

ON THE MERITS

Summer 2014
Volume 2 Issue 1



FIRST CHAIR: PRESIDENT'S MESSAGE

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

It is hard to believe that summer is nearly upon us, and my term as President of the Dayton Chapter of the FBA is beginning to wind down. The past several months have been filled with continued growth and development of our Chapter. Our membership continues to thrive. Additionally, our Board of Directors is also fortunate to have ten new members including Judge Rose and Judge Rice as well as representatives from the U.S. Attorney's Office, the City of Dayton Attorney's Office, and six different law firms. The Board has also added Erin Rhinehart to its Executive Committee. Our recent events include the following:

Sixth Circuit Practice Institute

On May 6, 2014, the Dayton and Cincinnati-Northern Kentucky Chapters of the FBA, in conjunction with the FBA's national Litigation Section, co-sponsored the *Sixth Circuit Practice Institute*, a day-long CLE on federal appellate practice. The *Practice Institute* is held every five years or so; the last such event was in 2009. The *Practice Institute* brought together Appellate Judges, Sixth Circuit Clerk of Courts Deborah Hunt, Chief Circuit Mediator Paul Calico, multiple State Solicitors, and practitioners at the Westin Hotel in downtown Cincinnati. Speakers presented on emerging issues in appellate practice as well offering tips for effective advocacy and court services. The event was a great success, with over 225 attorneys in attendance and nearly a dozen Federal Judges participating in panel discussions throughout the day. The participating Judges included Chief Judge Batchelder and Judges Cole, Norris, Sutton, and Rogers, among others. I had the honor of moderating a panel discussion -- with Chief Judge Dlott, Judge Barrett, and Judge Rose from the District Court -- entitled *Preserving Issues for Appeal*. The keynote speaker was United States Solicitor General Donald B. Verrilli, Jr.

This unique event would not have been possible without the hard work and dedication of my three fellow Planning Committee members: Cincinnati-Northern Kentucky Chapter President Pierre Bergeron; Scott Hamilton, a member of the FBA's Eastern District of Michigan chapter; and our own Dayton Chapter Treasurer, Steve Justice. Steve did an outstanding job, and we owe him our thanks and gratitude.

FBA's Mid-Year Meeting & Leadership Training Program

The FBA held its annual *Mid-Year Meeting* in Washington D.C. at the end of March. I was fortunate to attend along with President-Elect Jeff Cox. The event kicked off with the Seventeenth Annual Thurgood A. Marshall Moot Court Competition on Thursday.

(Pres. Message cont. p. 3)



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

INSIDE THIS ISSUE

- 2 CLERK'S OFFICE
- 4 SIXTH CIRCUIT PRACTICE INSTITUTE SELLS OUT!
- 5 THE DAVIS-BACON ACT – NOT JUST FOR BREAKFAST ANYMORE
- 6 UDSL STARTS LAW STUDENT DIVISION OF DAYTON FBA
- 7 STANDING ON THE CORNER – A RECENT SIXTH CIRCUIT DECISION GOVERNING STANDING IN IMMIGRATION CASES
- 8 DAYTON FBA SUBMITS GRC PROPOSAL
- 9 UPCOMING EVENTS

CLERK'S OFFICE

BY: JEFFREY S. GAREY,

CASE MANAGEMENT SUPERVISOR - DAYTON/CINCINNATI U.S. DIST. COURT S.D. OHIO



*The Hon. Thomas M. Rose,
District Court Judge, Southern District of Ohio
(Dayton), initiated a pilot program allowing
attorneys to seal documents in criminal cases.*

*Judge Rose is an active member of the
Dayton Chapter of the FBA,
and serves as a
Member of the Chapter's Executive Committee.*

EXPANSION OF PRISONER E-FILING PROJECT

The Prisoner E-Filing Project successfully added three additional institutions to the program. Lebanon Correctional went live on October 29, 2013, and both Ross Correctional and Chillicothe Correctional went live on November 5, 2013. This brings the district's total to four institutions involved with the program, including Warren Correctional which went live in 2012.

The e-filing process involves a network attached scanner that transfers the scanned document from the prison to a designated court email box. The Prison librarians have received instructions and are responsible for scanning documents. The documents are received in .pdf format, which results in less time spent scanning prisoner correspondence. The documents are filed on the docket and an NEF is sent to the prisoner as confirmation that the document was filed.

Both the prison staff and the court benefit from the e-filing process. The program substantially reduces the amount of staff time spent processing prisoner court filings. Postage costs are also reduced and mailing delays are eliminated.

As the staff and inmates become more familiar with the program, we can expect to see an increase in e-filings that will result in less prisoner correspondence. The institutions have been very receptive to the new scanners and are excited to be a part of the program. Due to the success of the project, the willingness of the Ohio Department of Rehabilitation and Correction, and the support of the Southern District of Ohio, two additional institutions are scheduled to be added to the program in 2014.

**JUDGE ROSE INITIATES PILOT PROJECT
ALLOWING ATTORNEYS SEALED ACCESS IN CRIMINAL CASES**

The Honorable Thomas M. Rose began a pilot program on February 1, 2014, for the Southern District of Ohio, which allows sealed access by attorneys of record in criminal cases. The program is currently limited to only the criminal cases before Judge Rose.

Whenever a new criminal case is opened, attorneys of record will receive a Notice for Criminal Sealed Access filed by the Court. The attorneys will then have the ability to view and file documents in a sealed case. Permission to file documents under seal will still require the Court's consent and shall follow all current local and federal rules. Counsel will still use their regular log-in to the system through their respective CM/ECF account, but attorneys will now have the additional viewing and filing privileges in criminal cases. Two new filing events, Sealed Document and Sealed Motion, have been created to assist with submitting the sealed documents.

The program was developed to provide attorney access to sealed filings twenty-four hours a day. Previously, attorneys were limited to only being able to file and access sealed documents with the clerk during business hours. The program should prove to be a savings of both time and money for the attorneys, as well as the Court.

"Clerk's Office" is a new feature of On the Merits.

Look for more updates from the Southern District's Clerk's Office in future editions of the newsletter!

(Pres. Message cont. from p. 1)

I was honored to serve as a Judge on two rounds at this event. During the Mid-Year Meeting, chapter leaders from throughout the United States were provided with an update on the strong financial status of the FBA and its national efforts on topics including leadership, younger lawyers, the Government Relations Committee's legislative agenda, and the FBA's national diversity efforts.

The Dayton Chapter sent another representative to Washington D.C. at the beginning of May. Christine Haaker -- who will follow Jeff Cox as Chapter President -- attended the FBA's 13th annual *Leadership Training Program* for incoming presidents.

UDSL Law Student Division

The Dayton Chapter has also undertaken a new initiative during my tenure that should prove successful for years to come: the creation of a *Law Student Division* of the Dayton FBA at the University of Dayton School of Law. The student division will be led by Tessie Smith, a rising 3L at UDSL who originally hails from Nebraska. Under Tessie's leadership, the division already boasts more than 15 members and has some exciting events planned for the coming fall semester. The Federal Judges in Dayton are looking forward to welcoming the students to the Dayton Chapter and the Dayton legal community as a whole. This is one of only a few law student divisions throughout the country, and we are very pleased and proud to have them join us.

U.S. District Court Federal Practice Seminar

On May 20, the FBA hosted the *Federal Practice Seminar & Admissions Ceremony* for attorneys seeking admission to the U.S. District Court for the Southern District of Ohio. Speakers included the Southern District's District Judges, Magistrate Judges, and Bankruptcy Judges along with attorney Charlie Faruki, who spoke on removal of cases from state court to federal court. A number of attorneys were admitted to the U.S. District Court for the Southern District of Ohio. These CLEs are now held every May and December.

Future Events

On June 21 at the Dayton Racquet Club, the Chapter will host a *Summer Associate & Extern Happy Hour* for externs and summer associates in the Dayton legal community. All are welcome.

Our *Annual Meeting* will be held in early October, and the *Mona Guerier Award for Public Service* will then be presented. Award nominations, by September 1, 2014, should be sent to Erin Rhinehart: erhinehart@ficlaw.com.

* * *

As my terms comes to a close this October, I look forward to passing the torch to my friend and colleague, Jeff Cox. Jeff will do an outstanding job on behalf of the FBA and Dayton Chapter.

This year has certainly gone by quickly, but I look forward to our summer events and the opportunity to watch our Chapter continue to grow and thrive in the future. It has been an honor to serve the FBA and the Dayton legal community.

Magistrate Judge Michael J. Newman,
U.S. District Court Southern District Ohio (Dayton)

The Dayton Chapter of the FBA is honored to have its very own space in the Federal Building. The Dayton FBA "plaque corner" is host to the growing number of awards received by the Dayton Chapter over the past few years. The Chapter wishes to express its gratitude to the Court for allowing it to display its accolades among the walls of the Federal Courthouse.



DAYTON FBA REPRESENTS AT 2014 NATIONAL FBA MID-YEAR MEETING IN WASHINGTON D.C.



Jeffrey T. Cox, Esq., is a partner with Faruki Ireland & Cox P.L.L., and is the current Dayton Chapter President-Elect.

Earlier this year, the Federal Bar Association's Mid-Year meeting was held in Arlington, Virginia. Dayton FBA President, the Honorable Michael J. Newman, and Chapter President-Elect, Jeffrey T. Cox, attended on behalf of the Dayton Chapter. During the National Council meeting, members of the FBA executive leadership reported on several topics, including financials, various committee chair reports, and announcements of upcoming events.

Of course, one of the most exciting announcements was the nomination of our Chapter President for FY 2015 Treasurer of the Federal Bar Association. Judge Newman's nomination, among others announced at the Mid-Year meeting, was recently confirmed. Congratulations to our Chapter President, Judge Michael Newman!

INAUGURAL SIXTH CIRCUIT APPELLATE PRACTICE INSTITUTE SELLS OUT! BY: NICHOLAS SEGER, ESQ.



On May 6, the Cincinnati-Northern Kentucky and Dayton Chapters of the Federal Bar Association, in cooperation with the Litigation Section of the FBA and the United States Court of Appeals for the Sixth Circuit, sponsored the 2014 Sixth Circuit Appellate Practice Institute at the Westin Hotel in downtown Cincinnati. Attendees had the incredible opportunity to ask questions to Sixth Circuit Judges, court staff, and leading appellate attorneys about how to practice effectively before the Sixth Circuit. The event attracted more than 200 practitioners eager to hear the distinguished panelists discuss appellate practice.

In the morning, Chief Judge Alice Batchelder hosted a number of young attorneys during a special breakfast session. During the session, these young lawyers had the rare opportunity to talk one-on-one with the Chief Judge, who provided valuable mentoring and practice tips.



During the morning sessions, Chief Judge Batchelder joined Squire Sanders attorney Pierre Bergeron and Sixth Circuit Clerk of Court Deborah Hunt to discuss the technological transformation of appellate practice. Later, Ben Glassman and Kevin Shaad, Appellate Chiefs for the U.S. Attorney's Office and Federal Public Defender's Office, respectively, provided updates in criminal appellate practice. Ken Loomis also offered tips on how to take appointed cases before the Sixth Circuit, and the solicitors general for Ohio and Michigan, Eric Murphy and Aaron Lindstrom, respectively, offered insights into their roles and responsibilities.

Attendees were also fortunate to hear from several District Court and Circuit Court judges throughout the day-long seminar. Judges from the Southern District of Ohio, Western Division, the Honorable Michael Barrett, Thomas Rose, and Michael Newman, joined Chief Judge Susan Dlott to provide practitioners with tips on best practices in preserving issues on appeal, with a focus on proffers of evidence. Later, Sixth Circuit Judges Richard Suhrheinrich, Alan Norris, and Jeff Sutton provided an insightful, and often comical, discussion regarding effective brief writing.



On May 6, the Dayton and Cincinnati/Northern Kentucky Chapters of the FBA held the inaugural Sixth Circuit Practice Institute featuring U.S. Solicitor General Donald B. Verrilli, Jr. as the keynote speaker (pictured in top photo above). The event was sold out, with over 200 members of the federal bench and bar in attendance.

The highlight of the seminar was undoubtedly the luncheon address by keynote speaker, the 46th Solicitor General of the United States, Donald B. Verrilli, Jr. Mr. Verrilli provided attendees with a rare explanation of the procedures of his office, how he and his staff handle the multitude of cases in which the United States is a party, and the role of politics and history in deciding the position the United States takes in any given case.

(Institute cont. p. 8)

THE DAVIS BACON ACT - NOT JUST FOR BREAKFAST ANYMORE!

BY: GREG WHITT & BILL WELLS

MESSRS. WHITT & WELLS ARE ATTORNEYS WITH THE DEPT. OF THE AIR FORCE AT WRIGHT-PATTERSON AFB IN DAYTON, OHIO. THE VIEWS EXPRESSED HERE ARE THEIR OWN, AND DO NOT REPRESENT THE OFFICIAL POSITION OF THE U.S. AIR FORCE.

The Davis-Bacon Act (the "Act"), applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. The Act defines the term public building and public work to include all structures intended to serve the interest of the general public regardless of whether title thereof is in a federal agency. The Act directs the Department of Labor to determine locally prevailing wage rates. The Act applies to contractors and subcontractors performing work on federal projects within the United States and District of Columbia.

In addition to the Davis Bacon Act itself, Congress added Davis-Bacon prevailing wage provisions to approximately 60 laws—"related Acts"—under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. (Examples of the related Acts are the Federal-Aid Highway Acts, the Housing and Community Development Act of 1974, and the Federal Water Pollution Control Act.) Generally, the application of prevailing wage requirements to projects receiving federal assistance under any particular "related" Act depends on the provisions of that law.

The Davis-Bacon Act allows for suspension by the President in case of emergency. This authority has been exercised four times since passage: twice in general, and twice in limited areas. The last suspension was made by President George W. Bush for one month in Florida, Alabama, Mississippi, and Louisiana after Hurricane Katrina.

The general coordination of the administration of labor standards laws, both in construction and in other areas, is vested in the Department of Labor. However, Reorganization Plan No. 14 of 1950 makes it clear that a federal agency and its local agency grantees administering construction projects are primarily responsible for enforcement of the pertinent labor provisions. In order to achieve uniform compliance, with specific enforcement responsibilities, the U.S. DOL has promulgated the following rules:

- **29 CFR Part 1:** Establishes methods for determining prevailing rates and describes when they "lock in" for the project duration.
- **29 CFR Part 3:** Details the conditions under which deductions from wages are permitted or not permitted. Contractors are also required to file weekly statements showing wages paid and accounting for any deductions made.
- **29 CFR Part 5:** issued pursuant to Plan No. 14 directive: Labor standards clauses which must be included in construction contracts; responsibility of Federal agencies (*e.g.*, HUD) for enforcement measures such as the examination of payrolls, investigations, and withholding of funds, if necessary; it further addresses hearings, rulings and interpretations as well as variations, tolerances and exemptions.
- **29 CFR Part 7:** provides for appeals to the Department of Labor's Wage Appeals Board as to questions concerning both law and fact arising from decisions of the Solicitor of Labor regarding wage determinations, debarment, and other matters relating to labor standards provisions.

FAR Part 22.4 implements Davis Bacon Act requirements with the applicable FAR provisions referenced in FAR 22.407 for FAR procurement construction contracts.



Bill Wells is an attorney with the Dept. of the Air Force at WPAFB in Dayton, Ohio



Greg Whitt is an attorney with the Dept. of the Air Force at WPAFB in Dayton, Ohio

**DAYTON CHAPTER & UDSL COLLABORATE TO BOAST
ONE OF THE FIRST FBA STUDENT DIVISIONS NATIONALLY**

BY: NADIA KLARR,

VICE PRESIDENT ADMINISTRATION & MARKETING FBA, UDSL DIVISION

The Executive Board would like to introduce the University of Dayton School of Law Student Division of the Dayton Chapter of the Federal Bar Association. It is the mission of the University of Dayton's Student Division to promote the interaction and relationships among UDSL students and local members of the federal bench and bar. Working with both the National and Dayton Chapters of the FBA, this organization strives to strengthen student understanding, knowledge, and interest in the federal legal system. The organization wishes to further provide opportunities for students to interact with federal practitioners, and with information on careers in various areas of federal law.

(UDSL cont. p. 10)

(The Davis-Bacon Act cont. from p. 5)

The Act may also apply to leases of Government property, such as leases under 10 U.S.C § 2667 for Government Owned Contractor Operated industrial facilities, or where the Government is leasing private property within the United States, or military family housing privatization projects.

For non-FAR contractual transactions, such as leasing or military family housing privatization, the courts have taken a broad view of what types of construction projects will be covered by the Act. For example, in Building and Construction Trade v. Turnage, 705 F. Supp. 5 (1988), the court found that the Act applied to lease construction projects when the buildings are constructed according to the Government's plans, drawings, and specifications. The court looked more at the end result than the labels and held this "contract for construction" invoked the application of Davis Bacon. The court held that this deal looked enough like a "contract for construction" to trigger the Act. The smaller the government's role and amount of control there is, the less likely it is that the Davis-Bacon Act will apply, but each project has to be looked at on its own facts. District of Columbia v. Department of Labor et al., DDC, Mar 31, 2014, Civil Action No. 13-0730, where the court found that an office, shopping, condominium and apartment complex that was going to be privately financed, privately owned, and privately maintained for 99 years was not a public work.

The Department of Labor has consistently taken the position that a contract is a contract for construction within the meaning of the Davis-Bacon Act "if more than an incidental amount of construction-type activity is involved." 1987 WAB Opinion at 4 (quoting In re Military Housing, (Aug. 23, 1985)). Similarly, the FAR instructs agencies that Davis-Bacon wage rates should be included in non-construction contracts involving some construction work when "[t]he contract contains specific requirements for a substantial amount of construction work." Likewise, 29 C.F.R. § 4.116(c)(2) provides that Davis-Bacon wage rates shall apply in similar circumstances in contracts otherwise covered by the wage and hour provisions of the Service Contract Act.

While non-FAR contractual transactions, such as leasing and military family housing privatization, are not required to use FAR clauses and provisions, many of the FAR Davis-Bacon provisions referenced in FAR 22.407 for FAR procurement construction contracts are often used when the act applies. This allows the Federal Agencies to avoid drafting special provisions to implement the Davis-Bacon and "related Acts" provisions while still meeting their enforcement responsibilities. Using the standard language contained in the FAR clauses when applicable is not only easier, it also makes the results more predictable as these provisions have been shaped overtime by administrative and judicial rulings.

Every Government proposal that will result in something being built or remodeled, especially for non-FAR contractual transactions such as leasing, should be examined for Davis Bacon Act and Related Acts applicability utilizing the general guidance discussed above. The final determination of applicability of the Act will depend on the facts of each transaction.

One thing all contractors and legal counsel need to be aware of is that the requirements of the Davis-Bacon Act follow down to subcontractors, and that the responsibility for the subcontractors failure to comply can rebound back on the prime. In United States ex rel. Wall v. Circle C Const., LLC, 697 F. 3d 345 (6th Cir. 2012), the Sixth Circuit held that a subcontractor's failure to completely comply with the Davis-Bacon Act could subject a general contractor to liability not just with the Department of Labor, but under the False Claims Act as well.



*Tessie Smith, incoming 3L at UDSL,
is the current President of the
Dayton FBA/UDSL Law Student Division*

"One thing that all contractors and the legal counsel represent them need to be aware of . . . is that the requirements of the Davis-Bacon Act follow down to subcontractors, and that the responsibility for the subcontractors failure to comply can rebound back on the prime."

STANDING ON THE CORNER

BY: BRYAN SCOTT HICKS AND BILL C. WELLS,

MR. WELLS IS AN ATTORNEY WITH THE DEPARTMENT OF THE AIR FORCE AT WRIGHT-PATTERSON AFB IN DAYTON OHIO. THE VIEWS EXPRESSED HERE ARE HIS OWN, AND DO NOT REPRESENT THE OFFICIAL POSITION OF THE U.S. AIR FORCE.

Standing is one of those things that every lawyer knows about, but almost never encounters in real life. You spend weeks learning about it (or being confused by it) in the first year of law school. Several hours (or perhaps days) reviewing it for the bar exam, but then, for the most part you never see it again. In large part, this is likely caused by the fact that a person whose interest is distant enough from the matter for standing to be an issue will not be interested enough to pay a lawyer to prepare and prosecute a law suit.

It is said that for (almost) every rule there is an exception, and in Patel v. United States Citizenship and Immigration Services, No. 12-1962 (6th Cir. Oct. 11, 2013), the court was faced with a real standing question in an immigration matter.

Shashikant Patel is a native of India, and came to the United States on a one-year tourist visa. When that visa expired he sought to convert his status to that of a permanent resident by obtaining an employment visa. To do this, an applicant for permanent resident status must find an employer who is willing to hire him, and that employer then must file an application with the United States Department of Labor for a labor certification. If the Department finds that there are no qualified U.S. workers available for the job and the alien's employment "will not adversely affect the wages and working conditions" of other workers, it will issue the certificate.

Once the certificate is issued the employer files a petition for an employment visa on the alien's behalf with the United States Citizenship and Immigration Services (CIS). 8 U.S.C. §1154(a)(1)(F); 8 C.F.R. §204.5(a). For skilled workers, the CIS will approve the petition if the employer has a valid labor certification and the alien has at least two years of relevant training or experience. 8 U.S.C. § 153(b)(3)(A)(i); 8 C.F.R. §204.5(l).

If the CIS approves the petition, the alien must apply to adjust his status to that of a permanent resident. 8 U.S.C. §1255; 8 C.F.R. §245.2(a)(3)(ii). The CIS will approve the application if "the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence"; and "an immigrant visa is immediately available to him at the time his application is filed." 8 U.S.C. §1255(a).

Attempting to follow these procedures, Mr. Patel obtained a job offer as a Lodging Manager with the Deluxe Inn in Lansing, Michigan. Deluxe applied for and received a certification from the Department of Labor to employ Mr. Patel, and applied to the CIS for the 2nd step of approval. However, the CIS rejected Deluxe's application under 8 C.F.R. §204.5(g)(2) because they found that Deluxe would be unable to pay the proffered wage.

Mr. Patel did not give up and in February 2010, Peshtal Inc. offered him a job as Lodging Manager at its hotel in Richmond, Indiana. However, instead of applying for its own labor certification, Peshtal attempted to use the certification that had been issued to Deluxe Inn and filed a petition for an employment visa on Patel's behalf. The CIS denied the petition on grounds that Peshtal had failed to get its own labor certification.

(Standing cont. p. 9)



Bryan Scott Hicks is an immigration attorney in Lebanon, Ohio.

The full text of the opinion, Patel v. United States Citizenship and Immigration Services, No. 12-1962 (6th Cir. Oct. 11, 2013), is available at <http://tinyurl.com/Patel-v-USCIS6thCir2014>

Interested in Immigration Law?
Join the FBA's Immigration Law Section!
 Go to www.fedbar.org today.

DAYTON FBA SUBMITS PROPOSAL TO GRC TO BENEFIT MILITARY SPOUSE ATTORNEYS

BY: BRIDGET M. FINDLEY, ESQ.

In April, the Dayton FBA Chapter, in conjunction with the Federal Bar Veterans and Military Law Section, submitted an issue proposal to the Government Relations Committee regarding licensing accommodations for military spouse attorneys. The proposal requests the Federal Bar Association's support advocating for legal licensing accommodations, including bar membership without additional examination for military spouse attorneys, in each of the fifty states.

Military spouse attorneys across the country face daunting, sometimes career-ending obstacles every few years, when their service member spouse receives mandatory orders to move from the United States Government. Often times, the service member is provided with little more than a few months advance notice of a move, and it is not uncommon for service members to receive multiple changes in their orders prior to the actual move. These frequent moves create numerous career complications for military spouse attorneys. Spouses can, and some do, make the difficult decision to remain geographically separated from their service member to maintain a legal career.

"[L]egal licensing is a long, complicated process. The complexity is exacerbated for a military spouse attorney."

As attorneys know, legal licensing is a long, complicated process. The complexity is exacerbated for a military spouse attorney. By the time the military spouse attorney learns of an impending move, it is highly likely that the application deadline for the next bar exam will have passed. Assuming that the attorney can register for the next bar exam, the process is time consuming. The attorney must study and sit for a bar exam, wait months for the results, the receipt of an actual license, and the swearing-in process. Thus, even assuming substantial notice of military reassignments, each relocation requiring a bar exam will likely result in months of unemployment for a military spouse attorney. What about admission by motion? Due to the periods of unemployment and frequent moves, military spouse attorneys have a difficult time establishing the continuous practice of law necessary to meet the admission by motion requirements for most states.

In 2009, the Military Spouse Juris Doctorate Network (MSJDN) was established to advocate for licensing accommodations for military spouse attorneys. The group is comprised of over 900 attorneys living all over the world. MSJDN developed a model rule pertaining to bar admission for military spouse attorneys. The rule grants bar admission to a military spouse residing in a state due to military orders and who meets the following requirements: a degree from an ABA-approved law school, a passing MPRE score, a member in good standing in all jurisdictions where they have been admitted, not subject to pending disciplinary matters in any jurisdiction, and requisite character and fitness. To date six states: Arizona, Idaho, Illinois, North Carolina, South Dakota, and Texas, have adopted licensing accommodations for military spouse attorneys. Similar rules are in consideration in twenty-five other states across the country. Both the American Bar Association and the Conference of Chief Justices passed resolutions in support of such licensing accommodations.

MSJDN is grateful for the Dayton FBA Chapter's assistance in highlighting the importance of military spouse attorney licensing barriers and introducing the topic to the Federal Bar Association.

(Institute cont. from p. 4)



General Verrilli used the World War II Japanese internment case, and the recent revelations regarding the DOJ's knowledge regarding that case when it was decided, as a grave example of why the Solicitor General's Office must attempt to build and maintain the Office's credibility with the Supreme Court. It does so, he said, by remaining primarily politically neutral, allowing common-sense and good judgment to prevail in deciding the United State's position in each case, and remembering that history will judge harshly those who fail to use foresight in exercising the United State's incredible power before the Court.

Just prior to the close of the day, Chief Judge Batchelder swore in several attorneys recently admitted to practice before the Sixth Circuit Court of Appeals. All attendees were then invited to enjoy a cocktail reception sponsored by the Litigation Section of the FBA. The inaugural event was a resounding success and the Dayton Chapter Executive Committee would like to thank the members of the planning committee, panelists, moderators, and all attendees, without whom the Institute would never had occurred.

Following the seminar, several attorneys were admitted to practice before the Sixth Circuit Court of Appeals and sworn in by C.J. Batchelder, including Erin E. Rhinehart and Steven A. Weigand (pictured above), both with Faruki Ireland & Cox P.L.L.

(*Standing cont. from p. 7*)

In response to this decision, Mr. Patel filed suit in federal district court under the Administrative Procedure Act, alleging that the denial of Peshtal’s petition for an employment visa was arbitrary and capricious. The government moved to dismiss for lack of prudential standing. The district court granted the motion, finding that the party with the legally protectable interest here was the employer and not the potential immigrant. Mr. Patel appealed to the 6th Circuit.

The 6th Circuit reversed the District Court, finding that under the APA, a party has prudential standing if the party is adversely affected or aggrieved by agency action. The court held that, "A party is 'adversely affected or aggrieved' if the interest he seeks to protect is 'arguably within the zone of interests to be protected or regulated by the statute' in question. The Court explained that, because Congress wanted to make agency action presumptively reviewable, the prudential-standing test was not meant to be demanding, and that the benefit of any doubt goes to a plaintiff. The basis for this standard is that the plaintiff only needs to be "arguably" within the statute's zone of interest to be entitled to that statute’s protection.

Having decided in Mr. Patel’s favor on the issue of standing, the Sixth Circuit reversed the judgment of the district court but declined to address the merits of the case and remanded it to the District Court for "further proceedings consistent with this opinion."

While the court's legal analysis as to why Mr. Patel had standing is fairly straightforward, the practical impact of this case increases its importance. In many cases, an employer, while willing to sponsor an applicant for permanent resident status, will not be willing to pursue it if the CIS initially declines the request (as happened with Mr. Patel’s first potential employer) and will just move on to another applicant. While the employer has an interest in hiring someone for the position, absent special circumstances such a superstar engineer or computer programmer or a relative, will not have any attachment to a particular applicant, and it is likely that they will make the business decision not to invest time and money in contesting the denial. On the other hand, the individual has a great deal of interest in the result but, under the prior rule, would not have been able contest the denial. Following the decision in the Patel case, they have a legal basis on which to pursue that practical interest

UPCOMING EVENTS

- **U.S. DISTRICT COURT, SOUTHERN DISTRICT OF OHIO (DAYTON)
ADMISSIONS CLE & SWEARING-IN CEREMONY** **MAY 20, 2014**
- **BROWN BAG LUNCH WITH U.S. DISTRICT COURT JUDGE,
S.D. OHIO** **JUNE 2014**
- **SUMMER ASSOCIATE & EXTERN COCKTAIL PARTY** **JUNE 21, 2014**
- **HABEAS CORPUS CASES CLE
HOSTED BY MAGISTRATE JUDGE MICHAEL MERZ** **SEPTEMBER 2014**
- **FBA ANNUAL MEETING (PROVIDENCE, RI)** **SEPTEMBER 4-6, 2014**
- **DAYTON CHAPTER ANNUAL MEETING** **OCTOBER 2014**

* * *

DON'T FORGET TO "LIKE" THE CHAPTER'S FACEBOOK PAGE & CHECK OUT THE CHAPTER WEBSITE TO STAY CURRENT ON ALL FBA EVENTS THROUGHOUT THE YEAR!

(UDSL cont. from p. 6)

The University of Dayton School of Law Student Division Executive Board would like to express its sincere gratitude to all of those involved in working to install the Student Division. We would especially like to thank Magistrate Judge Michael J. Newman for his tremendous support and dedication to the Student Division, as well as Dean Paul McGreal, who will serve as the advisor of the Student Division, for his guidance and direction. We would also like to express appreciation for Ms. Elyse Akhbari, Mr. Vipal Patel, Mr. Jeremy Smith, and Ms. Sasha VanDeGrift for their involvement and support in this initiative.

The Student Division has several exciting events planned for the upcoming year, including a panel event comprised of local federal practitioners, as well as a networking mixer for local federal judges, practitioners, and law students.

The Student Division is truly thankful for the interest and support shown by the Dayton Chapter. We are eager to be involved in the Dayton legal community and look forward to a strong year ahead and continued organizational success for years to come.

For more information on upcoming events sponsored by the Student Division, log on to www.fedbar.org and click on the Dayton Chapter

***FBA UDSL
Student Division Executive Board***

<i>President</i>	Tessie Smith
<i>Executive Vice President</i>	Michael Sivore
<i>Vice President</i>	
<i>Administration & Marketing</i>	Nadia Klarr
<i>Vice President</i>	
<i>External Affairs</i>	Kaelynn Smith
<i>Treasurer</i>	Joseph Latas
<i>Secretary</i>	Markus Moll

FBA HOSTS LARGEST CAPITOL HILL DAY EVENT IN HISTORY!

According to a recent press release issued by the FBA, on April 24, thirty-five chapter and circuit leaders of the FBA went to Capitol Hill to discuss the need to take action in filling judicial vacancies and to establish additional judgeships in high-caseload districts.

W. West Allen, chair of the FBA Government Relations Committee, coordinated the event. He explained that, "The Federal Bar Association represents the foremost constituency of our federal courts. As its practicing bar, we have a responsibility to continually remind Congress of the critical role the courts play, the challenges they face, and their ongoing needs for resources."

For a copy of the full press release, and copies of the FBA Issue Briefs associated with Capitol Hill, go to www.fedbar.org/Advocacy.Capitol-Hill-Day

**DAYTON FBA
COMMITTEE MEMBER SPOTLIGHT**



The Dayton FBA would like to thank Nicholas D. Seger, Associate with Faruki Ireland & Cox P.L.L., and member of the Publicity & Public Relations Committee, for all of his help in the editing and production of this edition of "On the Merits."

Look for additional contributions from Nick in upcoming editions of the Dayton FBA's official newsletter!

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.

EXECUTIVE COMMITTEE

President –
Magistrate Judge Michael J. Newman, U.S. Dist. Ct., S.D. Ohio

President Elect –
Jeffrey T. Cox, Faruki Ireland & Cox P.L.L.

Vice President –
Christine M. Haaker, Thompson Hine LLP

Treasurer –
J. Steven Justice, Dungan & LeFevre, LPA

Secretary –
Thomas P. Whelley II, Dinsmore & Shohl

National Delegate –
Erin E. Rhinehart, Faruki Ireland & Cox P.L.L.

Immediate Past President –
Glen R. McMurry, Dungan & LeFevre, LPA

Member at Large –
Judge Thomas M. Rose, U.S. Dist. Ct., S.D. Ohio

COMMITTEES - CHAIRS*

Membership –
Timothy G. Pepper,
Taft/
Vipal J. Patel,
The U.S. Attorney's Office, S.D. of Ohio

Publicity & Public Relations –
Erin E. Rhinehart,
Faruki Ireland & Cox P.L.L.

Criminal Law –
Nicholas G. Gounaris,
Gounaris, Denslow, Abboud LPA
Cheryll A. Bennett,
Asst. Federal Public Defender
James P. Fleisher,
Bieser Greer & Landis LLP

Armed Services –
Bill C. Wells, U.S. Air Force

CLE –
Jessica Salisbury-Copper, Thompson Hine LLP

Young Lawyers –
Jeremy Smith, Thompson Hine LLP
Adam R. Webber, Falke & Dunphy, LLC

**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.

All copyright reserved.