PRACTICE SERIES

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**MARCH 7, 2024 | FEDERAL COURT | NOON**

## **WE DON'T BITE (UNLESS PROVOKED)**

Geared towards infrequent visitors to federal court, this CLE hour is a primer on the important differences between state and federal courts, the rules that govern procedure and practice in federal court, common mistakes made in federal court, and how to avoid "getting bitten."

*Instructors: Chief Judge Nannette Jolivette Brown; Judge Janis van Meerveld*

**MARCH 14, 2024 | NOON**

## **RECENT CHANGES IN EMPLOYMENT LAW**

This hour will address recent substantive changes to employment-law standards on viable adverse employment actions, causation, and protected characteristics/groups, among other relevant, developing issues for the courts and employment-law practitioners.

*Instructors: Judge Donna Phillips Currault; EEOC Asst. Regional Attorney Gregory Juge; and Camille Bryant, McGlinchey Stafford*

**MARCH 21, 2024 | NOON**

## **ESI BEST PRACTICES**

Not every case involves voluminous electronically stored information (ESI) or justifies spending thousands of dollars on data-management software and vendor services. Nonetheless, ESI is present in many cases and with some preparation and cooperation, you can manage the collection and review efficiently. This hour-long CLE panel will discuss topics such as: early client engagement and best practices for data preservation and collection; making your Rule 26(f) conference effective; whether to bother with an ESI protocol; privilege logging options for ESI vs. traditional documents; and technology for managing ESI.

*Instructors: Judge Karen Roby; Margot Want, EDLA career clerk*

**MARCH 28, 2024 | NOON**

## **LEGAL WRITING BY THE NUMBERS, PART TWO**

A follow-up to a survey on legal writing completed by EDLA district-court and magistrate judges, this hour will address additional legal-writing preferences and common pitfalls identified by the collective EDLA bench. You need not have attended the first session to benefit from Part Two!

*Instructors: Chloé Chetta, Barrasso Usdin; Amy McIntyre, Chaffe McCall*

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**MARCH 14 | RECENT CHANGES IN EMPLOYMENT LAW**

**MARCH 21 | ESI BEST PRACTICES**

**MARCH 28 | LEGAL WRITING BY THE NUMBERS, PART II**

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