



# Sidebar Idaho Chapter Federal Bar Association Quarterly Newsletter

## A MESSAGE FROM J. WALTER SINCLAIR, PRESIDENT



Your FBA chapter continues to be very active, thanks to all of our members. The FBA Brown Bag CLE program for 2017 is pretty much planned out with the assistance of Tyler Anderson (southern), April Linscott (northern Idaho) and DeAnne Casperson (eastern Idaho) in organizing this program. They are organizing an entire statewide CLE schedule. A copy of the schedule as planned to-date can be found on the following page.

Dana Herberholz, our Government Relations liaison continues to work hard on the replacement of Judge Lodge, as well as advancing our position on a third District Judge for Idaho. As everyone probably knows, Judge David Nye has been nominated by the President and now waits a full Senate confirmation.

Larry Prince (and his assistant, Terry Hancock) continue to serve as our Treasurer. Larry

recently reported that after contributing \$500 to the Access to Justice Idaho campaign, the balance in the pro bono account is \$8,493.72; and the balance in the primary account is \$18,313.46. We have a few expenses coming up soon, however. We will be sending out a Budget for review and approval at our next meeting.

John Zarian, our President Elect, attended the FBA Lobbying Day in Washington, D.C. in April, along with two days of Leadership Training. He reported that it was an excellent opportunity to lobby for our judicial needs and to learn what National has in assisting our Chapter in being as effective as possible here in Idaho. John is really excited to lead the Chapter this next year.

As a reminder, the next Tri-State conference will be held October 5-7, 2017 in Jackson, Wyoming. Please save the date and plan on attending. The current version of the Brochure is attached via separate email for your information. When we have several of our Judges participating in these panels, and it would be great to have the support of our members in attendance.

While it is still early, please hold the date of December 8, 2017 for our annual Holiday Mix & Mingle, which will be held at Crane Creek Country Club from 5:30 p.m. - 7:30 p.m. We generally have a good attendance by several

of our Federal Judges, so come and network with them and your fellow FBA members.

I hope you can join us for our next FBA meeting at 4:00 p.m. in the Clearwater Room in the U.S. Federal Courthouse on August 22, 2017. This will be the election of our new officers, so please to attend, either in person or by telephone, if you can. A notice will be sent out 30 days before the meeting, as required by our By-laws. We did approve an amendment to the By-laws several months ago that will allow electronic voting as well, so please vote even if you cannot attend the meeting.

Also, the deadline for nominating someone for the FBA Exemplary Service Award is July 28th, so please consider nominating someone who should be considered. We have received a few already, and look forward to additional nominations.

Finally, thanks to all of you for your help this year -- we hope to see you at an FBA sponsored event in the near future.



## CLE BROWN BAG PROGRAM SCHEDULE

Month	Location	Venue	Sponsor(s)	Coordinator	Topic	Presenter
<b>February</b> (Thur., Feb. 16)	Boise	U.S. Attys' Office	Moffatt Thomas	Ty	Amendments to FRCP/FRE	Ken Withers Sedona Conference
<b>March</b>	Spring Break, No CLE					
<b>June</b> (Wed., June 21)	CDA	U.S. Courthouse 1st Floor, Suite 130	Lake City Law	April	The changing landscape of civil case management; and time for Q&A	Judge Bush
<b>July</b>	Ninth Circuit Judicial Conference, July 17-20, 2017					
<b>August</b> (Wed., Aug. 16)	CDA	U.S. Courthouse Program in 341; Lunch in Jury Room	Winston & Cashatt	April	Proportionality Follow-up	Judge Winmill
<b>September</b>	District Bench-Bar Conference in CDA on Friday, September 15, 2017					
<b>September</b> Tues., Sept. 26)	Boise	U.S. Courthouse Clearwater Conf. Center	To Be Determined	Ty	Proportionality Follow-up	Judge Winmill
<b>October</b>	Tri-State Conference, Jackson Hole, Wyoming, October 5-7, 2017					
<b>November</b>	District Bench-Bar Conference in Boise on Friday, November 3, 2017					
<b>November</b> (Tues., Nov. 7)	Pocatello	U.S. Courthouse Jury Assembly Room	Parsons Behle & Latimer	DeAnne	Proportionality Follow-up	Judge Winmill and Judge Dale
<b>December</b>	FBA Annual Mix & Mingle – Friday, December 8, 2017 (5:30 p.m. to 7:30 p.m.) Crane Creek Country Club, Boise					

**Special appreciation to our luncheon sponsors:**

**Moffatt Thomas; Lake City Law;  
 Winston & Cashatt; and Parsons Behle & Latimer**

**NEW CLERK OF COURT  
 STEPHEN W. KENYON**



On June 19, 2017, Stephen W. Kenyon became the new Clerk of Court for the District and Bankruptcy Court in the District of Idaho.

Kenyon, whose appointment was announced

by Chief District Judge B. Lynn Winmill and Chief Bankruptcy Judge Terry L. Myers, is an attorney and a certified public accountant, holding degrees from the University of Idaho and Idaho State University. Kenyon and his wife Teuila have four children and live in Boise.

"We are delighted to have Steve join the federal court," Winmill said in a statement. "With his extensive experience in public and judicial administration, his legal and accounting training, his familiarity with the judicial and legal traditions of our state, and as a life-long Idahoan, we are confident that he will make a great and long-lasting contribution to the District and Bankruptcy Courts in the District of Idaho."

**GOVERNMENT RELATIONS**

*Article III Judicial Vacancies* by Bruce Moyer, Counsel for Government Relations and West Allen, Chair, Government Relations Committee



The Federal Judiciary website reported the following Article III vacancies and pending nominees as of July 7, 2017:

FEDERAL JUDICIAL VACANCIES		
Jurisdiction	Vacancies	Nominees Pending
Court of Appeals	20	7
District Courts	108	6
U.S. Court of Intern'l Trade	2	0
U.S. Court of Federal Claims	6	2
Totals	136	15

Fifty-two of the vacancies are considered "judicial emergencies" by the Judicial Conference, the policy-making body of the Federal Judiciary. Six months into the Trump presidency, the Senate has confirmed two judicial nominees: Associate Justice Neil M. Gorsuch to the U.S. Supreme Court and Judge Amul Thapar to the Sixth Circuit Court of Appeals. Fifteen other Article III nominees remain pending:

Name	Court	Nomination Date
David Stras	Eighth	May 8, 2017
Amy Coney Barrett	Seventh	May 8, 2017
John K. Bush	Sixth	May 8, 2017
Kevin C. Newsome	Eleventh	May 8, 2017
Allison H. Eid	Tenth	June 7, 2017
Ralph R. Erickson	Eighth	June 7, 2017
Stephanos Bibas	Third	June 19, 2017
David Nye	Idaho	May 8, 2017
Scott L. Palk	WD OK	May 8, 2017
Dabney L. Friedrich	D.D.C.	June 7, 2017
Timothy J. Kelly	D.D.C.	June 7, 2017
Trevor N. McFadden	D.D.C.	June 7, 2017
Claira Horn Boom	KY	June 12, 2017
Damien Michael Schiff	Claims Court	May 8, 2017
Stephen S. Schwartz	Claims Court	June 7, 2017

Outside groups on the left and the right are pouring money into television ads promoting or challenging some of these nominees. Senate Judiciary Committee Chairman Chuck Grassley previously pledged he will not provide a hearing or move on judicial nominees without the okay from their home state senators through the return of their blue slips, although Grassley has signaled he might reevaluate that practice in the future, especially as to circuit court seats. Grassley already has decided to downplay the role of American Bar Association ratings on judicial nominees, scheduling nomination hearings for two district court nominees before the ABA had completed its respective reviews. The nominees are Timothy J. Kelly and Trevor McFadden, both picked to serve as federal judges for the D.C. district court.

**FY18 Funding for the Federal Judiciary**

The House Financial Services and General Government (FSGG) Appropriations Subcommittee on June 29 completed its markup of its FY 2018 measure, approving it on an 8-5 vote. The Subcommittee provided a favorable funding mark for the Federal Judiciary, providing \$7.1 billion in discretionary appropriations for FY 2018, a 2.4 percent (\$167 million) increase above FY 2017. The House level is \$100 million below the Judiciary's re-estimated FY 2018 request, with the majority of the reduction in the courts' Salaries and Expenses account.

The House full appropriations committee has not scheduled markup of the measure, nor has the Senate FSGG subcommittee announced its markup.

The Federal Bar Association on June 29, 2017 sent the attached correspondence to the Senate FSGG subcommittee in support of the Federal Judiciary's funding request.

The outlook for final Congressional action on the Federal Judiciary's spending request, and more broadly FY 2018 spending decisions, is uncertain. Potential controversial policy riders within the FSGG spending bill, like mandating that the IRS cease enforcement of the ACA individual mandate, could become obstacles. Other big legislative priorities are also involved. Legislative progress on health care and tax reform measures will depend on offsetting cuts in mandatory and discretionary government spending achieved through the "reconciliation process," and House and Senate adoption of a concurrent budget resolution. But the future of the budget resolution in both chambers over the

coming weeks, beginning with the House, is complicated.

The Congressional budget resolution process itself is complicated. The budget resolution allocates top-line spending numbers to the 12 appropriations subcommittees for each fiscal year and directs authorizing committees to achieve cuts in spending areas within their jurisdiction. If the spending and revenue levels in the budget resolution require changes in existing law, the resolution instructs committees to report legislation containing such statutory changes. Whether for tax increases or decreases, deficit reduction, mandatory spending increases or decreases or adjustments in the public debt limit, approval of the budget resolution, at many points, can falter, especially since it is a non-binding budget blueprint. This explains why Congress has been unable to adopt a budget resolution in any of the past ten years. However, the streamlined nature of the budget reconciliation process, requiring only 51 votes in the Senate, lends to its current appeal, particularly among Senate Republicans. In the meantime, continued disagreements over spending and budget cuts between Democrats and Republicans, and particularly among Republican lawmakers, will threaten progress over the coming weeks on the FY 2018 budget, health care and tax reform. Raising the debt limit later this fall, combined with the prospect of a government shutdown, could present political challenges.

## ELECTION OF OFFICERS



By John N. Zarian, President Elect

In accordance with the Chapter By-Laws, President Walt Sinclair recently appointed a Nominations and Elections Committee to nominate candidates for presentation to the membership. The committee consists of President Elect John Zarian and Executive Director Susie Headlee.

The committee will be nominating Dana Herberholz for the position of President Elect. In addition, names will be presented for the offices of Vice President, Secretary, Treasurer and National Delegate. Under the By-Laws, these elected officers and the Immediate Past President comprise the Executive Committee of the Chapter.

In addition to the Executive Committee, a number of unelected positions need to be filled for the 2017-18 term, including: Government Relations Liaison, Membership Chair, Special Events Chair, CLE Chair, Pro Bono Liaison, Young Lawyers Section Division, Attorneys for Civic Education (ACE) Liaison, and Chapter Wills for Veterans Liaison.

If you are interested in serving on the Board of the Idaho Chapter, or serving in any of the unelected positions, please contact John at [jnzarian@idahomediategroup.com](mailto:jnzarian@idahomediategroup.com) or Susie Headlee at [sheadlee@parsonsbehle.com](mailto:sheadlee@parsonsbehle.com).

## CHIEF JUSTICE ROBERTS APPOINTS JUDGE CANDY DALE TO NATIONAL COMMITTEE

Chief Justice John Roberts has invited U.S. Magistrate Judge Candy Waghaoff Dale to serve as Judge Observer for the United States Judicial Conference. As the Magistrate Judge Observer, Judge Dale will represent the Nation's Magistrate Judges as a non-voting member at the United States' Judicial Conference. The Judicial Conference is a bi-annual meeting between the United States Supreme Court and the Circuit Courts, chaired by Chief Justice Roberts from the United States Supreme Court. Only one of the Nation's five hundred Magistrate Judges is given this honor.

"I am humbled to receive this invitation, but looking forward to the opportunity to represent the interests of Magistrate Judges across the country during the business meetings of this policymaking body for the federal courts," commented Judge Dale.

## CELEBRATING THE RICH TAPESTRY OF AMERICA

By U.S. Magistrate Judge Candy Waghaoff Dale



Over the past nine years, I have had the privilege of presiding over approximately two dozen

ceremonies when the last step in a lengthy naturalization process -- the Oath of Allegiance -- has been taken by petitioners seeking citizenship in the United States. Most recently, on June 28, 2017, twenty petitioners from eleven different countries received their certificates of naturalization after taking the oath during a ceremony in Pocatello, and on December 1, 2016, thirty-two petitioners from 15 different countries received their certificates of naturalization after taking the oath during a ceremony in Boise. As I welcomed the petitioners and their families, friends and dignitaries, I commented about how presiding at these ceremonies (and granting citizenship) is at the top of a very short list of what a federal judge loves about her job.

Naturalization is the process that allows lawful permanent residents that have held a green card for a certain period of time, usually five years, to become citizens of the United States if they meet the eligibility requirements set by U.S. immigration laws. At least one interview with an examiner with the United States Citizenship and Immigration Services (USCIS) is among the requirements, along with passing the English test by demonstrating the ability to read, speak and write basic English (unless the petitioner is exempt due to age and length of permanent residency) and the History and Civics Test. Some petitioners are exempt from one or both of these tests due to disability.

The ceremonies have varied pomp and circumstance, in addition to the formal motion made by the USCIS examiner, administration of the Oath of Allegiance, and presentation of the certificates of naturalization.

All requests for change of name are also granted by the Court. Flags or pins are given to the new citizens by members of the Daughters of the American Revolution and other patriotic community groups; voter registration pamphlets are provided by the Idaho Secretary of State; special guests sing or give speeches; and all individuals recite the Pledge of Allegiance at the end of the ceremony.

Some of the moments I enjoy most are the handshakes and hugs I receive when I step off the bench to congratulate each new citizen after he or she receives the certificate from our naturalization clerk. Many of the petitioners are dressed in attire reflective of the traditions of their birth country, and the courtroom is full of young children. And to top off the ceremonies in Pocatello, the new citizens and their family members take the unique and special opportunity to ring the Liberty Bell replica that rests on the front steps of the courthouse.

Although each naturalization ceremony has special moments, one in Pocatello on October 26, 2016, provided a rare opportunity for me to put a human face on a litigant in a unique immigration case where I had issued a decision eight months earlier. When I glanced at the list of petitioners to count the number that would be naturalized that day, I noticed the name of the plaintiff in the case I had remanded to the USCIS to reissue the permanent legal resident card she received in 1992 after participating as an applicant in the Seasonal Agricultural Worker program in 1987 or 1988.

Unbeknownst to me until I noticed her name, the plaintiff had since passed all the criteria for naturalization after the USCIS reissued her green card that had been held up for nearly 14 years in administrative proceedings and in federal court. I was overwhelmed with emotion when I realized that she had realized the judge presiding during the naturalization ceremony was the same judge who issued the order in her case. Neither of us had expected

nor imagined we would share such a memorable moment with one another. (Here is a cite to the case: *Vargas-Ortiz v. McCarthy*, No. 1:14-cv-393-CWD, 2015 WL 3936735 (D. Idaho June 26, 2015)).

During these ceremonies, I also have the privilege of making comments about the efforts and courage it took for the petitioners to leave their country of birth and to become citizens, and I encourage them to exercise fully the rights and responsibilities of citizenship. And I like to highlight the diverse countries from where these new citizens immigrated to the United States. To do so, I frequently read this poem written by Maya Angelou: "We all should know that diversity makes for a rich tapestry, and we must understand that all the threads of the tapestry are equal in value, no matter what their color." If you ever get the opportunity to witness one of these celebrations of American citizenship, I highly recommend it.



## FBA Executive Board

PRESIDENT, J. Walter Sinclair

EXECUTIVE DIRECTOR  
Susie Headlee

PRESIDENT ELECT, John Zarian

VICE PRESIDENT, Rafael Gonzalez

TREASURER, Larry Prince

SECRETARY, Dana Herberholz

PAST PRESIDENT/NATIONAL  
DELEGATE, Keely Duke

FEDERAL JUDGE LIAISONS  
Judge N. Randy Smith  
Judge Candy Wagahoff Dale

## FBA Committee Members

CIVICS EDUCATION LIAISON  
Amy Lombardo

CLE PROGRAMMING  
Tyler Anderson, Chair  
April Linscott, Northern  
DeAnne Casperson, Eastern

MEMBERSHIP, Gary Cooper

PRO BONO LIAISON, Mary Hobson

SOLACE PROGRAM, Katie Ball

SPECIAL EVENTS/TRI-STATE  
Dan Williams

U of I STUDENT CHAPTER  
Colt Catlin, President

YOUNG LAWYERS LIAISON  
Sonyalee Nutsch

## 2017 Idaho Chapter, FBA Members

**We are delighted to welcome our newest Chapter members –**

**Erika Malmen, Jason Mau, Wendy Olson, Lee Radford, Jon Stenquist and Brad Williams.**

Greg Adams	Craig Christensen	Jessica Fernandez, Student Chapter
Ashley Akers	Matthew Christensen	Alyson Foster
Tyler Anderson	Merlyn Clark	William Fuhrman
Maria Andrade	Gary Cooper	Jennifer Fuhs, Student Chapter
Sam Angell	Tom Cruz, Student Chapter	Michael Gaffney
Tom Arkoosh	Christopher Cuneo	Jaclyn Gans
Sarah Arnett	Hon. Candy W. Dale	Patrick Geile
William Bacon	James Dale	Mark Geston
John Bailey, Jr.	Jennifer Dempsey	Danielle Glass, Student Chapter
James Ball	Katy DeVries, Student Chapter	Rafael Gonzalez
Katie Ball	Bradley Dixon	John Goodell
Aaron Bell, Student Chapter	Teague Donahey	Alexandra Grande
Steven Berenter	William Dryden	Richard "Dick" Greener
Sara Berry	Keely Duke	Brit Groom
Erika Birch	Yvonne Dunbar	F.J. Hahn, III
Katherine Bolton	Angelique EagleWoman	Blake Hall
Brook Bond	Wendy Earle	Brady Hall
Hon. Larry M. Boyle	Dylan Eaton	Rich Hall
Christopher Brown	April Eggers, Student Chapter	Nicole Hancock
Grant Burgoyne	Michael Elia	Syrena Hargrove
John Burke	Jamie Ellsworth	Jordan Harshfield, Student Chapter
Robert Burns	Ford Elsaesser	Maria Hart
Hon. Ronald E. Bush	Ritchie Eppink	Susie Headlee, Honorary Member
Aaren Carnline, Student Chapter	Peter Erbland	Richard Hearn
DeAnne Casperson	Joshua Evett	Kara Heikkila
Bruce Castleton	Robert Faucher	Dana Herberholz
Colt Catlin	Deborah Ferguson	Mary Hobson

Alexandra Hodson, Student Chapter	Franchell McClendon, Student Chapter	Sam Schiffler, Student Chapter
Ernest Hoidal	Kelly McConnell	Lee Schlender
Kate Holey	Charles McDevitt	Steven Schossberger
Amy Holm	Christine Meeuwesen	Alan Schroeder
Jessalyn Hopkin, Student Chapter	Jason Moore, Student Chapter	Benjamin Schwartzman
Regina Hovet	Michael Moore	Patrick Shearer, Student Chapter
Sarah Hugues, Student Chapter	Rachel Murphy	Brian Sheldon
Josh Hurwit	Hon. Terry L. Myers	R. Jonathan Shirts, Student Chapter
Emily James, Student Chapter	Jaycee Nall, Student Chapter	Cathy Silak
Marcus Johnson, Student Chapter	Kirt Naylor	J. Walter Sinclair
Kacey Jones, Student Chapter	Ryan Nelson	Bill Smith
Justice Jim Jones	Derek Newman, Student Chapter	Hon. N. Randy Smith
Julie Kane	Bryan Nickels	Slade Sokol
Ron Kerl	Sonyalee Nutsch	Newal Squyres
Shanna Knight	Phillip Oberrecht	Benjamin Stein
Steve Kraft	John Oborn	Jon Stenquist
Debora Kristensen	Wendy Olson	Erik Stidham
Maureen Laflin	Patricia Olsson	Jordan Stott
Reed Larsen	Hon. Jim D. Pappas	Kenneth Stringfield
Marsha Larson, Student Chapter	Kira Pfisterer	Kirsten Svendsen, Student Chapter
Tamsen Leachman	James Piotrowski	Greg Tollefson
April Linscott	Jason Prince	Amanda Ulrich
Hon. Edward J. Lodge	Larry Prince	Matthew Walters
David Lombardi	Mark Prusynski	Cameron Warr, Student Chapter
Amy Lombardo	Sanja Prutina	Elijah Watkins
Laird Lucas	Lee Radford	J. Kevin West
Kennedy Luvai	David Risley	Larry Westberg
Stacy Mahar, Student Chapter	Ausey Robnett	Robert White
Erika Malmen	Richard Rubin	Bradley Williams
Kelsey Manweiler, Student Chapter	James Ruchti	Brandelle Whitworth
Jason Mau	Jason Joe Rudd	Daniel Williams
Tara Martens Miller	John Runft	Hon. Mikel H. Williams
James Martin	Kevin Scanlan	Jeffrey Wilson

Hon. B. Lynn Winmill

Shannon Work

John Zarian

Brian Wonderlich

Yuen Xenica, Student Chapter