

ON THE MERITS

Summer 2013
Volume 1 Issue 1



FIRST CHAIR: PRESIDENT'S MESSAGE

BY: GLEN R. MCMURRY



*Glen R. McMurry, President
Dayton, Ohio Chapter,
Federal Bar Association*

It is my pleasure to introduce the first FBA Dayton Chapter newsletter, *On the Merits*. This newsletter will be published semi-annually and delivered to you via email as a benefit of your membership in our Chapter.

As demonstrated in this newsletter, the theme for this year is "change." The Dayton Chapter is a vibrant, growing chapter of the FBA. Over the last year, our Chapter's membership grew by nearly 100%. Also, our Chapter now boasts some of the most innovative and rewarding programming for federal practitioners in the Southern District of Ohio. Some of the highlights of our 2013 programming are featured in this newsletter, including brown bag lunches with our local federal judges, as well as biannual Criminal Justice Act Certification and Federal Practice seminars. We are also happy to announce that October 10, 2013 will be our Annual Meeting open to all members.

Please see *First Chair* on page 2

SIMPLIFYING SUBPOENA PRACTICE: RULE 45 GETS A MAKEOVER

BY: ERIN E. RHINEHART

Say goodbye to those anxious readings (and re-readings) of Rule 45. After twenty-one years, Rule 45 is getting a makeover. This past September, the Judicial Conference of the United States approved the first substantive amendments to Rule 45 since 1991. Absent congressional action, these revisions will become effective on December 1, 2013.

First, all subpoenas, for documents or testimony or both, will issue from the court where the action is pending. No longer will attorneys need to determine the appropriate court from which the subpoena should issue. The proposed revisions to Rule 45(a)(2) simplify the analysis: "A subpoena must issue from the court where the action is pending."

Second, Rule 45's notice requirement finally gets some attention.

Please see *Simplifying Subpoena Practice* on page 3

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MASTERPIECES & MYSTERY

BY: ELIZABETH FAVRET



Several Dayton FBA members, and attorneys with the law firm Faruki Ireland & Cox P.L.L., attended the event at the DAI on May 21.



From left to right – James W. Satola, Glen McMurry (Chapter Pres.), Hon. Michael J. Newman (Chapter Pres. Elect), Michael Roediger (Executive Director DAI), and Raymond J. Dowd (Presenter)

On May 21, 2013, the FBA was honored to host Raymond J. Dowd, Esq. - a partner in the New York City law firm Dunnington Bartholow & Miller LLP - here in Dayton. Mr. Dowd, who is the Vice President for the Second Circuit of the FBA, has become known in the past decade as an expert in the area of Nazi-looted art and its recovery by the family members of Holocaust victims in the United States. Mr. Dowd travels to museums worldwide speaking on this topic.

Mr. Dowd's speech at the Dayton Art Institute (DAI) was extremely well received. He spoke for close to two hours about legal concerns related to stolen art, the history of personal property law in the United States, and the difficulty family members have had in state and federal courts to recover works of art belonging to their ancestors. Additionally, Mr. Dowd shared his experience serving as trial counsel in several art recovery cases, and provided an overview of the relevant disputes and litigation across the United States.

Prior to Mr. Dowd's speech, the Dayton FBA and DAI hosted a cocktail reception in one of the DAI's beautiful rotundas. Over 100 guests were in attendance, including District Judge Thomas M. Rose, Magistrate Judge Michael J. Newman, members of the Dayton FBA Executive Committee, and local art patrons. All were welcomed by Michael Roediger, the Executive Director of the Dayton Art Institute. Following Mr. Dowd's speech, a coffee and dessert reception was held, and those in attendance were given an opportunity to ask follow-up questions to Mr. Dowd, as well as reflect upon the myriad of issues raised during his presentation.

The FBA is grateful for the opportunity to have Mr. Dowd in Dayton for this entertaining and insightful lecture on issues of significant relevance and continuing concerns.

For more information about Mr. Dowd, and to obtain a copy of his presentation, please contact Glen McMurry.

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Our keynote speaker and special guest will be General William Suter, the current United States Supreme Court Clerk. General Suter, who is set to retire on August 31, 2013, is credited with bringing our Nation's highest court into the 21st century.

In addition, our Chapter now possesses multiple substantive committees affording each of you with the opportunity to volunteer and contribute to our Chapter, including the Younger Lawyer Committee, Criminal Law Committee and Armed Services Committee. In 2013, Dayton FBA members will enjoy the opportunity to participate in approximately 20 social activities, CLEs, and general programming events hosted/sponsored by these Chapter committees.

The growth and resurgence of the Dayton FBA would not be possible without the support of our local federal judges, members, and national organization. Thank you for your continued support. I look forward to working with each of you to make 2013 a productive and rewarding year for the Dayton FBA.

"In 2013, Dayton FBA members will enjoy approximately 20 social events, CLEs and general programming events."

BENCHED

A MESSAGE FROM YOUR LOCAL FEDERAL JUDGES

BY: HON. MICHAEL J. NEWMAN,
UNITED STATES MAGISTRATE JUDGE, S.D. OHIO, AT DAYTON

There have been many exciting events recently occurring at the Federal Court in Dayton.

District Court Admissions CLE Seminar

On May 14, the FBA held a CLE seminar for lawyers seeking admission to our Court. Speakers included the three District Judges in Dayton (Judge Rose, Judge Black and Judge Rice), the three Dayton Magistrate Judges (Judge Ovington, Judge Merz and myself), and a representative from the Clerk's Office who addressed CM/ECF and electronic filing issues. Following the half-day seminar, a number of lawyers were admitted to practice in the Southern District of Ohio.

The CLE seminar is now held twice per year -- on the **second Tuesday of May**, and the **second Tuesday of December**. Counsel do not have to be newly-admitted attorneys to attend the CLE seminar. In fact, the Court encourages representatives from all law firms to attend, as the seminar is an opportunity for the Judges to explain, on a twice-a-year basis, any new rules, policies or procedures that apply to practice in the District Court.

Please see *Benched* on page 4



*Hon. Michael J. Newman,
U.S. Magistrate Judge,
S.D. Ohio, at Dayton*

For More Information on Upcoming Events, Check Out the Dayton FBA Online!

*www.fedbar.org

*Join the Dayton FBA LinkedIn Group

**"Like" the Dayton FBA Facebook Page

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Simplifying Subpoena Practice from page 1

Under the newly proposed subsection (a)(4), documents-only subpoenas must be served on each party before the subpoena is served on the person to whom it is directed, and the notice must include a copy of the subpoena.

Third, under proposed subsections (b)(2) and (c), service of process will be extended nationwide (alleviating the burden of identifying and retaining local process servers), but the witness is required to comply only within the state or 100 miles of where the witness lives, works, or regularly does business in person.

Finally, the newly added subsection (f) authorizes the transfer of subpoena-related motions from the enforcement court to the issuing court (*i.e.*, the court where the underlying action is pending). The primary concern is still protection of the person subject to the subpoena. Subsection (f) merely simplifies the process of these "satellite litigations." Specifically, the court where compliance is required may transfer the motion to the issuing court if the nonparty consents to the transfer, or if the court finds "exceptional circumstances" warrant transfer to the issuing court.

These proposed modifications are a practical response to the problems of compliance with Rule 45. As millennial discovery practice becomes more complicated, any attempt to simplify the process is welcome. If approved, these amendments will significantly refine federal subpoena practice.

***"The Judicial
Conference of the
United States
approved the first
substantive
amendments to Rule
45 since 1991."***

Benched from page 3



Judge Thomas M. Rose hosted one of the Dayton FBA lunches and encouraged members to visit his new courtroom to practice using the new technology available.

Bankruptcy Judges Lawrence S. Walter and Guy R. Humphrey also participated in the May 14th seminar, and explained the rules, policies and procedures applicable to practicing in the Bankruptcy Court. Bankruptcy practitioners are likewise encouraged to regularly attend the seminar, even if they are already admitted to the U.S. Bankruptcy Court.

The next Admissions CLE seminar is scheduled for **Tuesday, December 3, 2013**. More information will be available on the websites of the District Court and the Bankruptcy Court this fall.

Brown Bag Lunches with Local Judges

In the past few months, the Dayton Chapter of the FBA has also held two brown bag lunches: one with Judge Rose; and another with Magistrate Judge Merz. Both lunches were successful and well attended -- more than 25 attorneys attended each lunch. Judge Merz talked about the history of the Court in Dayton, his favorite cases, and the recent retirement of his longtime career law clerk, Pat Zimmer.

Judge Rose gave a tour of his new courtroom, and also the new hearing room, located on the Ninth Floor of the Federal Courthouse. Both the courtroom and the hearing room are equipped with state-of-the-art technology including computer monitors for counsel, jurors and witnesses. Liz Penski, Judge Rose's courtroom deputy, demonstrated to all in attendance how best to operate the equipment. The Judge and Ms. Penski have graciously offered to permit counsel, prior to hearings and trials, to come to the new courtroom to practice with the technology. To make arrangements for such a practice session, counsel should contact Ms. Penski at (937) 512-1600.

Future brown bag luncheons will be held with the Judges on a bi-monthly basis. A **brown bag luncheon with Judge Rice is scheduled for June 12, 2013 at noon** followed by luncheons with Judge Black, Magistrate Judge Ovington, and myself. The FBA is hoping to also schedule luncheons with Judge Humphrey and Judge Walter of the Bankruptcy Court in late 2013 or early 2014.



On May 14th, the Dayton FBA hosted its Bi-Annual Federal Practice Seminar and Swearing-In Ceremony for new admittees to the United States District Court for the Southern District of Ohio. Pictured from left to right: Elizabeth Meyers (new admittee), U.S. District Court Judge Rose, U.S. Chief Magistrate Judge Ovington, U.S. Magistrate Judge Newman, Glen McMurry (Dayton Chapter President), Sheila Coats (District Court Clerk's Office); Bradley Adams (new admittee), Bill Wells (Chair, Dayton Chapter Armed Services & Federal Employee Relations Committee).

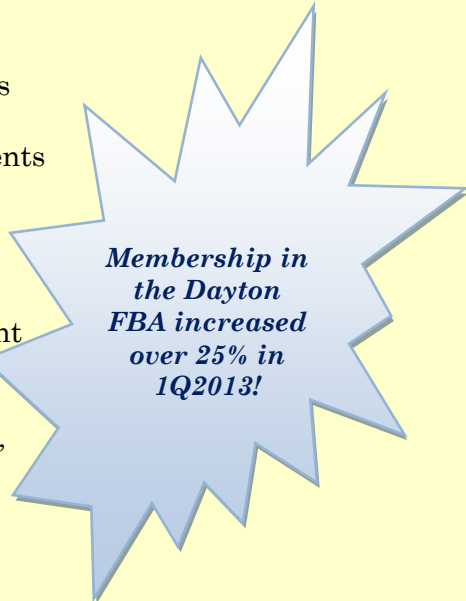
***Did you know?
The Dayton FBA Brown
Bag Lunches are FREE for
FBA members!***

MEMBERSHIP UPDATE

BY: SASHA ALEXA M. VANDEGRIFT

Over the past several months, the Dayton FBA has seen tremendous growth in membership. The first quarter of 2013 reported an astonishing 25% increase in membership! Much of this growth is attributed to the events hosted by the chapter (many of which are highlighted throughout this newsletter), as well as the efforts of your Membership Committee Chairs. The Dayton FBA has presented to local law students and law firms, showcasing the myriad of both local and national FBA member benefits.

The Membership Committee also works for the Dayton FBA's current members! The Committee welcomes feedback from current members regarding benefits, event ideas, as well as thoughts on how to better serve members and prospective members. If you have suggestions or comments, contact me at vandegrift@coollaw.com.



MEMBERS IN THE NEWS

•The Dayton FBA Chapter is pleased to announce that Dayton Federal Judges continue to be profiled in *The Federal Lawyer Magazine*. Magistrate Judge Michael J. Newman was profiled last summer (*TFL*, Aug. 2012 issue). The Chapter has just been advised that a profile of Magistrate Judge Michael R. Merz is scheduled to appear this coming August. We are honored that the Magazine has chosen to profile two of our local Federal Judges who both exemplify the high caliber of our federal bench, and also their significant volunteer work on behalf of the greater Dayton community. Congratulations to both Judge Newman and Judge Merz!

• Executive Committee members, Jeff Cox and Magistrate Judge Newman attended the FBA Leadership conference this past April, which was held in Washington D.C. FBA leaders from across the country gathered to network, learn from other successful chapters, and identify best practices for motivating an encouraging the members of their own chapters.

• Dayton FBA President Glen McMurry and Erin Rhinehart, Chair of the Dayton FBA Publicity and Public Relations Committee, were recently selected from among over 250 nominees as recipients of the Dayton Business Journal's *40 Under 40* award. Both were honored at a dinner held on May 23 at the Schuster Center in downtown Dayton.

**The Dayton FBA is always looking for announcements to include in its "Members In the News" section of our Newsletter. Please forward your submission to Erin Rhinehart, erhinehart@ficlaw.com*



Dayton FBA Executive Committee members Magistrate Judge Newman (left front) and Jeff Cox (front middle) attended the FBA Leadership Conference on behalf of the Dayton Chapter this past April in Washington D. C. After the first day of meetings, several FBA leaders caught a Washington Nationals game at Nationals Park.



Dayton FBA members, Erin Rhinehart and Glen McMurry received the Dayton Business Journal's 40 Under 40 award.

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

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 Glen McMurry at
gcmcmurry@dunganattorney.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.