

ON THE MERITS

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FIRST CHAIR: PRESIDENT'S MESSAGE

BY: MAGISTRATE JUDGE MICHAEL J. NEWMAN,
U.S. DISTRICT COURT, SOUTHERN DISTRICT OF OHIO



Hon. Michael J. Newman,
U.S. Magistrate Judge,
S.D. Ohio, at Dayton, President
Dayton Chapter,
Federal Bar Association

It is my pleasure to take the reins as President of the Dayton Chapter of the Federal Bar Association for the 2013-2014 term, succeeding Glen McMurry, who did outstanding work on behalf of the Dayton Chapter. The Dayton Chapter is transitioning from a year of tremendous growth to a year of strategic organization and planning. My goal as Chapter President is to plant the seeds for continued growth and accomplishment so that the Dayton Chapter remains vibrant and productive for the next generation of Dayton federal practitioners.

I am excited to share some of the highlights of the upcoming year. In January, Chief Judge Susan J. Dlott will lead the *State of the Court* luncheon, at which all six of the Dayton federal judicial officers will be in attendance to discuss current issues facing the Southern District, challenges that lie ahead, and how the bench and bar can overcome those challenges together. In May, the Dayton Chapter will partner with the Cincinnati-Northern Kentucky Chapter of the FBA to host the *Sixth Circuit Practice Institute*. This two-day CLE is shaping up to be a preeminent gathering of members of the local and national federal bench and bar.

In addition to the foregoing, I plan to continue our Chapter's tradition of holding brown bag lunches with our local federal judges, the biannual Criminal Justice Act Certification CLE, the District Court admissions CLE, and our Federal Practice Seminars.

I am also pleased to share that the University of Dayton School of Law has shown tremendous interest in, and support of, the Federal Bar Association. Dean Paul McGreal has agreed to serve as a member of the Dayton Chapter Board of Directors, and we are working to install a Law Student Division of the Federal Bar Association at UDSL. The partnership between the federal court, local federal practitioners and law students promises to be a win-win for all involved.

Finally, I want to take a moment to express my sincere gratitude and appreciation for the warm welcome I have received by the Dayton legal community. I have been humbled by the collegiality of this legal community and inspired by the relentless support that my fellow judicial officers give to this organization. I am proud to call Dayton home. I look forward to continuing the mission of the Federal Bar Association, and I welcome the challenge of keeping the Dayton Chapter at the forefront nationally of the FBA.

Magistrate Judge Michael J. Newman,
U.S. District Court, Southern District of Ohio

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DAYTON FBA CLEANS UP AT THIS YEAR'S ANNUAL MEETING IN SAN JUAN

BY: GLEN R. MCMURRY



Former Chapter President, Glen McMurry, received the Presidential Excellence Award on behalf of the Dayton Chapter of the FBA at the Annual Meeting in San Juan, Puerto Rico

This past September, Magistrate Judge Michael Newman, Jeffrey Cox and I represented the Dayton Chapter in San Juan, Puerto Rico at the 2013 FBA Annual Meeting and Convention. The themes of this year's annual meeting were "Collaboration" and "Growth." I am happy to report that the Dayton Chapter was a shining example of both of these qualities.

While bar associations continue to decline in membership nationally, the FBA has experienced significant membership growth - eclipsing 16,000 members in 2013. This growth is due, in large part, to the efforts of chapters like ours, which experienced over a 30% increase in membership in 2013 alone. It is this success that garnered our Chapter the Presidential Excellence Award. This is the highest honor a chapter can receive and another first for the Dayton Chapter.

The annual meeting also provided a unique opportunity for our Chapter representatives to become better educated on the national resources that will assist us in continuing to grow. Topics ranged from how to select the substance and duration of our programming, to how to make it easier for members to pay for programming.

The 2013 Annual Meeting was a success for our national organization and Chapter. In fact, the FBA National President, U.S. District Court Judge Gustavo Gelpi, identified our Chapter as one of the success stories of 2013 that other chapters should seek to reproduce.

For more information about upcoming FBA events, please check out the following:

www.fedbar.org

"like" the Dayton FBA Facebook Page

join the Dayton FBA LinkedIn Group

follow us on Twitter @Dayton FBA

PROTECTIONISM OR PRAGMATIC CONTROL? THE SOUTHERN DISTRICT'S "TRIAL ATTORNEY RULE"

BY: NICHOLAS D. SEGER, ESQ.

The United States District Court for the Southern District of Ohio recently declined to adopt a proposed change to Local Rule 83.4, the "Trial Attorney" Rule. The change would have removed the requirement that, in every case, each party retain an attorney who is a permanent member of the Southern District's Bar. The Trial Attorney must attend all proceedings and sign all papers filed with the court. The Trial Attorney Rule follows Local Rule 83.3(b), which requires an attorney to obtain membership to the bar of the Supreme Court of Ohio before becoming eligible for the admission to the Southern District's Bar. A party must, therefore, retain and involve an Ohio attorney in any case it pursues in the Southern District.

The Trial Attorney Rule may appear antiquated at a time when attorneys have online access to the local rules, can obtain from PACER past documents on which to model their filings, and have the ability to file court documents from anywhere, at any time. So why keep it?

A skeptic might suggest that this presents an example of lawyer protectionism -- that the Court has maintained the Rule to protect the local bar's business from outsiders. Lawyers may question the merits of a policy favoring the Ohio attorneys practicing in a subdivision of a Federal, and largely uniform, court system. After all, an attorney barred in either Michigan, Ohio, Kentucky, or Tennessee may become admitted to represent clients before the Sixth Circuit by mailing it the proper motion, certificate of good standing and, of course, a check. It makes no difference from which state the appeal arises.

A critic need look no further than the Southern District's sister court, the United States District Court for the Northern District of Ohio, for an example of a contrary rule. The Northern District permits all attorneys appearing before it to become members of its bar. An attorney may be admitted to practice in any state to qualify for admission to the Northern District.

Judges who favor the Southern District's rule have provided different reasons why it benefits the bench and bar. However, it appears that judges primarily consider the Trial Attorney Rule necessary to encourage civility and professionalism when outside lawyers visit the Southern District. For example, at a recent Inn of Court meeting, Ohio Supreme Court Justice Judith French described Dayton as an unusually collegial legal community. A local trial attorney will, if she or he understands the proper role of the trial attorney, ensure that outside attorneys do not violate the unwritten rules of court regarding demeanor and acceptable litigation tactics.

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FORMER CLERK OF THE U.S. SUPREME COURT SPEAKS AT THE 2013 ANNUAL MEETING OF THE DAYTON CHAPTER OF THE FBA

BY: MATTHEW BRUCE, ESQ.



Erin E. Rhinehart, Esq., recipient of the 2013 Outstanding Member Contribution Award

At this year's Annual Meeting of the Dayton Chapter of the FBA, attendance exceeded all expectations. No doubt this was due to the featured speaker, recently retired Clerk of the U.S. Supreme Court, General William K. Suter, and the stellar panel of special guests.

The afternoon's event began with the issuance of several awards and plaques to deserving individuals, including Erin Rhinehart, Esq. and Glen McMurry, Esq., whose efforts have contributed greatly to the success of the Dayton FBA and its mission. Perhaps the most emotional award of the afternoon, though, was the presentation of the inaugural Mona Guerier Public Service Award, which was named in honor of Dayton Assistant U.S. Attorney Mona Guerier, a public servant of the highest order, who lost her brave fight with cancer. The award was presented to AUSA and Southern District of Ohio Criminal Chief Kenneth Parker for his longstanding efforts to help minority high school and college students apply to, and then succeed in, law school. Specifically, Mr. Parker leads the Summer Work Experience in Law ("SWEL") program, which was founded in 1988 as a pilot program by the Black Lawyers Association of Cincinnati to inspire more African American students to consider seriously a career in law, has enhanced the legal community and offered more than 300 students experience and exposure to the world of law. Mr. Parker, and his work with SWEL, exemplify the qualities necessary to receive an award as magnificent and honorable as the woman whose name adorns the plaque.



National FBA President, Judge Gustavo A. Gelpi, Jr. with Dayton FBA President, Judge Michael J. Newman

Following the awards, General William K. Suter, recently retired Clerk of the Supreme Court of the United States, treated the guests with an entertaining account of his 22 years in office. Highlights included hilarious stories of pranks and antics pulled by the Justices on tourists and staff members, including one story of a Justice who was asked by a passing tourist to take their picture outside of the courthouse. Obliging, the Justice took the tourists' photo and then asked, "Hey, have you guys seen any of those Supreme Court Justices walking around here?" to which the unwitting tourists replied, "Nope, not a one!" Not letting them in on the joke, the Justice then shrugged, told them to keep their eyes open, and continued on his way.

General Suter, who has himself observed thousands of oral arguments, shared war stories, as well as tips on what to do and what not to do when giving the most important oral argument of your career. General Suter's insight was tremendous and well appreciated as he stepped off the podium to roaring applause.

Finally, the National President of the FBA, the Honorable Gustavo A. Gelpi, Jr., capped off the event by swearing in the slate of incoming Dayton FBA executives, including the newly minted FBA Dayton Chapter President, Magistrate Judge Michael J. Newman. Judge Gelpi not only guided Judge Newman through the raise-your-right-hand-and-repeat-after-me necessities, but also took the opportunity to congratulate outgoing President, Glen McMurry, for his tremendous three-year reign. With the swearing in of the other new officers in the Dayton Chapter, the FBA and its members left that afternoon ready to tackle the next year. All in attendance agreed that the luncheon was the most successful event in the Chapter's 60 year history.



From left to right: Glen McMurry, Immediate Past-President Dayton FBA, Judge Newman, President Dayton FBA, Judge Black, Judge Gelpi, Jim Satola, Judge Ovington, Gen. Suter, recently retired Clerk, U.S. Supreme Court, Karen Silberman, Executive Director, FBA, and Alan Dorhoffer, U.S. Sentencing Commission

If you have questions about the Dayton Chapter, or would like to join the FBA and become involved in the Chapter, contact the Chapter's Membership Chair, Tim Pepper, Esq., at pepper@taftlaw.com.

Do You HYPERLINK IN YOUR BRIEFS?*BY: JIM SMERBECK, ESQ.*

One of the most rapidly evolving areas in federal practice is the use of hyperlinks in electronic filings. A hyperlink is "a word, phrase, picture, icon, etc., in a computer document on which a user may click to move to another part of the document or to another document." Hyperlinks enable a reader to move to a different place in the document, to a different document, or to a website by clicking on the link embedded in the text of the document. Through hyperlinks, an attorney may direct his or her reader to specific pages in the record, other CM/ECF filings, LexisNexis or Westlaw, or other external electronic resources.

Seven of the Circuit Courts of Appeals have amended their local rules to allow and set guidelines for the use of hyperlinks. The other circuits, including the Sixth Circuit Court of Appeals, have not amended their local rules or published guidelines for use of hyperlinks, but none have prohibited their use. Almost half of the district courts, including the Northern District of Ohio, have amended their rules or administrative procedures to permit hyperlinks in submissions. Others, including the Southern District of Ohio, either do not mention hyperlinks or do not expressly permit or prohibit them. Only the Central District of California has a local rule expressly prohibiting hyperlinks.

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"Seven of the Circuit Courts of Appeals have amended their local rules to allow and set guidelines for the use of hyperlinks."

Trial Attorney Rule from page 2 (cont.)

Attorneys who practice in the Western Division of the Northern District, specifically in Toledo, would politely assert that their bar exhibits the highest standards of professionalism, civility, and collegiality – without the Trial Attorney Rule. They often refer to their willingness to cooperate as "the Toledo way." Thus, the bench and bar in both Dayton and Toledo, though located in different districts with different local rules regarding local counsel, expect the same level of respect and courtesy from all attorneys. Although the Northern District has retained its inclusionary rule, one of its judges has expressed his strong preference for participation of local counsel. Senior District Judge James G. Carr highly recommends (but does not require) that outside attorneys employ local counsel. Judge Carr expects local counsel to serve as an information intermediary and safety valve. He encourages outside attorneys to keep a local attorney informed of principal developments in the case and copy the local attorney on substantive correspondence with the client and court. If attorneys follow this practice, then when unexpected circumstances arise, local counsel can step in to protect the client's rights, and appease the court by keeping the case on schedule.

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Local Rule 83.4(a) provides:

"Unless otherwise ordered . . . all parties other than pro se parties must be represented at all times by a 'trial attorney' who is a permanent member of the bar of this Court in good standing."

Have you RSVP'd for the January 30th State of the Court Luncheon?

On January 30, Chief Judge Susan J. Dlott will lead a State of the Court discussion with local federal practitioners and all six of Dayton's federal judicial officers.

This event is not to be missed!

For all of the details go to <http://www.fedbar.org/Chapters/Dayton-Chapter/Calendar/>

NATIONAL FBA PRESIDENT JUDGE GUSTAVO A. GELPI, JR. TOURS SOUTHERN DISTRICT OF OHIO

BY: ERIN E. RHINEHART, ESQ.

The three FBA chapters in the Southern District of Ohio (Dayton, Columbus, and Cincinnati/Northern Kentucky) together celebrated a very successful and productive visit to Ohio by National President, Judge Gelpi, and Executive Director, Karen Silberman, in October. As part of the three-day trip to Ohio, Judge Gelpi and Judge Michael J. Newman together met with numerous law students interested in the FBA and also with the Deans of the University of Dayton School of Law, The Ohio State Moritz College of Law, and Capital University Law School. As a result of Judges Gelpi and Newman's visits, law student divisions are now being established at all three schools.

While in Ohio, Judge Gelpi also spoke at two sentencing law CLE seminars -- at the Federal Courthouse in Dayton, and at the Ohio Supreme Court in Columbus -- along with Alan Dorhoffer from the U.S. Sentencing Commission. At the Columbus CLE, Judge Gelpi and Alan were joined by two additional speakers, Judges Sargus and Watson, both U.S. District Judges from the Southern District of Ohio. Also in attendance in Columbus were the Southern District's United States Attorney, Carter Stewart, and Acting Federal Public Defender, Dennis Terez. At the conclusion of the Dayton CLE, Judge Rose presented Judge Gelpi and Alan with Certificates of Appreciation from the U.S. District Court.

While the centerpiece of Judge Gelpi's trip was the Dayton FBA Annual Meeting (see p. 3 for more details on the event), it was a pleasure to be able to share with him the impact of the FBA in Ohio and its surrounding areas. Numerous FBA leaders from throughout the Midwest, including Sixth Circuit Vice President Jim Satola (who traveled from Cleveland), Federal Litigation Section Vice President Tom McNeal (who traveled from Detroit), and Cincinnati/Northern Kentucky Chapter President Greg Ahrens and Vice President Pierre Bergeron. The Dayton Chapter of the FBA looks forward to hosting additional members of the FBA in the future.



National FBA President, the Hon. Judge Gustavo A. Gelpi, Jr. visits UD Arena during his recent visit to Dayton, Ohio

Trial Attorney Rule from page 4 (cont.)

Most importantly, though, Judge Carr advises that, "local counsel should be consulted [by outside counsel] with regard to practices and procedures regarding discovery, motions, settlement and trial. It is particularly important that local counsel call attention to this court's practices concerning discovery disputes and expectations concerning the conduct of discovery generally and depositions in particular." The implicit message being that, too often, outside attorneys without local counsel do not conform their behavior to the Court's expectations. The result often leads to a very unpleasant call from the Court.

After spending time in both cities, it is apparent that Dayton and Toledo have outstanding legal communities. Judge Timothy Black of the Southern District often impresses upon and reminds young lawyers of their responsibility to maintain the standards of professional conduct exhibited by our bar. The judges of the Southern District consider it so important that they adopted a civility code, which precedes the local rules and encourages appropriate behavior. As Judge Black recently cautioned young lawyers at the swearing in ceremony for the Southern District, "our bar has something special, and it's up to us to protect it."

In the end, retaining local counsel benefits everyone. Outside attorneys benefit from the advice of local counsel and earn credibility and respect, and the bench sees fewer mistakes. Perhaps more importantly, such attorneys positively enhance the public's perception of lawyers in general. Therefore, the Southern District's Trial Attorney Rule likely provides a valuable form of protectionism - it presents a pragmatic way for the bench and bar to protect and further our profession.



Outside University of Dayton School of Law from left to right: Karen Silberman, Jim Satola, Gen. Suter, Judge Newman, Glen McMurry, Judge Gelpi, and Alan Dorhoffer

JUDGE MERZ HOSTS FREE CLE FOR FBA MEMBERS

BY: JEFFREY DEBEER, ESQ.

On November 19, 2013, the Dayton Chapter held a CLE – "Federal Civil Practice" – at the federal Courthouse in downtown Dayton. United States Magistrate Judge Michael Merz led the discussion in front of twenty local attorneys. Judge Merz discussed the Federal Rules of Civil Procedure, as well as the Southern District of Ohio's Local Rules, and offered invaluable practice tips for practitioners of all experience levels. This event, like several offered throughout the year, was free for FBA members.

Judge Merz is no stranger to teaching lawyers. He previously lectured young attorneys preparing to take the admission exam required to practice before the Southern District of Ohio. The long-time member of the bench jokingly commented on the Southern District's stubborn adherence to requiring an exam, "We were the first jurisdiction to require a test, and we were the last to abandon it." Although an exam is no longer part of the admission process, Judge Merz was gracious enough to give his presentation and educate attorneys on practicing before the federal courts.

During the seminar, Judge Merz focused on issues regarding jurisdiction and venue, as well as covered the Federal and Local Rules of Civil Procedure and Evidence. He also discussed procedural and substantive differences between the Federal Rules and Ohio's Rules of Civil Procedure.

The Dayton FBA offers CLE events, like this one, throughout the year – many of which are complementary to FBA members. Be sure to check the Chapter website – <http://www.fedbar.org/Chapters/Dayton-Chapter> – for upcoming opportunities!

Judge Merz's Practice Tips:

1. *Do not to miss an opportunity to draft a proposed order for the Court's review: "The first draft is where the power is."*
2. *Be considerate when preparing an Answer or other responsive pleading: "Seems to me that Twombly and Iqbal should apply equally to an Answer."*
3. *Lawyers are not required to attach unreported decisions in the Southern District.*
4. *Lawyers still receive the benefit of the 3-day mailing rule when e-filing a document.*



On November 19, 2013, Magistrate Judge Michael Merz led the Federal Practice Seminar before twenty local practitioners at the Federal Courthouse

***Check out the Dayton FBA's Facebook page
to stay current on all Chapter events!***

<https://www.facebook.com/pages/Federal-Bar-Association-Dayton-Ohio-Chapter/201309796674567>

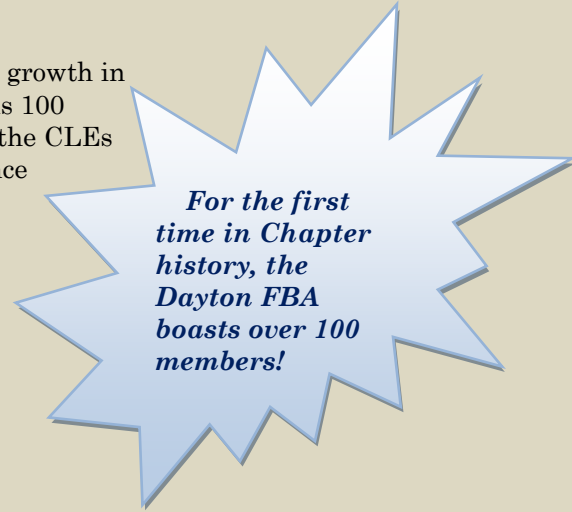
MEMBERSHIP UPDATE

BY: ERIN E. RHINEHART, ESQ.

The Dayton Chapter of the FBA has continued to see tremendous growth in membership. For the first time in Chapter history, membership exceeds 100 members! As previously reported, much of this growth is attributed to the CLEs and events hosted by the Chapter, as well as the strong national presence that several members of our Executive Committee maintain.

The Dayton FBA wants to take this moment to say *thank you* to our members, without whom our Chapter would not be so successful.

Never one to rest on our laurels, the Membership Committee welcomes feedback from current members regarding benefits, event ideas, and thoughts on how to better serve you.



**Not a member of the FBA?
Log on to www.fedbar.org and join today!**

**FBA GOVERNMENT RELATIONS COUNSEL,
BRUCE MOYER, MEETS WITH LOCAL
JUDGES & PRACTITIONERS**

BY: ERIN E. RHINEHART, ESQ.

On November 25, 2013, the Dayton FBA was fortunate to meet with Bruce Moyer, Esq., Government Relations Counsel for the Federal Bar Association. Moyer met with several members of the local federal judiciary, as well as a small group of Dayton FBA Executive Committee members. Over lunch, Moyer provided a report from Capitol Hill on the budget battles, judicial vacancies, and adequate judicial pay.

For more of Moyer's insights into the issues surrounding federal court funding, check out his article in the December 2013 edition of *The Federal Lawyer*.



From left to right: Magistrate Judge Michael J. Newman, Judge Walter H. Rice, Judge Thomas M. Rose and Bruce Moyer, Esq.

(Hyperlinking continued from page 4)

Courts that have adopted rules allowing hyperlinks are virtually uniform in their treatment of hyperlinks. As the Ninth Circuit stated in its Administrative Order Regarding Electronic Filing, hyperlinks are "simply mechanisms for accessing material cited in a filed document and are not considered part of the appellate record." As such, they "do not replace citations to the appendix, record, or legal authority. Documents must contain standard citations." For those interested, Michael Dunbar's article, *Hyperlinking: Electronic Submission in Federal Courts*, provides a comprehensive overview of the adoption and implementation of rules and practices governing hyperlinks across the federal courts.

Hyperlinks in court documents have many advantages. As the United States District Court for the District of Nebraska's *Attorney Guide to Hyperlinking in Federal Courts* explains, hyperlinks allow for judges and chambers staff to easily review the cited case law and access relevant portions of exhibits "without having to navigate through the CM/ECF record." However, the use of hyperlinks has raised concerns in several areas, including "link rot" -- when the linked website no longer hosts the desired content. As Adam Liptak recently wrote, "49 percent of the hyperlinks in [United States] Supreme Court decisions no longer work." Another concern is with the length of the material linked.

Nonetheless, with the rise of mandatory electronic filing in federal courts, the use of hyperlinks in documents is likely to increase as well. Federal practitioners that choose to implement the use of hyperlinks should be careful that the hyperlinks they use are accurate and useful.

ABOUT THE DAYTON CHAPTER

The mission of the Dayton Chapter of the FBA is to advance the profession and science of jurisprudence and to promote the welfare, interests, education, and professional growth and development of the members of the Federal legal profession.

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**Interested in joining a committee?*

Contact Erin Rhinehart at erhinehart@ficlaw.com



On The Merits is the official publication of the Dayton, Ohio Chapter of the Federal Bar Association. If you are interested in submitting content for publication consideration, please contact Erin Rhinehart at erhinehart@ficlaw.com.