



# Federal Bar Association

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## Idaho Chapter

# Sidebar

## EXECUTIVE BOARD

Dana Herberholz, President

Susie Headlee, Executive Director

Wendy Olson, President Elect

Rafael Gonzalez, Vice President

Marcus Johnson, Secretary

Alyson Foster, Treasurer

Daniel Williams, National Delegate

John Zarian, Immediate Past President

### A MESSAGE FROM DANA HERBERHOLZ, CHAPTER PRESIDENT

DECEMBER 2018



The Idaho Chapter of the FBA has had a very busy year. We experienced record growth in membership, expanded our Brown Bag CLE offerings, and hosted a meeting and reception for the FBA's national Board of Directors, among other events. Many thanks to our Past-President, John Zarian, and to our Board Members for a truly exceptional year.

The upcoming year will be another busy one for our Chapter. We established four primary goals for the 2018-2019 term:

**1. Engaging Members.** Chapter membership stands at over 190 members, a record high for our Chapter and an increase of nearly 20% since the

beginning of 2018. As membership approaches 200 in the upcoming year, we will emphasize engagement and work toward ensuring that members take advantage of the many benefits associated with being a Chapter member. To that end, we will continue to offer high quality CLE programming at our Brown Bag CLEs in Boise, North Idaho, and Eastern Idaho. We also plan to expand networking opportunities and host several social events, including our annual Mix & Mingle Holiday Party, Toy Brigade, and a Spring Fling social.

**2. Strengthening Our Relationship with Student Chapters.** Over the past few years, the FBA has experienced explosive growth in law student membership. The Student Chapter at the University of Idaho College of Law is no exception and continues to flourish under the leadership of Professor Katie Ball and Student Chair Serena Minasian. Our Chapter will work closely with the Student Chapter this year on a number of programs and events, including the law student mentorship program, which pairs Student Chapter Members with mentors from our Chapter.

**3. Hosting the 15th Annual Tri-State Conference – September 26-28, 2019.** Every year, members from the Idaho, Utah, and Wyoming chapters of the FBA meet to discuss emerging trends in federal practice. Unlike any event of its kind in the FBA, the Tri-State Seminar features exceptional speakers and is well attended by practitioners and members of the federal judiciary. It is our Chapter's turn to host in 2019, and planning is already underway. Please plan to join us in Sun Valley next year for this outstanding CLE program.

**4. Continuing to Support Efforts to Obtain an Additional Judgeship.** The District of Idaho remains in desperate need of an additional judgeship to assist with its growing caseload. Our Chapter will continue to lobby our congressional delegation to create a third judgeship for our district, and we will work with the Government Relations Committee of the FBA on Capitol Hill to support the effort.

**Chapter Meetings.** We held our last membership meeting on September 11, and our Executive Committee met on October 30. Please join us for our next

membership meeting on January 22, 2019 4:00 p.m. at the offices of Andersen Schwartzman Woodard and Brailsford.

**Holiday Mix & Mingle Party – December 6, 2018.** Please join us for our annual Mix & Mingle Holiday Party, starting at 5:30 p.m. on Thursday, December 6, 2018, at Crane Creek Country Club. One of our Chapter's signature events, the Mix & Mingle provides a great opportunity to socialize with Chapter members and members of our federal judiciary. If possible, please RSVP so we can prepare.

I look forward to serving as your President this year. Please contact me if you have questions or ideas as to how we can better serve you.

## EXEMPLARY SERVICE AWARD RECIPIENTS



Larry E. Prince, Partner  
Holland & Hart, LLP



Terry Hancock  
Holland & Hart, LLP



You and your guest are Cordially  
Invited to the Idaho Chapter, FBA's

# MIX & MINGLE HOLIDAY SOIRÉE

Thursday, December 6, 2018  
Crane Creek Country Club  
5:30 p.m. to 8:00 p.m.

Please RSVP by Monday, December 3rd  
to Susie Headlee at [sheadlee@parsonsbehle.com](mailto:sheadlee@parsonsbehle.com)

Idaho Chapter, Federal Bar Association

We were pleased to present this year's Exemplary Service Award to Larry Prince and Terry Hancock at the District of Idaho Bench/Bar conference in Boise. The Exemplary Service Award is our Chapter's highest honor and is reserved for individuals who go out of their way to serve the bench and bar with exceptional professionalism and civility. Larry is a founding member of our Chapter and worked tirelessly as its treasurer for 12 years, providing solvency and stability of the Chapter's finances. Terry Hancock, his legal assistant, helped Larry with these duties and was instrumental in managing

and tracking our Chapter's finances through several events for nearly a decade. Many thanks to Larry and Terry for their combined 20 years of service. Our Chapter would not be what it is today without them.

## UNIVERSITY OF IDAHO LAW STUDENT CHAPTER

The purpose of student chapters is to enhance the professional growth and development of members of the FBA legal profession and promote high

standards of professional competence and ethical conduct, providing quality education programs; and supporting student members through promoting professional and social interaction.

It is our hope that by engaging law students at the beginning of their entry into the legal profession, they will continue their membership and participation upon bar admission.

We are delighted to report that under the leadership of Professor Katie Ball, we currently have added twenty-eight new student chapter members, who we wholeheartedly welcome: **Alyson Acheson, Kendra Ankrum, Darrel Robert Aubrey, Kacie Bitzenburg, Garrett Brown, Aspen Compton, Hailee Elledge, John Epperson, Thomas Everson, Spencer Felton, Jennifer Fuhs, Wendy Gordon, Keegan Hahn, Dillon Haws, Alexandra Hodson, Emily James, Andrew James Johnson, Courtney Lennberg, Hailey McClung, Lauren Catherine Markuson, Whitney Mestelle, Serena Minasian, Allan Moriarty, Tishra Lynn Murray, Morgan Reese, Kayleen Richter, Kyle Rozanski, Sarah Marie St. John, Lindsey Sanders, Sydney Sears, Danielle Strollo, Jennifer Tengono, Christopher Thompson, Aubrey Thorne, Dawn Elisabeth Trivolis, and Max Williams.**

Additionally, for the first time we welcome new student chapter members **Olivia Nicole Ford** and **Gwen King** from Concordia University School of Law.

We look forward to including these new members in our organization and look forward to serving as mentors in the coming years!

## GOVERNMENT RELATIONS

*Update on Government Relations and Public Policy Developments* by Bruce Moyer, Counsel for Government Relations; and Rachel Rose, Chair Government Relations Committee



On October 1, 2018, FBA President Maria Vathis appointed Rachel Rose, a Houston-based practitioner, as chair of the Government Relations Committee. Ms. Rose succeeds West Allen, who led the GRC for the past six years and will serve for the next year as Treasurer.

### Statement on the Rule of Law

The Board of Directors of the Federal Bar Association on September 13, 2018 released a statement on the Rule of Law. The statement is here:

<http://www.fedbar.org/Advocacy/FBA-Statement-on-the-Rule-of-Law.aspx>

### Statement on Executive Order 13843 and ALJ Hiring

The Federal Bar Association on August 10, 2018 released a statement on Executive Order 13843 regarding the hiring of Federal Administrative Law Judges. Executive Order 13843, as issued by President Trump on July 10, 2018, provides for the direct hire of administrative law judges by individual federal agencies, a change from the prior practice of agency selection of ALJs from a pool of candidates certified by the Office of Personnel Management (OPM), the central personnel agency of the federal government.

Statement on Executive Order 13843 is here:

<http://www.fedbar.org/Advocacy/FBA-Statement-on-Executive-Order-13843.aspx>

The Executive Order authorizes agencies to hire new ALJs and place them in a new category of employees, Schedule E, whose hiring is exempted from stricter competitive hiring rules. Excepted Service appointees are not eligible for the same protections against removal as competitive service employees. Giving agencies this flexibility to hire ALJs and reducing the protections of ALJs has raised concerns over potential abuse and politicization of ALJ hiring practices. In its August 10 statement, the FBA “encourage[d] national leaders and Members of Congress to take prompt and responsible action to assure that our federal administrative judiciary remain fully qualified, independent and effective in resolving the administrative disputes brought before them.”

On August 23, 2018, Senators Maria Cantwell (D-WA) and Susan Collins (R-ME) introduced legislation (S.3387) that restores the hiring of federal administrative law judges to the arrangement existing prior to the executive order. The legislation also assure compliance with the Supreme Court’s *Lucia* decision in requiring the appointment of administrative law judges by agency heads.

### FBA Endorses Federal Judiciary Recommendations on Judicial Workplace Conduct

Federal Bar Association President Kip Bollin, in a September 6, 2018 letter, expressed to Chief Justice Roberts and the Judicial Conference of the United States the strong support of the Federal Bar Association for the report of the Federal Judiciary Workplace Conduct Working Group and its recommendations aimed at the prevention and elimination of inappropriate conduct, including harassment, in the Judicial Branch workplace. The recommendations addressed improvements in workplace standards and communications about how employees can file complaints, and the creation of more, less formal avenues for employees to seek advice and assistance on workplace conduct issues, along with training for judges and employees. The isolation and intimacy of

the workplace in a judge’s chambers especially heightens the possibility of harassment and misconduct of a judge’s clerks.

In response to the Working Group recommendations, the Judicial Conference committees on Codes of Conduct and Judicial Conduct and Disability on September 13, 2018 released for public comment proposed changes to the Code of Conduct for U.S. Judges and the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The amendments include provisions that state:

- A judge has an affirmative duty to promote civility, not only in the courtroom, but throughout the courthouse.
- A judge should neither engage in nor tolerate workplace misconduct, including comments or statements that could reasonably be interpreted as harassment, abusive behavior, or retaliation for reporting such conduct.
- A judge should take appropriate action upon learning of reliable evidence indicating the likelihood that another judge's conduct violated the Code. The action should be reasonably likely to address the misconduct, prevent harm to those affected by it, and promote public confidence in the integrity and impartiality of the Judiciary.
- In order to file a misconduct complaint, an individual does not have to be subject to alleged misconduct.
- Confidentiality obligations of employees should never be an obstacle to reporting judicial misconduct or disability.
- A judge has an obligation to safeguard complainants from retaliation. Retaliation for reporting misconduct constitutes judicial misconduct.
- A judge’s failure to call to the attention of the relevant chief judge clearly identified information reasonably likely to constitute judicial misconduct constitutes judicial misconduct.

- An express reference to workplace harassment within the definition of misconduct.

**Federal Judicial Vacancies and Confirmations**

FEDERAL JUDICIAL VACANCIES as of October 9, 2018		
Jurisdiction	Vacancies	Nominees Pending
Supreme Court	0	0
Court of Appeals	14	6
District Courts	118	60
U.S. Court of Intern'l Trade	2	2
U.S. Court of Federal Claims	11	3
<b>Totals</b>	<b>145</b>	<b>71</b>

SENATE CONFIRMATIONS OF TRUMP NOMINEES as of October 9, 2018	
Supreme Court	2
Courts of Appeal	26
District Courts	41
U.S. Court of International Trade	0
U.S. Court of Federal Claims	0
<b>Total</b>	<b>69</b>

**House Judiciary Panel Approves Three Court-Related Bills**

The House Judiciary Committee on September 13, 2018 approved three bills that would make significant changes to federal courts’ structure, capacity and authority. The bills are:

- H.R. 6755, the Judiciary ROOM Act
- H.R. 6754, the CIRCUIT ACT
- H.R. 6730, Injunctive Authority Clarification Act

The Injunctive Authority Clarification Act was introduced by House Judiciary Committee Chairman Robert Goodlatte (R-VA). The Judiciary ROOM Act and the CIRCUIT Act were introduced by Rep. Darrell Issa (R-CA), the chair of the House

Judiciary Subcommittee on the Courts, Intellectual Property and the Internet. All three bills were introduced three days before the House Judiciary Committee approved them, and no hearings were held on the measures. Further action on the bills in the remaining days of the 115th Congress is unlikely. Each of the three measures is summarized below.

H.R. 6755, the Judiciary ROOM Act, would:

- Authorize the addition of 52 new permanent district court judgeships and convert eight of the 10 existing temporary district court judgeships to permanent status. During the September 13 markup, the bill was amended to delay the new judgeships until Jan. 22, 2021, in the early days of the next administration.
- Require the Judicial Conference to issue a code of conduct for all federal judges, including Supreme Court justices. (The Judicial Code of Conduct does not currently apply to justices of the Supreme Court.)
- Require physical exams for federal judges and Supreme Court justices, with increasing frequency as they get older. Physicals would be required every five years for judges and justices age 70 and younger, every two years for those who are older than 70 and younger than 81, and every year those who are 81 and older. When a physician has identified a condition that may impact the ability of the judge or justice to carry out his or her duties, the physician must submit his findings to the appropriate chief judge or chief justice.
- Require appellate courts (but not the Supreme Court) to livestream their arguments and require the Supreme Court to release same-day audio within a year and provide live audio within two years.
- Require a Supreme Court justice, upon recusal, to release an online notice explaining the reasons for the recusal.

H.R. 6754, the CIRCUIT ACT, would realign the Ninth Circuit Court of Appeals by restructuring the Circuit into three regional divisions:

- The Northern Division, comprised of Alaska, Idaho, Montana, Oregon, and Washington;
- The Middle Division, consisting of the existing Northern and Eastern Districts of California, Guam, Hawaii, Nevada, and the Northern Marianas; and
- The Southern Division, comprised of Arizona and the existing Central and Southern Districts of California.

A four division, covering the entire circuit, would hear cases to resolve conflicts between the divisions. The CIRCUIT Act's approach toward restructuring of the Ninth Circuit resembles the recommendations of the 1998 Commission on Structural Alternatives for the Federal Courts of Appeal, chaired by Justice Byron White.

H.R. 6730, the Injunctive Authority Clarification Act. The measure would ban nationwide injunctions in non-class action cases. Nationwide injunctions have been criticized for their ability to obstruct the implementation of certain initiatives of the Trump Administration, as well as the Obama administration, over the past several years.

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### **Welcome to our newest Ninth Circuit Court of Appeals Judge Ryan Nelson**

The United States Senate has confirmed President Trump's nomination of attorney Ryan Douglas Nelson of Idaho Falls, Idaho, to serve as a judge of the U.S. Court of Appeals for the Ninth Circuit.



Senators gave their consent by a vote of 51-44. Judge Nelson, who is expected to maintain chambers in Idaho Falls, was nominated to the court on May 10, 2018. After appearing before the Senate Judiciary Committee on July 11, 2018, his nomination was reported to the Senate floor on September 13, 2018. He fills a judgeship vacant since August 11, 2018, when Judge N. Randy Smith of Pocatello, Idaho, assumed senior status.

Prior to his appointment to the bench, Judge Nelson served as general counsel of Melaleuca, Inc., based in Idaho Falls since 2009. He served previously as special counsel for U.S. Supreme Court nominations to the Ranking Member of the Senate Judiciary Committee in 2009. He also served as deputy general counsel to the White House Office of Management and Budget, from 2008 to 2009, and deputy assistant attorney general in the Environment and Natural Resources Division of the U.S. Department of Justice from 2006 to 2008.

Earlier in his career, Mr. Nelson engaged in private practice in the Washington, D.C., office of Sidley Austin LLP from 2001 to 2006. Born in Idaho Falls, Judge Nelson received his B.A. from Brigham Young University in 1996 and his J.D. from BYU Law School in 1999, graduating with honors and inducted into the Order of the Coif. While in law school, he was a lead articles editor of the BYU Law Review.

Following law school, he served as a law clerk to Judge Karen LeCraft Henderson of the U.S. Court of Appeals for the District of Columbia Circuit, from 1999 to 2000, and to Judges Charles N. Brower and Richard S. Mosk of the Iran-U.S. Claims Tribunal at The Hague from 2000 to 2001.

# 2018 Idaho Chapter, FBA Members

Welcome new Chapter Members:

Kyle Cole, Kira Dale, Edward William Dindinger and Jeremy Litster

Greg Adams	Merlyn Clark	Robert Faucher
Tyler Anderson	Kyle Cole	Deborah Ferguson
Maria Andrade	Aspen Compton, Student Member	Olivia Nicole Ford, Student Member
Sam Angell	Gary Cooper	Alyson Foster
C. Tom Arkoosh	David James Cummings	Trudy Hanson Fouser
Sarah Arnett	Marisa Crecelius	William Fuhrman
Darrel R. Aubrey, Student Chapter	Christopher Cuneo	Jennifer Fuhs, Student Member
William F. Bacon	Hon. Candy W. Dale	Jaclyn Gans
John Bailey, Jr.	James Dale	Patrick Geile
James Ball	Kira Dale	Jack Gjording
Katie Ball	Bart M. Davis	Amber Goeden
Sara Berry	Jennifer Dempsey	Rafael Gonzalez
Erika Birch	Edward W. Dindinger	John Goodell
Walter H. Bithell	Bradley Dixon	Wendy Gordon, Student Member
Kacie Bitzenburg, Student Member	Teague Donahey	Alexandra Grande
Katherine Bolton	William Dryden	Daniel Green
Brook Bond	Keely Duke	Richard "Dick" Greener
Garrett Brown, Student Member	Yvonne Dunbar	Kevin Griffiths
Grant Burgoyne	Dylan Eaton	Brit Groom
John Burke	Michael Elia	Rebecca Gullett
Robert Burns	Hailee Elledge, Student Member	F.J. Hahn, III
Hon. Ronald E. Bush	Jamie Ellsworth	Keegan Hahn, Student Member
DeAnne Casperson	Ford Elsaesser	Blake Hall
Bruce Castleton	Ritchie Eppink	Brady Hall
Colt Catlin	Peter Erbland	Rich Hall
Craig Christensen	Thomas Everson, Student Member	Nicole Hancock
Matthew Christensen	Joshua Evett	Christina Hardesty

Syrena Hargrove	David Lombardi	Lee Radford
Maria Hart	Amy Lombardo	Morgan Reese, Student Member
Dillon Haws, Student Member	Laird Lucas	David Risley
Joel Hazel	Erika Malmen	Ausey Robnett
Susie Headlee, Honorary Member	Lauren C. Markuson, Student Member	Kyle Rozanski, Student Member
Richard Hearn	Tara Martens Miller	Samuel R. Rubin
Kara Heikkila	James Martin	James Ruchti
Dana Herberholz	Jason Mau	Jason Joe Rudd
Alexandra Hodson, Student Member	Kelly McConnell	John Runft
Ernest Hoidal	Charles McDevitt	Christine Salmi
Kate Horwitz	Michael McIntyre	Lindsey A. Sanders, Student Member
Regina Hovet	Christine Meeuwsen	Kevin Scanlan
Loren Ipsen	Hon. Joseph M. Meier	Alan Schroeder
Emily James, Student Chapter	Whitney Mestelle, Student Member	Benjamin Schwartzman
Andrew J. Johnson, Student Member	Serena Minasian, President, Student Chapter	Sydney Sears, Student Member
Marcus Johnson	Michael W. Moore	Alex Semanko
Hon. Jim Jones (ret.)	Allan Moriarty, Student Member	Norman Semanko
Julie Kane	Hon. Terry L. Myers	Cathy Silak
Stephen Kenyon, Clerk of Court	Hon. Ryan D. Nelson	J. Walter Sinclair
Ron Kerl	Bryan Nickels	Colleen Smith
Gwen King, Student Member	Sonyalee Nutsch	Hon. N. Randy Smith
Shanna Knight	Hon. David C. Nye	Scott Smith
Steve Kraft	Phillip Oberrecht	William Lloyd Smith
Debora Kristensen	John Oborn	Slade Sokol
Maureen Laflin	Wendy Olson	Newal Squyres
Reed Larsen	Hon. Jim D. Pappas	Craig Stacey
Tamsen Leachman	James Piotrowski	Benjamin Stein
Tristan Leavitt	Jason Prince	Jon Stenquist
Courtney Lennberg, Student Member	Larry Prince	Erik Stidham
April Linscott	Mark Prusynski	Jordan Stott
Jeremy Litster	Sanja Prutina	Kenneth Stringfield
Hon. Edward J. Lodge		Danielle Strollo, Student Member

Jennifer Tengono, Student Member	Amanda Ulrich	Max Williams, Student Member
Stephen R. Thomas	Matthew Walters	Daniel Williams
William H. Thomas	Linda Wells	Hon. Mikel H. Williams
Christopher Thompson, Student Member	Larry Westberg	Jeffrey Wilson
Aubrey Thorne, Student Member	Robert White	Hon. B. Lynn Winmill
Greg Tollefson	Brandelle Whitworth	Brian Wonderlich
Dawn E. Trivolis, Student Member	Bradley Williams	John N. Zarian