



Federal Bar Association

Lafayette/Acadiana Chapter

AMICI CURIAE

Spring 2017

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President's Message

By Jaclyn B. Bacon

To all of my friends and colleagues in the Lafayette-Acadiana Chapter of the Federal Bar Association, I am humbled and honored to serve you as our Chapter President during 2017. With deep gratitude to our Immediate-Past President, Heather Edwards, and the many other past leaders who have helped to make this organization what it is today, I look forward to working with you during the year ahead. The demonstrated commitment to excellence and professionalism by this organization are but a few of the reasons why I have the utmost appreciation for this opportunity to collaborate with our Chapter's Board of Directors to continue serving our members. We are committed to remaining relevant to our members and serving the needs of federal practitioners, judges, and courts, as well as the Acadiana community as a whole.

Planning is well underway for many of our Chapter's events this year, including quality networking events, educational programs, and civic engagement. In particular, our members and guests are invited to a trivia competition at the Chapter's 2nd Annual Battle of the Brains Trivia Night on the evening of March 30th at Legends Annex in Lafayette. Further, in April our Chapter will be participating in the FBA's Civics Community Outreach initiative by hosting a group of high school students at our local federal courthouse for a facility tour and presentations by representatives of various federal agencies. We will also continue offering quality CLEs on varying topics of interest to federal practitioners with periodic luncheon CLEs, in addition to our Chapter's Annual Meeting and Judge John Shaw Civility & Ethics CLE, scheduled on December 7, 2017.

Our Chapter will be well represented during 2017 at the national level by board members attending the FBA's mid-year and annual meetings, Capitol Hill Day, and Leadership Training Program. Our board will also continue monitoring the status of our local federal judiciary's vacant seat(s) this year and will keep our members apprised of developments. Finally, we are proud to have recently facilitated equipping the Lafayette Bankruptcy Court with wireless internet, which is now accessible by our local practitioners while using the courthouse.

In closing, to those who are already involved I say thank you and I look forward to continuing to work with you this year. If you are not yet a member, please consider joining the Federal Bar Association and the Lafayette-Acadiana Chapter. We look forward to seeing you at our upcoming events. If you have any questions or concerns pertaining to our Chapter, please do not hesitate to contact me at federalbar.acadiana@gmail.com.

Upcoming Chapter Events

Trivia Night

Date: March 30, 2017

Place: Legends Annex

Time: Meet at 5:30; Trivia at 6:00

Brown Bag CLE

Date: Spring 2017

Place: Federal Courthouse – Court Room 5 - 3rd Floor

Time: 11:30 a.m. – 1:00 p.m.

Brown Bag CLE

Date: Summer 2017

Place: Federal Courthouse – Court Room 5 - 3rd Floor

Time: 11:30 a.m. – 1:00 p.m.

Brown Bag CLE

Date: Fall 2017

Place: Federal Courthouse – Court Room 5 - 3rd Floor

Time: 11:30 a.m. – 1:00 p.m.

14th Annual Judge Shaw “Country Gentleman” Civility & Ethics Seminar

Date: December 7, 2017

Place: Federal Courthouse

Interested in becoming a member of the Federal Bar Association?

Contact Membership Chair:

George D. Ernest, III
Hurlburt, Monroe & Ernest
PO Drawer 4407
Lafayette, LA 70502
(337) 237-0261
Fax (337) 237-9117
dave.ernest@hpmatty.com

or

Federal Bar Association
1220 North Fillmore St., Suite 444
Arlington, VA 22201
(571) 481-9100
Fax (571) 481-9090
www.fedbar.org

Membership fee includes both national and chapter membership in the Federal Bar Association.

13th Annual Judge Shaw Civility & Ethics CLE



On December 1, 2016, the Lafayette/Acadiana Chapter held the 13th Annual Judge John M. Shaw “Country Gentleman” Civility & Ethics Seminar. The annual seminar serves as a memorial to the high degree of civility and professionalism embodied by Judge Shaw, and encourages our members to follow the example by which he led his life and practice. This year’s seminar featured Chief Judge Carl E. Stewart, who discussed Professionalism & Ethics in the Digital Age, Chief Judge Dee D. Drell, who discussed upholding the Code of Professionalism in our legal endeavors, and Gary T. Cornwell, who spoke about his work as Deputy Chief Counsel for the John F. Kennedy Task Force of the House Select Committee on Assassinations. Following the swearing in of the 2017 Officers and Board of Directors, a drawing was held for a signed copy of Mr. Cornwell’s book, *Real Answers*, about the Kennedy Assassination. The event concluded with a cocktail reception catered by iMonelli. This event was a huge success and we hope you all mark your calendars for this year’s seminar.



2017 Officers & Board. Left to right: Hon. Carol Whitehurst, Elwood Stevens, Mildred Methvin, John Roy, Alec Alexander, Doug Truxillo, Cristie Gibbens, Dave Ernest, Rob Felder, Jaclyn Bacon, Nadia de la Houssaye, Tony Moore, Cory Hebert, Ken DeJean, JoelBabineaux, Hon. Rebecca Doherty



Chief Judge Carl E. Stewart



Judge Davis, J. Bacon, H. Edwards, Chief Judge Stewart



Heather Edwards, Chief Judge Dee D. Drell



Heather Edwards, Gary Cornwell



Cory Hebert, Mildred Methvin

Brown Bag Bankruptcy CLE **with the Hon. Robert R. Summerhays**



A Brown Bag CLE with the Honorable Robert R. Summerhays, Chief Judge of the U.S. Bankruptcy Court for the Western District of Louisiana, was hosted by the Lafayette/Acadiana Chapter of the FBA on July 27, 2016 at the U.S. Bankruptcy Courthouse in Lafayette, Louisiana. Following a catered lunch, the 36 attendees (which included both bankruptcy and non-bankruptcy practitioners) were provided with an overview of recent trends in consumer and commercial bankruptcy filings at both the national and local levels, as well as a discussion of the potential economic factors influencing those trends. Judge Summerhays additionally discussed several recent and notable bankruptcy rulings from the U.S. Fifth Circuit Court of Appeals.

Clerk's Corner

By Pam Mitchell, Staff Attorney, U.S. District Court, Western District of Louisiana

Help Desk Aids the Public

On every business day, the phone rings off the hook in all five divisional offices of the Clerk of Court of the U. S. District Court, Western District of Louisiana. This is just a day in the life of the Western District's well-used Help Desk.

The Western District went live on CM/ECF in June 2004 with attorneys beginning to file in the system in February 2005. It was at this same time that the Help Desk went live primarily to answer questions about the new electronic filing system. Electronic filing was new and many attorneys and their staff were nervous about using the system. The Help Desk helped relieve some of that anxiety.

Currently, the Western District's Help Desk rotates around the district from 8:00 a.m. to 5:00 p.m. excluding the lunch hour, weekends and holidays. (1-866-323-1101) Help Desk calls may be answered by docket clerks and intake staff in any of the five divisional offices. The Western District has 11 employees assigned to answer the Help Desk with back-up employees to step in as needed. In the last quarter of 2016, a report run by the Western District indicates that 987

calls were made to the Help Desk with call times ranging from only a few minutes to longer calls of up to 20 minutes or more. The Help Desk is also available by email during the same time frame at cmecf_helpdesk@lawd.uscourts.gov.

The questions received on the Help Desk can be "all over the place" as Appeals Clerk Bobby Walker reports. Many questions are routine such as what event to use, how to reset an attorney's CM/ECF password or when an attorney was admitted to practice. Some questions walk a fine line with giving legal advice and employees must be careful what information they can give. With questions coming from any area of the court, employees on the Help Desk may not immediately know the answer. "If they call the Help Desk, my responsibility is to answer their question. I don't just transfer the call. I figure out the answer. You learn a lot," Bobby said. He added that, if needed, he will get the caller's name and call them back with the information. Bobby enjoys taking the calls on the Help Desk because "I like helping people. Their problem becomes our problem and we can work together on it."

Practice Tips

Do you like to bring a paper copy of the Federal Rules of Civil Procedure with you to court? I do. For years I lugged around West's (now Thompson Reuters) paperback version. It's big. It's bulky. It's heavy. It's expensive. It takes up a lot of valuable space in my briefcase. Recently I stumbled upon a better alternative from LegalPub.com. It's a compact publication. It includes the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Federal Rules of Appellate Procedure, select provisions of Title 28, and the U. S. Constitution. Unlike the Thomson Reuters version, it does not have all the advisory committee notes and the amendments. But who needs all that when you are just looking for an exception to the hearsay rule?

The LegalPub.com version measures approximately 5.5" x 8.5" and is only .5

inches thick. In comparison, the Thomson Reuters version is about 8" x 9.5" and is 1.5 inches thick. The LegalPub.com booklet weighs only about 10 ounces whereas its competitor weighs in at a whopping 4 pounds! The best part? The cost. It's only \$23 plus shipping. Ordering online is easy at www.legalpub.com. For the bankruptcy attorneys among us, the company also publishes a bankruptcy code and rules booklet. The company offers volume discounts and can print custom covers in case you want your firm's name or logo on it.

Until I start bringing an iPad to court with an electronic version of the federal rules, I will be carrying the LegalPub booklet.

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Want a quick and easy way to determine whether your federal filings will be in compliance with the local rules of the Western District of Louisiana? If so, go to www.lawd.uscourts.gov/content/deficiency-check-list. There, you will find the checklist the Clerk's Office uses to determine whether or not a filing is deficient. If you comply with this checklist, your document is highly likely to be filed without the dreaded deficiency notice. All attorneys practicing in our district should download a copy for themselves and their support staff. A quick rundown of the checklist for compliance before filing any documents will likely save you future time and headache in curing deficiencies.

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Did you know you may often avoid the use of affidavits in federal court and use declarations instead? 28 U.S.C. Sec. 1746 allows for the execution of a written declaration (subscribed to by the declarant as true under penalty of perjury) in lieu of an affidavit, thereby dispensing with the need to appear before a notary. Under section 1746, such a declaration has the same force and effect of a notarized affidavit. See section 1746 for formal requirements.

News and Announcements

Welcome to our newest members:

Elizabeth Austin

Brown Sims

**Homer Edward Barousse,
III**

Borne Wilkes & Rabalais

Lawrence C. Billeaud

*The Law Office of Lawrence
C. Billeaud*

Robert M. Brandt

Brandt & Sherman

Gina Rush Calogero

Gina Rush Calogero, APLC

Kevin Camel

*Cox, Cox, Filo, Camel
& Wilson*

Gerald J. Casey

*Gerald J. Casey,
Attorney at Law*

Jennifer B. Frederick

*United States
Attorney's Office*

C. Shannon Hardy

Penny & Hardy

Brent A. Hawkins

Hawkins Kee Law Group

Michael J. Juneau

Juneau David

Derrick D. Kee

Hawkins Kee Law Group

Charles M. Creamer

Allen & Gooch

D'Ann R. Penner

*Veron, Bice, Palermo
& Wilson*

Laura L. Putnam

*Louisiana Department of
Justice*

April L. Rolen-Ogden

Liskow & Lewis

Jeremiah Sams

*Louisiana Department
of Justice*

Andrew P. Texada

Stafford, Stewart & Potter

Jazmine Torres

*Louisiana Department
of Justice*

Anne E. Watson

Law Office of Anne Watson

Clifford T. Watts

*Clifford T. Watts,
Attorney at Law*

Jordan Wright

*Domengeaux Wright
Roy & Edwards*

Adam G. Young

Young, Cotter & Meade

If you have any news you would like to share with our members, please contact us at federalbar.acadiana@gmail.com

Duly Noted

In ***Coastal Conservation Ass'n v. U.S. Dep't of Commerce*** the U.S. Fifth Circuit affirmed the E.D.La.'s summary dismissal of plaintiff's challenge to an amendment to the Reef Fish Fishery Management Plan. Federal law establishes separate quotas of red snapper for recreational fishing (which includes charter fishing) and commercial fishing. The challenged amendment creates separate components within the recreational sector - a federal charter component and a private angling component - and allocates the recreational quota between these two sub-components by establishing separate season closures, with a longer snapper season for charter boat fishermen than for private anglers in the Gulf of Mexico. One of the reasons provided by the Secretary of Commerce in the notice of rulemaking was that unlike private anglers with boats, federally permitted charter boats cannot take advantage of longer state snapper seasons. For example, while the federal season in 2014 for private anglers was only nine days, the Louisiana state season was 286 days. (The federal season for charters was 40 days.) Additionally, the Secretary noted there has been a moratorium on the issuance of new charter vessel permits since 2003, whereas there is no limit to recreational vessels targeting red snapper. The Fifth Circuit found the rule was properly devised and implemented. The amendment will sunset on December 31, 2017 unless the Gulf Council takes further action. **846 F.3d 99 (5th Cir. 2017)**

In ***Nguyen v. U.S. Citizenship & Immigration Services***, the Fifth Circuit affirmed the ruling on summary judgment issued by Judge Rebecca Doherty, holding Louisiana's automatic first-offender pardon is not a "full and unconditional executive pardon," as required for an alien to be eligible for naturalized citizenship. Unlike a gubernatorial pardon, the automatic first offender pardon does not restore a "status of innocence," and is not full and unconditional. **847 F.3d 750 (5th Cir. 2017)**

In ***In Re: Larry Doiron***, the Fifth Circuit affirmed the ruling on summary judgment issued by Judge Rebecca Doherty, which held a contract to perform flow-back services on an

offshore natural gas well in state territorial waters was maritime in nature, primarily because the work ultimately required the use of a vessel (a crane barge) when the original equipment was deemed insufficient to complete the job. Had the contract been deemed non-maritime, Louisiana state law would have applied and the indemnity provision therein would have been rendered void by virtue of the Louisiana Oilfield Indemnity Act. In his concurring opinion, Judge Eugene Davis urges the court to take the case en banc "and simplify the test for determining whether a contract is a maritime contract." **Docket No. 16-30217, Decided: Feb. 23, 2017**

In ***Mays v. Chevron Pipe Line Co.***, Judge Rebecca Doherty issued one of the few rulings examining the scope of LHWCA coverage under the OCSLA on a non-OCS situs, since the U.S. Supreme Court's decision in *Pac. Operators Offshore, LLP v. Valladolid*, 132 S.Ct. 680 (2012). In *Valladolid*, the Supreme Court resolved a circuit split and held the scope of LHWCA coverage under OCSLA requires a claimant to establish a "substantial nexus" between the injury suffered and on-OCS operations conducted for the purpose of extracting natural resources from the OCS. The Supreme Court rejected the Fifth Circuit's "situs-of-injury" test as unsupported by the language of sec. 1333(b). In *Mays*, plaintiff, a valve maintenance worker, was killed while working on a platform in state territorial waters due to an explosion caused when a pressure barrier was breached on the valve he was repairing. Although natural gas from state territory traveled by pipeline to the platform where the injury occurred, plaintiff presented evidence showing natural gas from the OCS also traveled to that pipeline, and natural gas production from platforms on the OCS had to be shut in to stop the release of gas through the valve at the incident site. The Court denied summary judgment for Chevron, finding an issue of material fact existed as to whether there was a substantial nexus between the injury suffered and on-OCS operations. **2017 WL 129899 (W.D.La.)**

Government Relations Update

Circuit and District Judicial Vacancies

As of February 13, in addition to an open Supreme Court seat, 117 Article III judicial vacancies await nomination by the President, including 18 seats on the federal courts of appeals and 91 federal district court seats. That is more than twice as many vacancies that existed when President Obama took office in 2009.

The Federal Judiciary website reported the following vacancies as of February 13, 2017:

	Current Vacancies	Nominees Pending
Supreme Court	1	1
Courts of Appeal	18	0
District Courts	91	0
US Ct of International Trade	2	0
US Ct of Federal Claims	6	0
Total	118	1

Bankruptcy Filings

The Federal Judiciary reported on January 25, 2017 that filings in federal bankruptcy courts during 2016 declined by 5.9 percent. The number of filings – 794,960 cases – represented the lowest number of filings for any calendar year since 2006, and the sixth consecutive calendar year that filings have fallen. Observers predict that a decline in bankruptcy filings over the next 12-24 months will continue, but at a slower pace, followed by a rise in filings as interest rates continue to creep up.

Recently Introduced Judgeship Legislation

The Federal Bar Association supports the authorization and establishment of additional permanent and temporary federal judgeships, including bankruptcy judgeships, along with support personnel, as proposed by the Judicial Conference of the United States, when rising caseloads in the federal courts threaten the prompt delivery of justice.

The Judicial Conference is expected next month to transmit its biennial recommendations to Congress for the establishment of additional federal judgeships in alignment with current caseload demands. On April 20 during FBA Capitol Hill Day, FBA leaders and members will educate Congress about how overwhelming caseloads threaten the ability of the Third Branch to effectively administer justice.

In the meantime, several bills have been introduced in the 115th Congress to establish additional district judgeships, realign the Ninth Circuit Court of Appeals, and convert or add additional bankruptcy judgeships.



SECOND ANNUAL



BATTLE OF THE BRAINS TRIVIA NIGHT

Thursday, March 30
Legends Annex (110 Polk St.)
Meet @ 5:30 – Trivia @ 6:00
Teams of up to 6
No Entry/Registration Fee



- * Eternal Bragging Rights *
- * Epic Trophy *
- * Prizes for 1st, 2nd, & 3rd Place *
- * Mind-blowing Drink Specials *

**Brought to you by the Federal Bar Association
Lafayette-Acadiana Chapter**

For Questions or Team Registration (optional):
FBATrivia@gmail.com