

ON THE MERITS

Winter 2017
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FIRST CHAIR: PRESIDENT'S MESSAGE

BY: J. STEVEN JUSTICE, ESQ.
PARTNER, DUNGAN & LEFEVRE CO., LPA



*J. Steven Justice, Esq. –
Dungan & LeFevre Co., LPA
President Dayton Chapter,
Federal Bar Association*

In October 2016, it was my privilege to take the helm as President of the Dayton Chapter for the 2016-17 Term. Without a doubt, the Dayton Chapter of the Federal Bar Association is one of the most active Chapters in the Association. We have 127 members comprised of federal practitioners and federal judges in the Dayton region, along with over 30 University of Dayton Law School students, who are members of the law student division of the Dayton Chapter. Plus, our own Magistrate Judge Michael Newman is the current President of the National Federal Bar Association. These truly are exciting times to be a member of the FBA Dayton Chapter.

Structurally, the Executive Committee of the Dayton Chapter provides outstanding day-to-day leadership for the Chapter. For the 2016-17 Term, the following FBA members are serving as Officers for the Chapter:

- President:** J. Steven Justice (justice@dunganattorney.com)
- President-Elect & National Delegate:** Erin Rhinehart (ERrhinehart@ficlaw.com)
- Vice President:** Timothy Pepper (pepper@taftlaw.com)
- Treasurer:** Vipal Patel (Vipal.Patel@usdoj.gov)
- Secretary:** Jeremy Smith (Jeremy.Smith@ThompsonHine.com)
- Sergeant at Arms:** Judge Thomas M. Rose (thomas_rose@ohsd.uscourts.gov)
- Immediate Past Pres.:** Christine Haaker (Christine.Haaker@ThompsonHine.com)

Feel free to reach out to any of our Officers if you have questions about the Dayton Chapter, or about FBA membership.

The Board of Directors of the Dayton Chapter meets on a monthly basis, typically on the first Monday of each month at noon in the Federal Building, Fifth Floor, Judge Newman's courtroom. The calendar for our monthly meetings can be found on the FBA website (<http://www.fedbar.org/Chapters/Dayton-Chapter/Calendar.aspx>). Board meetings are open to all members, so if you want to get involved and serve on any of the Chapter's committees or participate in any other way, consider yourself invited to join us for our monthly meetings and explore how you can get involved.

We have a number of exciting initiatives and events planned for this year. At the 2016 National Convention, President Newman announced two, new initiatives for the FBA: The National Civics Initiative and SOLACE. The Dayton Chapter has taken up the challenge by implementing both of these initiatives.

The National Civics initiative is a cooperative effort between federal judges, lawyers and local school systems whereby students gain a better understanding of the inner workings of the courts, how cases proceed through the courts, and how cases are ultimately decided by judges or juries. Students are invited to the federal courthouse, and federal judges are also visiting the students at local schools. Michael Rhinehart (michael_rhinehart@ohsd.uscourts.gov), has volunteered to serve as our Chapter Liaison for the Dayton Chapter's Civics Initiative. Already, numerous area schools, involving hundreds of students, have asked to participate in the Dayton Chapter's Civics initiative in 2017. For more details about the Civics Initiative, see Michael Rhinehart's excellent article in this newsletter. *(continued on page 2)*

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SOLACE stands for "Support of Lawyers/Legal Personnel—All Concern Encouraged." SOLACE provides a way for the FBA legal community to assist other FBA members and those related to them who experience a significant personal loss or crisis. Examples of past requests and responsive help include securing a medical evacuation airlift from a foreign country, donating furniture to a solo practitioner whose office was consumed by a fire, contributing frequent flyer miles or hotel points for families who cannot afford the travel costs associated with medical treatment, providing a family with meals, lodging, assistance with grocery shopping or child care, or providing non-legal information—whatever the situation may warrant.

SOLACE is a benefit of FBA membership. If an FBA member or someone related to an FBA member in the legal community -- judges, lawyers, court personnel, paralegals, legal secretaries and their families -- needs assistance, a request for help can be submitted directly to our Dayton Chapter SOLACE Liaison, Jeremy Smith (jeremy.smith@thompsonhine.com), or the request can be submitted directly to the National FBA Office through an on-line submission form (<http://www.fedbar.org/Outreach/SOLACE/SOLACE-Submission-Form.aspx>). Help is typically provided within a few days. For more information, see Jeremy Smith's excellent article in this newsletter.

In addition to our normal Chapter activities, e.g., social mixers for members, brown bag luncheons with the federal judges, summer associate reception, and federal admission seminars, the Dayton Chapter also is currently planning three major events for this year: a Federal Sentencing Seminar (targeted for the spring), a Human Trafficking Seminar (targeted for July), and the Sixth Circuit Practice Institute (targeted for October). The Federal Sentencing Seminar will provide training that helps federal practitioners qualify and serve on the Dayton Division's Criminal Justice Act panel, providing legal assistance to indigent defendants. The goal is to bring together the best minds and resources to explore how we can stop human trafficking in the United States. The Sixth Circuit Practice Institute will be co-sponsored by the Cincinnati/N.Kentucky Chapter of the FBA and will be held in Cincinnati. The Institute is designed to educate and update those who practice before the U.S. Sixth Circuit Court of Appeals. Three years ago over 250 appellate practitioners attended the Institute, and we expect a similar response this year. Finally, do not forget to mark your calendar for the FBA National Convention, which will be held in Atlanta, September 14-16, 2017.

As you can see, the Dayton Chapter is very active, and we look forward to an exciting year together. If you are not already involved, I hope you will jump on board and make it even better!

NATIONAL CIVICS INITIATIVE TAKES FLIGHT IN DAYTON

BY: MICHAEL N. RHINEHART, ESQ

The National Civics Initiative undertaken by the Federal Bar Association ("FBA") -- and specifically spearheaded by the FBA's National President and the Dayton Chapter's own Hon. Michael J. Newman -- is off to a resounding start in Dayton. This current school year alone, the District Court in Dayton expects to meet with over 1,000 students in the courthouse or in schoolhouses across the Southern District of Ohio and, specifically, within the Dayton region of the Court.

The Dayton Chapter's civics outreach efforts officially kicked off in October when Judge Newman and I travelled to Five Points Elementary School in Springboro, Ohio to meet with approximately two hundred third grade students to discuss the three branches of government and, specifically, the role of the court. Based upon the Big Bad Wolf's destruction of property in the Three Little Pigs fairy tale (and altering the tale by omitting the Wolf's eating of the Pigs), we explained the various roles each branch of government would play in the Big Bad Wolf's prosecution for destruction of property, as well as the types of relief the Three Little Pigs could seek from the courts in a civil action.

On December 9, 2016, U.S. Pretrial Services Officer Kelvin Gover and I met with approximately twenty students in a Criminal Studies class at Northmont High School in Englewood, Ohio. Kelvin and I discussed the role of Pretrial Services in the criminal justice system, the differences between state and federal courts (e.g., with regard to the types of cases prosecuted, potential penalties for criminal offenses and sentencing), as well as the different types of motions brought before federal courts in criminal cases .

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*Michael Rhinehart, Esq.
Career Law Clerk to the Honorable Michael J.
Newman in the U.S. District Court for the Southern
District of Ohio in Dayton*



*Judge Newman and Mike Rhinehart discuss
judicial system with third graders and staff at 5
Points Elementary*

STAY TUNED:

**Annual Dayton Chapter Meeting & Luncheon
September 2017**

CLEVELAND ROCKED! RECAP OF 2016 FEDERAL BAR ASSOCIATION ANNUAL MEETING AND CONVENTION

BY: GLEN MCMURRY

Last September 14-17, I enjoyed the pleasure of representing the Dayton Chapter alongside Magistrate Judge Michael Newman in Cleveland, Ohio for the 2016 Federal Bar Association Annual Meeting and Convention. I also enjoyed the privilege of Co-Chairing this event with Kip Bollin, a member of the Northern District Chapter and the FBA's current President-Elect. The highlight of this year's Annual Meeting was the September 17th Presidential Installation Banquet, where our very own Judge Newman was sworn in as the National President of the FBA.

The 2016 Annual Meeting boasted an impressive lineup of speakers and special guests, including Dean Erwin Chemerinsky and both United States Senators for Ohio, Sherrod Brown and Rob Portman. The Annual Meeting began on Wednesday afternoon with a special sitting of the Sixth Circuit Court of Appeals followed by a welcome reception at the recently renovated law firm of Calfee, Halter & Griswold in downtown Cleveland.

Thursday and Friday included continuing legal education programs from Judges and legal experts from all over the country, including numerous presentations from Dayton Chapter members. On Thursday evening, Convention attendees were treated to a private reception at the popular Alley Cat, a waterfront Oyster bar in the Flats East Bank entertainment district. Friday night, Convention attendees enjoyed another private reception, but this time at the Rock-N-Roll Hall of Fame where everyone rocked the night away to live music, incredible food, and dancing! What better way to end a Friday!

The Dayton Chapter played a major role in the success of the 2016 Convention. The Dayton Chapter was responsible for all aspects of planning the Presidential Installation Banquet. Dayton Chapter Member and Immediate Past-President Christine Haaker led several of our Chapter members in planning and organizing all aspects of the Installation Banquet and also served as the Banquet's Master of Ceremonies. The Dayton Chapter also shared fundraising responsibility for the Convention and, with the assistance of Dayton Chapter Member and Past-President Jeff Cox, procured the single largest sponsor in FBA history, Lexis Nexis.

In fact, the Dayton Chapter's continued commitment and participation resulted in another FBA highlight and record. While state, regional, and affinity bar associations continue to decline in membership, the Federal Bar Association has experienced significant membership growth, eclipsing over 18,000 members, another historic record for our organization. This growth is due, in large part, to the efforts of chapters like the Dayton Chapter. With competition for membership at its highest, we have thrived.

While this event took place in Cleveland, the Dayton Chapter was ever visible to attendees as the co-hosts of this event driving its success. You, as members, were recognized for your dedication to the Federal Bar Association, your volunteerism, and your continued willingness to coordinate with surrounding chapters to organize premier federal programming events in our region.

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Glen McMurry, Partner at Dungan & LeFevre



Judge Newman, with family by his side, is sworn in as FBA President by Ohio Senator Robert Portman



FBA members enjoy drinks and appetizers at Alley Cat Oyster Bar in Cleveland, Ohio



Judge Walter Rice participates in panel discussion on success of re-entry court system.

To learn more and sign up for the FBA Annual Convention, visit this link: <http://www.fedbar.org/Education/Calendar-CLE-events/2017-Annual-Meeting-and-Convention-.aspx>

FINAL OVERTIME RULE REMAINS IN LIMBO IN NEW ADMINISTRATION

BY: JENNIFER RULON, ESQ.
ATTORNEY AT FROST BROWN TODD LLC



Jennifer Rulon
Frost Brown Todd LLC

In May 2016, the Department of Labor released its Final Rule regarding overtime pay for white collar workers. The Rule brought significant change for employers by extending the overtime pay requirements to an estimated 4.2 million additional workers who were not currently eligible for overtime under federal law. The Rule was set to take effect on December 1, 2016, and specifically would:

- Raise the salary threshold from \$23,660 to \$47,476 a year.
- Update the salary threshold every three years.
- Raise the highly compensated employee threshold from \$100,000 to \$134,004 in total compensation annually.
- Count bonuses and commissions toward up to 10 percent of the new salary level.

These are substantial changes that would have serious consequences for many small businesses, non-profits, and government agencies.

Days before the Rule was set to take effect, U.S. District Judge Amos L. Mazzant in the Eastern District of Texas issued a nationwide preliminary injunction forbidding the Department of Labor from enforcing the Final Rule in a lawsuit filed by twenty-one states and over fifty businesses. The court concluded that, while Congress intended the Department of Labor to delimit the types of duties required for an employee to fall within the white collar exemption, it did not intend the Department of Labor to delimit a minimum salary threshold. The court equated the new salary threshold to a de facto salary-only test, a result which would be contrary to constitutional intent.

In December 2016, the Department of Labor appealed the preliminary injunction to the Fifth Circuit. The court granted the Department of Labor's request for the appeal to be heard on an expedited basis. However, the appeal would not be ripe for decision until after President Trump was inaugurated and a new Congress took office.

On the first day of President Trump's administration, White House Chief of Staff Reince Priebus instructed federal agencies to freeze all pending regulations. Priebus told the agencies, including the Department of Labor, to "consider potentially proposing further notice-and-comment rulemaking" for any regulations that have been held up over legal questions. This instruction appears to freeze implementation of the Department of Labor's Rule. In addition to this move, President Trump's administration could, if it chooses, abandon the appeal of the preliminary injunction and amend the answer to admit that the regulation violates the law, thereby potentially ending the litigation with a permanent injunction in place preventing the final rule from taking effect.

Congressional Republicans could also use the Congressional Review Act to pass a joint resolution to remove the Final Rule. This option, which is rarely used, would prevent the Department of Labor from issuing substantially similar regulations.

For now, without additional action from President Trump or Congress, the resolution of the lawsuit will ultimately determine when or if the Final Rule becomes operative. The bottom line is that the legal and political landscape has created additional uncertainty for employers, who must now await the outcome of a Rule that comes with considerable consequences for their workforces.

FAA ISSUES GENERAL AVIATION MEDICAL RULE

BY: BILL WELLS

MR. WELLS IS AN ATTORNEY WITH THE DEPT. 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.

On Jan 11, 2017, the Federal Aviation Administration issued a final rule that allows general aviation pilots to fly without holding an FAA medical certificate as long as they meet the requirements in the Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016 (FESSA) (Pub. L. 114-190). The rule was published at 82 FR 3149 to 3167, and is expected to be commonly known as and referred to as the BasicMed Rule.

Prior to the passage of FESSA and the promulgation of the implementing regulations, the FAA has required private, recreational, and student pilots, as well as flight instructors, to meet the requirements of and hold a third-class medical certificate. This meant that they were required to complete an online application and undergo a physical examination with an FAA-designated Aviation Medical Examiner. The resulting medical certificate is valid for five years for pilots under age 40 and two years for pilots age 40 and over.



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

Once the new rule becomes effective on May 1, 2016, pilots will have the choice to take advantage of the regulatory relief in the BasicMed Rule or opt to continue to use their FAA medical certificate. Under BasicMed, a pilot will be required to complete a medical education course, undergo a medical examination every four years, and comply with aircraft and operating restrictions. These restrictions include that pilots using BasicMed cannot operate an aircraft with more than six people onboard or one weighing more than 6,000 pounds.

A pilot flying under the BasicMed Rule must meet a variety of requirements set out in the rule. Among the important requirements are that an individual must have held a valid FAA medical certificate at any time after July 15, 2006, and that an individual's most recently held medical certificate cannot have been revoked, suspended, or withdrawn. In addition to holding a current valid driver's license, pilots operating under the BasicMed Rule must have taken a medical education course meeting FESSA's requirements within the past 24 calendar months and have completed a comprehensive medical examination with a physician within the past 48 months. The driver's license must be carried by the pilot when operating an aircraft, but there is no requirement to carry a copy of the medical certificate. However, the FAA does require that the FESSA checklist be maintained in the pilot's logbook.

The FAA recognized that many pilots maintain their logbooks electronically. Accordingly, pilots may carry an electronic facsimile or representation of the certification and checklist along with their pilot logbook entries, as long as they are clearly legible.

In addition to the basic requirements, there are a number of provisions dealing with special situations including mental health, cardiovascular and neurological conditions. While this may also seem nearly as complicated as the existing FAA medical certification process, the FAA believes that the final rule implements, without interpretation, the requirements of section 2307 of FESSA. The agency states that the rule "reiterates the provisions of section 2307 of FESSA and describes how the FAA is implementing those provisions."



Jeremy Smith
Thompson Hine LLP

DAYTON CHAPTER PROMOTES FBA'S SOLACE INITIATIVE

BY: JEREMY SMITH, THOMPSON HINE LLP

In 2017, the Dayton Chapter will assist in the Federal Bar Association's efforts to implement the SOLACE program on a national scale.

The SOLACE program was co-founded in New Orleans by United States District Court Judge Jay Zainey and attorney Mark Suprenant. In 2002, Mr. Suprenant's wife fell ill. Judge Zainey asked Mr. Suprenant, his friend, if there was anything he could do to. Mr. Suprenant respectfully declined. After Mrs. Suprenant recovered, Mr. Suprenant suggested the idea of a network where members of the legal community could ask one another for help in a time of need. Judge Zainey and Mr. Suprenant brought the idea to the Louisiana State Bar Association, which agreed to help coordinate it, and the SOLACE program was born. "SOLACE" is an acronym for "Support of Lawyers/Legal Personnel—All Concern Encouraged."

Almost 15 years later, the SOLACE program provides a way for the FBA legal community to reach out in small, but meaningful and compassionate ways, to FBA members and those related to them in the legal community who experience a death, or some other catastrophic event, illness, sickness, injury or other personal crisis.

The SOLACE program has helped numerous individuals by handling a wide variety of requests. No request is too big or too small. Examples of past requests and responsive help include: providing temporary housing for an attorney receiving extended out-of-town medical treatment; arranging for a family to receive a consultation at the Mayo Clinic when confronted with a rare disorder; volunteering to care for the dog of an attorney who was away from home receiving medical care; and writing greeting cards to an ill member of the legal community.

In 2016, FBA President and United States Magistrate Judge Michael Newman made the SOLACE program one of his national priorities. Judge Newman appointed Dayton Chapter President Steve Justice as National SOLACE Coordinator, tasked with implementing the SOLACE program nationwide.

If you, a family member, or anyone related to you in the legal community is in need of assistance, you can submit a request for assistance by electronically submitting a SOLACE Request Form (which is found on the FBA's website) or by sending an email to me, the Dayton SOLACE Liaison, at jeremy.smith@thompsonhine.com.

If you are interested in helping those in need of assistance, all you need to do is watch your email. All Dayton FBA members will automatically receive a notification if a request for assistance is received that could be addressed by members in the Dayton area. The email notification will describe the need and how you can help.

WANT MORE INFORMATION ON HOW YOU CAN PARTICIPATE IN SOLACE?

Visit the FBA SOLACE webpage: <http://www.fedbar.org/solace.aspx>

NEW ADMITTEES WELCOMED INTO THE SOUTHERN DISTRICT OF OHIO

BY: NADIA KLARR, BIESER GREER & LANDIS LLP



Nadia Klarr, Bieser Greer & Landis LLP



Judge Walter Rice discusses the importance of civility in the practice of law.

On a cold and windy day in the middle of December, the Dayton Chapter warmly welcomed and admitted thirty-eight seminar attendees into the Southern District. By all accounts, it was a successful event. The basement of the federal building was nearly full as both new and senior attorneys from Indiana, Kentucky, and Ohio were greeted by President-elect Erin Rhinehart of the law firm Faruki, Ireland, Cox, Rhinehart & Dusing, P.L.L.

District Judges Thomas M. Rose and Walter H. Rice, alongside Magistrate Judges Sharon L. Ovington and Michael J. Newman, presented “a view from the bench.” They discussed practice and procedure in the Southern District of Ohio with an emphasis on civility and professionalism, providing guidance on navigating cases litigated in their Court. Bankruptcy Judges Lawrence S. Walter and Guy R. Humphrey turned a tedious (for many) law school class into an exciting hour-long presentation, but more importantly, a subject-matter relevant to almost every other practice area. Attorney Jeff T. Cox of the law firm Faruki, Ireland, Cox, Rhinehart & Dusing, P.L.L. reviewed the rules and procedural considerations involved in removing a case to federal court. Magistrate Judge Newman and his career law clerk, Michael N. Rhinehart, discussed specific issues related to practice in the Southern District of Ohio, including jurisdiction, venue, the Civil Justice Reform Act, as well as local rules, standing orders, and general orders that govern practice in the Southern District.

The federal practice seminar was followed by a swearing-in ceremony where the attendees were officially admitted in the Southern District of Ohio and encouraged by the judges to visit them in federal court as often as possible.



Judge Newman and Michael Rhinehart discuss local rules for the Southern District of Ohio- Dayton.



Jeff Cox, partner at Faruki Ireland Cox Rhinehart & Dusing P.L.L., discusses removal procedure.



Judge Michael Newman administers oath to newly admitted attorneys for the Southern District of Ohio.

DAYTON CHAPTER WELCOMES ALL AT ANNUAL LUNCHEON & MEETING

BY: ZACHARY HECK, ESQ.

DATA PRIVACY & SECURITY ATTORNEY, FARUKI IRELAND COX RHINEHART & DUSING P.L.L.

On October 11, the Dayton Chapter held its annual meeting and luncheon at the University of Dayton Arena, Time Warner Cable Flight Deck. Steve Justice served as the master of ceremonies, and was sworn in as our new Chapter President. The event was well-attended, with many local practitioners, judges, and law students enjoying an outstanding lunch, and speeches from distinguished guests.

First, Magistrate Judge Michael Newman, currently serving as the National President of the FBA, shared with us his encouragement for the upcoming year, and emphasized the importance of the FBA's civics initiative. Judge Newman explained how the FBA is seeking out opportunities to engage elementary, middle... *(continued on page 7)*



Zachary Heck is a data privacy and security attorney with Faruki Ireland & Cox Rhinehart & Dusing P.L.L. in Dayton, Ohio

(annual meeting continued from page 6)

and high school students, to help them understand the role of the federal courts and judiciary.

Next, Jim Duff, Director of the Administrative Office of the United States Courts, took the stage to discuss how lawyers should continue striving to make a difference in their communities. Specifically, Mr. Duff identified polarization of conflict as a major concern. Mr. Duff explained that lawyers have always been leaders in our communities, because we set an example while laboring in the field of conflict. Mr. Duff encouraged all of us, as lawyers, to set a strong example because our neighbors are looking to us for leadership.

The Keynote Speaker for the event was Erin Murphy, a partner at Bancroft PLLC, and a former law clerk to United States Supreme Court Chief Justice John Roberts. During her talk, Ms. Murphy discussed the evolution of the Roberts Court, and explained how the judicial philosophy of Chief Justice Roberts has evolved, while remaining true to his confirmation hearing ideology that the role of judges is to "call balls and strikes." Ms. Murphy also shared stories about her arguments before the U.S. Supreme Court, and provided insight into the world of appellate advocacy.

The next segment celebrated local chapter members who have made outstanding contributions to our community. Immediate Past Chapter President Christine Haaker presented four separate awards. Mr. Jim Fleisher received the *Mona Guerrier Public Service Award*, Mr. Michael Rhinehart received the *FBA Dayton Chapter Outstanding Member Contribution Award*, and both Ms. Tracy Gearon and Ms. Debra Horton accepted the *FBA Dayton Chapter Federal Service Award*. The Dayton Chapter also presented outgoing Chapter President Christine Haaker with a digital picture frame and other expressions of gratitude for her outstanding service to the Dayton Chapter.

The event concluded with the Honorable Walter Rice administering the Oath of Office to incoming Chapter President Steve Justice, and the Dayton Chapter's officers for the upcoming year. The meeting and luncheon adjourned with cheers and applause in celebration of a successful year.



Dayton Chapter President Steve Justice welcomes attendees to the Annual Luncheon and Meeting



Dayton Chapter President Steve Justice presents Jim Duff with a token of the Dayton Chapter's appreciation.



Debra Horton, Jim Fleisher, Tracy Gearon, and Michael Rhinehart were each recognized for their outstanding service to the community and the Dayton Chapter.



Jim Duff, Judge Michael Newman, and Erin Murphy each delivered speeches to the Dayton Chapter at its Annual Luncheon and Meeting



Judge Walter Rice administers the Oath of Office to incoming Dayton Chapter Board members.

Want to participate in an FBA Moot Court Competition? Consider volunteering with the Thurgood Marshall Memorial Moot Court Competition

<http://www.fedbar.org/Divisions/Younger%20Lawyers%20Division/Moot-Court-Competition.aspx>

THE DAYTON CHAPTER'S MENTORSHIP PROGRAM LEADS THE WAY

BY: NADIA KLARR

BIESER, GREER & LANDIS, LLP

Last year, the Student Division launched the Dayton Chapter's first mentorship program. The chapter paired ten local attorneys and judges with thirteen law students, all eager to make the local program succeed. In true Dayton Chapter fashion, our mentorship program caught the attention of national leaders. The national board of the Law Student Division took the Dayton Chapter program and used it as a model to propose and create a national FBA mentorship program for its law students across the country. What started in Dayton soon led to a national initiative with a working group of FBA leaders committed to implementing the program in all fifty states.

The Dayton Chapter has always taken mentorship of new lawyers and law students seriously. Dayton Chapter members pride themselves on being a resource for legal professionals to come to with any questions and requests for advice. For example, each year, the Dayton Chapter hosts a welcome reception for all summer clerks and associates in the area to help build those important relationships.

Eight chapters in nine different states have been selected as pilot chapters to implement the new mentorship program. The Dayton Chapter is one of the pilot chapters that will participate, oversee the program locally, obtain evaluation forms from participants, and host a social event for all mentors and mentees to gather, network, and socialize. The pilot program will run from January to June. Additional updates regarding the program and feedback from participants will be provided in the next issue. For more details about the program, please contact Nadia A. Klarr at nak@biesergreer.com.



FBA Members join local summer clerks for cocktails and appetizers at annual Summer Associate Welcome Event, August 2016



Chapter President Steve Justice talks with local summer clerks at annual Summer Associate Welcome Event, August 2016

STUDENT DIVISION UPDATE

BY: PATRICIA S. RILEY

PRESIDENT OF THE UNIVERSITY OF DAYTON SCHOOL OF LAW STUDENT DIVISION

The University of Dayton School of Law (UDSL), Law Student Division of the Federal Bar Association has been working diligently to provide interesting and varying activities for both the members of the Law Student Division and the Dayton Chapter members.

On January 11, 2017, we held an informational meeting at UDSL for law student members. Tim Pepper, a partner from Taft, Stettinius, and Hollister, LLP, explained some of the differences between the various bar associations.

On Friday, January 27th, at 5:30 p.m., the Dayton Chapter and the UDSL Division hosted a mixer at Brixx. All of the law student members and Dayton Chapter members were invited to attend this casual event and appetizers will be provided.

During the week of Valentine's Day, we will be holding an event called "Share the Love." This is a food pantry/personal hygiene drive at UDSL. All items collected will be donated to a local charity.

Tuesday, February 21, 2017, the United States District Court of the Southern District of Ohio will be hosting the UDSL Law Student Division for a brown bag lunch with some of the judges.

Monday, April 10th, noon, room 14, at UDSL, we will be holding a professionalism meeting regarding court appropriate attire as well as the Southern District's requirements for civility. Nadia Klarr, an associate attorney from Bieser, Greer, Landis, LLP, and Lisa Woodward, a law clerk from Judge Walter H. Rice's chambers, will be presenting.

Two additional events that are currently being planned are the elections of the UDSL Law Student Division Executive Board as well as the Mentorship Program event.

IT SEEMED LIKE A GOOD IDEA AT THE TIME

BY: BILL WELLS

MR. WELLS IS AN ATTORNEY WITH THE DEPT. 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.

While my current practice is mostly a mixture of government procurement and real estate, with a little bit of environmental law mixed in on occasion, in the past I have dealt with a number of labor law and occupational health and safety (OSHA) matters. I continue to subscribe to and read Occupational Health and Safety Magazine, published by 1105 Media of Chatsworth, CA. If you are interested in health and safety matters in the workplace, it is a useful resource, and the online version of the magazine can be found at <https://ohsonline.com/home.aspx>.

However, when I read the article titled "Your Ambulance Service: Friend or Foe?" by James Dziendziel in the Nov. 2016 edition, where the author, using the example of a workplace slip and fall, argued that the decision to call 911 should be made by plant medical personnel to avoid unnecessary transportation and medical expenses and to help avoid "unnecessary" recordable cases on the company's OSHA Log, I was concerned.

While there is nothing wrong with Mr. Dziendziel's (who is a Board Certified Occupational Health Nurse and retired paramedic) proposal that employers should have a policy in place that encourages (even strongly encourages) the involvement of management and plant medical personnel in making the decision of how to respond to a workplace injury, this is an area where great care is needed. The most fundamental concern here is not legal, but practical, because this is an area where the stakes include serious disability or even death.

After reading "Your Ambulance Service" I set it aside for a later follow up. However, a few weeks later while reading the Jan 06, 2017 issue of John Hyman's "Ohio Employer's Blog" (<http://www.ohioemployerlawblog.com/>) I noticed the headline "Local jerky company sued for firing employee who called 911 after accident," I of course clicked the link, and was taken to the *Farimont, West Virginia Times* where it was reported that the Dept. of Labor had filed suit on an employee's behalf seeking compensatory and punitive damages, and on its own behalf seeking declaratory and injunctive relief (<http://mcaf.ee/let4zp>). The paper's article reported that after a worker was injured while cutting meat, the owner of the plant had forced one of the other production workers to hang up on the call he was making to 911 and instead "collected the severed portion of the wounded worker's thumb and told a company supervisor to drive the injured employee to an urgent care clinic."

The injured worker was transferred ultimately to a hospital, where doctors were unable to reattach the severed body part. A copy of the complaint can be found at <https://mcaf.ee/nxwhjb>. While not mentioned in the complaint, it is highly likely that if the case goes to trial that there will be evidence that delay in transporting the injured worker to the hospital reduced the chance of a successful reattachment.

Although something like this was not at all what Mr. Dziendziel was advocating, and he specifically stated that "all life-threatening emergencies require 911," it is an excellent example of how something that seemed like a very good idea in theory can go terribly wrong in practice. Worker's Compensation is the sole remedy for most workplace injuries (See, e.g., ORC 4121 et seq.), but if the employer's conduct is deemed to have amounted to an intentional tort, it is possible for that protection to be lost. While the law in Ohio greatly disfavors such a result (**Houdek v. ThyssenKrupp Materials N.A., Inc.**, 134 Ohio St.3d 491, 2012), the decisions on this sort of issue vary widely from state to state. For a survey of the law on this topic, see Shaun McParland Baldwin and Dennis N. Ventura, "Workers' Compensation Acts and Exceptions to the Exclusivity Bar, A 50 State Summary," Tressler LLP, June 2016 at <http://mcaf.ee/hz6qvk>.

Of course, state worker's compensation statutes provide no protection for the employer against fines and penalties that must be imposed under federal law, or for the bad publicity that results when the national media reports that you did not sanitize the area where the injury occurred before resuming production, but only discarded the piece of meat the employee was working on when they cut off their thumb.

UPCOMING EVENTS – MARK YOUR CALENDAR!

FEDERAL SENTENCING SEMINAR

SPRING, 2017

HUMAN TRAFFICKING SEMINAR

JULY, 2017

2017 NATIONAL CONVENTION (CLEVELAND, OH)

SEPTEMBER 14-16, 2017

2017 DAYTON CHAPTER ANNUAL MEETING & LUNCHEON

SEPTEMBER, 2017

SIXTH CIRCUIT PRACTICE EVENT

OCTOBER, 2017

**DON'T FORGET TO "LIKE" THE CHAPTER'S FACEBOOK PAGE, FOLLOW US ON TWITTER @DAYTONFBA
&
CHECK OUT THE CHAPTER WEBPAGE ON THE FBA'S WEBSITE TO STAY CURRENT ON ALL FBA EVENTS
THROUGHOUT THE YEAR!**



Area students wrote dozens of thank you letters to Judge Newman, Mike Rhinehart, and other federal practitioners for coming to their schools to discuss the court system.

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Of special significance was a discussion about the 225th Anniversary of the Bill of Rights and the prevalence of Fourth Amendment issues in criminal pretrial proceedings, such as motions to suppress evidence based upon allegedly improper searches or seizures of persons, places or personal effects.

In an effort to expand the current outreach efforts, and to let area educators know that the courthouse doors are open to students of all ages at any time, in mid-December, the Dayton Judges sent an invitation to all public school superintendents and high school principals in Dayton Division's eight county region, encouraging all schools to arrange field trips to Dayton's federal courthouse. The response from schools has been tremendous. In less than a month, over a dozen schools have responded and, already, approximately 250 students from six area schools have scheduled visits in January, February, and March 2017. Approximately a half-dozen other schools -- elementary, middle and high schools in Champaign, Clark, Greene, Miami, Montgomery, and Preble Counties -- have expressed the desire to schedule a trip to the court by the end of the 2016-2017 academic year.

If you know of teachers in our community that may be interested in visiting the Court or having the Court visit their school -- or if you have interest in volunteering to assist with planning school visits to the Court -- please email me at michael_rhinehart@ohsd.uscourts.gov.

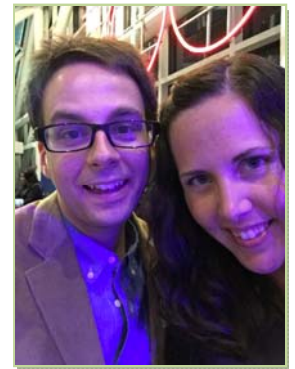
(Convention continued from page 3)

The Convention concluded on Saturday with the Presidential Installation Banquet. Celebrating the accomplishments of Judge Newman, attendees heard remarks by Senator Rob Portman and numerous Dayton dignitaries, including U.S. District Court Judge Thomas Rose and U.S. District Court Judge Walter Rice. It was the perfect ending to a celebration of Ohio's FBA accomplishments and, in particular, the Dayton, Ohio Chapter.

The 2016 Annual Meeting was a success for our national organization and Chapter. It was a historic event. It was the first Convention hosted by our Chapter and it was the first time in the history of the FBA that a Dayton Chapter member ascended to the highest position in the FBA. The credit goes to you, the members. Thank you for your membership and continued support.



FBA members gather for welcome reception at recently renovated law firm of Calfee, Halter, & Griswold in downtown Cleveland



Dayton FBA members Zach Heck and Jenny Rulon enjoy a rockin' good time at Cleveland's Rock n' Roll Hall of Fame

**DAYTON FBA
COMMITTEE MEMBER SPOTLIGHT**



Nadia Klarr, Esq.

Nadia is an associate at Bieser, Greer & Landis, LLP. Her practice focuses on business litigation, employment, and intellectual property law. Nadia's involvement in the FBA began in law school, where she served on the founding Law School Division's executive board, and then as President of the Law Student Division. Nadia currently serves as the Dayton Chapter's CLE Chair and the Mentorship Program Chair. She is also a member of the editorial board of [The Federal Lawyer](#).

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 Christine Haaker at*



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 Zachary Heck at zheck@fielaw.com.

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