



FEDERAL BAR ASSOCIATION - MARYLAND CHAPTER NEWSLETTER

MARCH 2010

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FBA - PRESIDENT'S MESSAGE

GEOFFREY H. GENTH
KRAMON & GRAHAM, P.A.

As this year's Chapter President, I want to thank our members for supporting our recent programs, and also to encourage all of you to take advantage of our upcoming events.

As those who attended know, the January 25 luncheon honoring Judges Davis, Legg, and Chasanow was wonderful. Our membership turned out "in force" to celebrate those three judges' career milestones, and Rig Baldwin, Judge Blake, and Gerry Martin spoke eloquently about our honorees. Thanks to all those who made it happen, whether by organizing or by attending. At the Court's official transition ceremony on January 29, the president of the Historical Society of the United States District Court for the District of Maryland (and former Chapter President) Herb Better, presented – on behalf of our Chapter and the MSBA – a beautiful selection of A. Aubrey Bodine's Maryland photographs to the District Court in honor of Judge Legg's service as Chief Judge. The selection will hang prominently in the Garmatz Courthouse.

Our Chapter's upcoming events include the following: On April 6, we're sponsoring a luncheon featuring General Suter, the Clerk of the United States Supreme Court, with a special opportunity for our members to be admitted to the high court. On April 16, we're co-sponsoring the Open Doors moot-court program for local high school students. Judge Gauvey and Mark Saudek are once again organizing this worthwhile and fun event. On April 23, we're offering a new Nuts and Bolts of Criminal Practice program, organized by Stephanie Gallagher, Stan Reed, and Paula Xinis. On May 14, we're presenting our Introduction to the Courthouse Program, organized by Celeste Bruce and Dawn Resh. Finally, turning to next fall, please save the date of October 11 (Columbus Day) for our Chapter's first-ever golf tournament at the Lake Presidential Club in Upper Marlboro, which is being organized by President-Elect Linda Thatcher. Many thanks to the organizers of our spring programs, and also to Linda for leading our Chapter in a new, athletic direction next fall! Each one of these events promises to be excellent, and I hope that each of you will be able to attend at least one of them.

I also encourage all of you to recommend to your friends and colleagues that they join our Chapter. Our Chapter's younger lawyers section, headed by Assistant U.S. Attorney Peter Nothstein, is quite active and, like our Chapter generally, offers great opportunities to strengthen and broaden professional relationships.

This year our Chapter is more indebted than ever for our federal bench's active encouragement and participation, which have been and will continue to be crucial to our ongoing success. Our Chapter is lucky to have such judicial support.

Finally, my thanks to Chad Curlett and Ezra Gologly for editing and producing this newsletter.

Please do not hesitate to contact me or any of our Chapter's other officers with questions, suggestions, or ideas for new programs or events. This is your Chapter, and we all want to make it as worthwhile for our members as possible.

The Younger Lawyer's Division of the FBA provides fun and informative social and networking events for FBA members. Our events are often open to FBA and non-FBA members, but we strongly encourage those who visit to join the FBA. We have two events coming up in the next few months. On March 4, the YLD will be hosting a reception for the participants and spectators of the semi-final round of the 40th Annual Morris Brown Myerowitz Moot Court Competition (also on March 4).

Also, the YLD will be hosting its second event for young lawyers on career planning. Last year's event was a big success, with a number of new attorneys and law students getting the opportunity to hear from and ask questions of experienced and successful attorneys from a number of different practice areas. This year's program will feature a focus on a variety of legal paths and tips for looking for employment in a difficult economy. The date of the program is to be announced, but is expected to be in March or April.

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Reflections on a Chief Judgeship

By Sarah F. Lacey, Esq., Saul Ewing LLP

Elevated to the office of chief judge of the U.S. District Court for the District of Maryland on January 6, 2003, Judge Benson Everett Legg recently completed his seven-year term and was succeeded by Chief Judge Deborah K. Chasanow on January 4, 2010. In an interview shortly before he returned to full-time service as a district judge, Judge Legg reflected on his experience as chief judge.

A chief judge's chief business, of course, is to efficiently and effectively administer the business of the court. In doing so, a chief judge of the federal district court in Maryland must frequently interact with the clerk's office, court reporters, AUSAs, Federal Public Defenders, U.S. Marshals, jurors, civil and CJA panel attorneys, pretrial and probation services, and the bankruptcy court, as well as the magistrate judges, the State's congressional delegation, the Fourth Circuit Judicial Council, and the Administrative Office of the U.S. Courts. Successfully managing day-to-day challenges in the courthouse, Judge Legg learned, requires the chief judge to appreciate the roles these stakeholders play in the federal court system as a whole.

There is little statutory authority to guide the chief judge in carrying out his or her duties. The late Judge Samuel J. Ervin, III, chief judge of the Fourth Circuit from 1989 to 1996, frequently remarked that "the reins of power are not attached to anything." During the twelve years preceding his own elevation to chief judge, Judge Legg observed Judges Walter E. Black, J. Frederick Motz, and Frederic N. Smalkin skillfully handle the office. Judge Legg, as chief judge, steered the court's operations much the same way his predecessors had: by building consensus among the numerous stakeholders in the court system.

With tremendous institutional help – particularly, the long memories of Felicia C. Cannon, Clerk of the District Court; Mark Sammons, Clerk of the Bankruptcy Court; and William Henry, Chief of the Probation and Pretrial Services Office – and with cooperation from a collegial bench, Judge Legg implemented a number of significant changes as chief judge. Perhaps the most useful of these (at least in the view of junior attorneys in private practice) is the CM/ECF system, which permits electronic filing of nearly all papers in civil cases. The District of Maryland was among the first to put this system in place in 2003. In 2008, the CM/ECF system was expanded to accommodate filings in criminal cases as well. The court's automated infrastructure, including its computers, telephones, and courtroom technology, also has been extensively upgraded.

The limits of the district's courthouses and other physical facilities, on the other hand, presented a perennial challenge to Judge Legg. After almost fifteen years, the district finally received the funds to move forward with a feasibility study for an annex to the Greenbelt courthouse. That courthouse, Judge Legg said, was "full at the time it was built" in 1994, and desperately requires more space. The Garmatz courthouse in Baltimore, once slated for replacement, now has been removed from the Five Year Courthouse Project Plan and consigned to undergo a series of project-by-project renovations. The lack of a local federal detention center, moreover, has created serious logistical difficulties for the U.S. Marshals and criminal defense attorneys, many of whom must spend two-fifths of their workdays traveling to prisons around the region.

Fortunately, Judge Legg said, Maryland's congressional delegation has been receptive to finding a solution to meet these various needs.

Judge Legg's successor is likely to face significant challenges of her own. Overseeing the construction of the Greenbelt annex – and, Judge Legg hopes, the renovation of the Garmatz courthouse – will require much of Chief Judge Chasanow's time. Judge Legg predicts that a generational shift in courthouse personnel over the next few years also will require deft management. Between 2012 and 2015, seven vacancies will open on the district court's bench, and the clerk's office and other units of the court will see a similar turnover. Complex personnel issues can arise as "pulses" of new people arrive and must be integrated into the Court's daily operations, Judge Legg notes.

Contemplating his return to the regular duties of a federal district judge, Judge Legg admits that he has "a lot of fun" on the bench. At the recommendation of his mentor, Judge Motz, Judge Legg patterned his "common sense, practical, pragmatic approach" after that of Judge Alexander Harvey, II, chief judge of the District of Maryland immediately prior to Judge Black, renowned for his approach to case management and legal scholarship. About two years after taking the bench, Judge Legg recalled participating in making a training video for the Federal Judicial Center, entitled "Your First Year on the Bench." Judge Legg said in the opening sequence that "[b]eing a federal district judge is a magnificent job if you're interested in the law." With sixteen more years of experience, Judge Legg would add that a district judge must rule honestly without worrying about reversal or the popularity of his or her ruling.

Practical considerations should be factored in as well, in Judge Legg's view. A district judge must be a self-starter because there is no oversight mechanism or the spur of billing to ensure that the work of the bench progresses. A federal judge also must be committed to giving and willing to put in significant time in carrying out his or her duties, both within the courthouse and as an active participant in extra-judicial activities. Judge Legg notes that the bulk of the administrative work of the courts is accomplished through committees and the involvement of members of the bar. Outside the courthouse, Judge Legg is an avid fly fisherman.

With an increased caseload but fewer administrative duties and two clerks rather than three, Judge Legg expects his workload soon will balance itself out. As a judge, having control over his own schedule – and being free of the pressure of the billable hour and realization rates – relieves much of the stress he remembers facing as an attorney in private practice. Being a litigator is a tough, albeit exciting, job, he remarked. Judge Legg regrets that federal judicial salaries have been decimated by inflation. Congress's failure to achieve a sensible salary structure for itself and for the federal judiciary (judicial and congressional salaries are linked) is making it difficult to attract candidates from the private sector. Nevertheless, Judge Legg continues to enjoy the "give and take" of the courtroom and the "excitement of its human content." Working through a problem where both sides sound plausible, patiently listening to the lawyers, reading cases, and writing opinions remain gratifying aspects of Judge Legg's duties, even after "exposure to every type of case there is" over nearly two decades on the federal bench.

Judge Legg was a partner at Venable, Baetjer and Howard when the opportunity to become a federal judge presented itself in 1991. Recalling the advice of Judge Motz, Judge Legg jumped at the chance “like a hobo jumping in an open boxcar.” Judge Legg offers the same advice to young attorneys today: affirmatively manage your own career. “Don’t be afraid to move,” he says. “You have a long career ahead, with many phases. Make them productive.” And of course, whenever you are before the court, be well prepared. Judges

are looking for honest, reliable guides, and you can lose credibility quickly. “Some lawyers, I take their word to the bank,” Judge Legg says. “Other lawyers, I take what they say with a large grain of salt.” Hardnosed, uncivil conduct also will damage your reputation. “Be reasonable in your interactions with other lawyers and the court,” adds Judge Legg. Lawyers quickly develop reputations, both good and bad. “Judges are social animals, and we talk among ourselves – federal and state.”

Open Doors to the Federal Courts

By Mark S. Saudek, Esq., Gallagher, Evelius & Jones, LLP

The witness swaggered to the stand in a throwback NFL jersey, low-riding jeans, and a blue bandana. “She a Crip, yo,” said Juror # 8, eyes wide. Her hands jerked to cover her mouth, too late.

Under most circumstances, this outburst would not be an auspicious evaluation of the performance of a law clerk working for the United States District Court for the District of Maryland. On that day in April, though, a higher compliment could hardly have been paid. The same law clerk later appeared as a track coach and bookish trusts & estates lawyer, eliciting coos and giggles from the jury.

The juror could have been excused, given her age. She was only 14. In fact, on both sides of her sat bright young adult jurors not old enough to drive. All of this proceeded under the knowing eye of the federal judge, without any reprimand or sanction.

The lawyers continued with their case, arguing suppression issues and presenting witnesses to persuade the jurors that a teenager caught with contraband on his family’s living room coffee table during a house party should or should not be convicted of possession with intent to distribute. At the close of the evidence, the jury deliberated. They chose a foreperson, and debated the evidence. Witness testimony was remembered and sometimes misremembered. Exhibits were considered. Jury instructions were deciphered, construed, and mostly followed. The discussion became heated, then it cooled. Jurors who had seemed disinterested added crucial information and opinions. The jury reached a verdict.

This seems like a model of the jury system. Yet, not one of the jurors was more than sixteen years old. How could such a thing have happened in the United States District Court?

Once a year, United States Magistrate Judge Susan K. Gauvey welcomes more than one hundred Baltimore high school students into federal court, to sit for a day as jurors. Seven federal judges generously devote a day to preside over mock trials. Judge J. Frederick Motz begins the session with a thoughtful and engaging overview of jurors’ roles. The students then divide into juries, and make their way to seven different court rooms, unsure of what to expect.

Local litigators argue motions and present opening statements, largely pre-scripted witness testimony, and closings. Judicial law clerks serve as witnesses, sometimes quite colorfully, as did the Crip/coach/trusts & estates lawyer. One memorable Open Doors trial involved a male law clerk with clean-shaven pate and less restraint than usually befits a witness in federal court. He was equally theatrical as both male and female witnesses. Sauntering on and off the witness stand, he conjured up accents from courtly Southern gentleman to cab driver.

At the close of the evidence, the jurors deliberate, reach a verdict, and present their verdict to the court. The case itself may be moot, but the students treat it as anything but. Consider the jury deliberations of the house party defendant. An outspoken juror opened the deliberations with: “How’d you know they’re his drugs? Drugs’re everywhere.” Another juror: “It’s his house. His table. His crew. Whose else it is?” A third: “His house? That’s his mama’s house. Mama let him live there. How’d you know the stuff’s not hers?” A fourth: “They’re there. Drugs everywhere? Maybe, OK, but not out on a table at a party. Not for long.” Jurors wearing ties loosened them. Slouching jurors sat up. Standing jurors sat, then slouched. Some opinions were voiced with logic and passion. Others opinions were dismissed. Some ideas resurfaced later, having gained an aura of reasonableness over time. In the end, the jury was unable to reach a verdict. Hung jury.

The jurors then returned to the large jury assembly room, where each of the seven forepersons presented their verdicts to the whole group. They presented five convictions, one acquittal, and one hung jury. Judge Gauvey told the students they all had considered the same facts, that the fact patterns and scripts were preset. All that had changed were the lawyers, judges, witnesses, and jurors. Discussion followed, and it continued back in the classroom once the students returned. What does justice mean? How can you be sure you get it? How could the same facts have led to three different results? Was one result better than the others? Is it right for someone to spend years behind bars if you could try the case seven times and reach three different verdicts?

The Open Doors to Federal Courts program every year makes the judicial branch accessible to students, who by law would otherwise have no opportunity to sit as jurors. Young people face courts in any number of contexts, very few of

them positive, nearly all bewildering. The Open Doors program gives them a new perspective on the court system. Through service as jurors, they challenge their notions of the judicial system and of justice in a concrete way.

The experience involves students with widely divergent backgrounds, education, and extracurricular interests. Like all jurors, each approaches the day with her own preconceptions. And in the tradition of American jury service, many over the course of the day come to recognize, acknowledge, and shed some of those preconceptions. Simply bringing these students together in a neutral environment where no one controls the entire process, and no one juror has authority over another, makes real to all who participate the unique power of sitting on a jury. It is an experience many may never forget. As one teacher said after the program, “when students learn about the courts in class, they understand it, but as an intellectual exercise. After sitting on a jury today, they

have some real understanding of the responsibility, the power of our democracy. They understand they can be heard.”

The experience does not start or stop with the jury service itself. Following the Open Doors program, students are given the opportunity to shadow with a lawyer for a day. We will pass along more on that program in a subsequent newsletter.

The Federal Bar Association, Maryland Chapter wishes to extend their sincere thanks to Judge Gauvey, her wonderful assistant, Donna Cowan, and each of the judges, law clerks, lawyers, and Court staff members who help to make the Open Doors to Federal Courts program such a great success. Their generous dedication of time and energy make this unique, invaluable community service possible.

Last year’s participants included:

JUDGES	LAWYERS	LAW CLERKS	STAFF
Hon. Catherine C. Blake	Marty Clark, Asst. U.S. Attorney Deborah Boardman, Asst. Federal Public Defender	Rebecca Caldwell Jon Kucskar	
Hon. James K. Bredar	Rod Rosenstein, U.S. Attorney Cy Smith, Zuckerman Spaeder, LLP	Matthew Jeweler Stephanie Wright	
Hon. Andre M. Davis	Mary Beth Ewen, Kramon & Graham, PA. Charles Peters, Asst. U.S. Attorney	Kathryn Rakoczy David Sharfstein	
Hon. Marvin J. Garbis	James Wyda, Federal Public Defender Paula Xinis, Asst. Federal Public Defender	Jennifer Katz Stephen Ruckman	Felicia Cannon, Clerk of Court
Hon. Susan K. Gauvey	Charles Curlett, Saul Ewing, LLP Jennifer DeRose, Saul Ewing, LLP	Beverly Peyton Griffith Michael Ziccardi	
Hon. Robert A. Gordon	Ezra Gollogly, Kramon & Graham, PA. Mark Saudek, Gallagher Evelius & Jones LLP	Melissa Martinez Clayton Solomon	Aaron Merki, Law Clerk to Hon. Susan K. Gauvey
Hon. William D. Quarles	Alex Major, Venable LLP Peter Nothstein, Asst. U.S. Attorney	Meghan Casey Julianne Johnston	Donna Cowan, Assistant to Hon. Susan K. Gauvey

If you are interested in participating in this year’s Open Doors to the Federal Courts program on April 16, please contact Mark Saudek (msaudek@gejlaw.com) or The Hon. Susan K. Gauvey.

“Making Discovery Manageable”: 2009 Biennial Bench-Bar Conference of the U.S. District Court for the District of Maryland

By Heather R. Pruger

The rate of trials is decreasing, both in Maryland and nationwide. Some blame alternative dispute resolution for this phenomenon, but a more likely cause is the increasing cost and delay inherent in the litigation process. There is a consensus that much of the overwhelming cost and delay involved in the litigation process is due to discovery. Many say that we are in the midst of a “discovery crisis.” The American College of Trial Lawyers Task Force on Discovery recently studied this crisis and reported (1) that the civil justice system is “in serious need of repair,” as it “takes too long and costs too much”; (2) current discovery rules “are a nightmare”; and (3) judges should take active roles in managing discovery from the outset of cases. American College, Final Report on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and the Institute for the Advancement of the American Legal System (Mar. 11, 2009).

The federal bench and bar of Maryland addressed this issue at its Sixth Biennial Bench-Bar Conference on October 30, 2009. Now-Chief Judge Deborah Chasanow welcomed approximately 160 members of the bar and federal judges to the federal courthouse in Greenbelt to discuss the American College’s report. Justice Rebecca Love Kourlis, Executive Director of the Institute for the Advancement of the American Legal System, gave a keynote speech explaining the report, and suggested that “we need to rethink the way that pretrial litigation is conducted, so that we neither sacrifice the search for truth nor capsize the system under the cost burden. It’s important for both sides of the case.”

Chief Magistrate Judge Paul W. Grimm moderated a panel discussion by Judge Catherine Blake; Judge Roger Titus; Jonathan P. Graham, Senior Vice President and General Counsel, Danaher Corporation; Roann Nicols, Deputy Chief, Civil Division, U.S. Attorney’s Office for the District of Maryland; Christopher B. Mead, Partner, London & Mead; and David L. Douglass, Partner, Shook, Hardy & Bacon. Panel participants disagreed whether discovery—and particularly e-discovery—was in a state of crisis, although they agreed that “at least significant concerns” remain. The panel members were similarly divided on who is to blame for the current state of discovery, but all agreed that timely judicial involvement would be a step in the right direction. Judge Titus commented:

I think I can say with some pride that this Court is getting more involved in discovery, both by having gurus like Paul Grimm around to refer discovery disputes to if they need to be referred, but also, hands-on talking to the people at the beginning of the case and forcing them to read *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354 (D. Md. 2008) and talking to them before they start discovery and letting them know you are available to help them sort out an unbelievable mess when they get into it.

Following the panel discussion, participants debated discovery issues in breakout sessions. The twelve individual breakout groups expressed concerns

focusing on the timeliness of judicial intervention, active judicial supervision of discovery, and burden imposed by discovery-related motions practice. Participants reported favorably of situations in which judges set ground rules for discovery early in a case and remained available to resolve discovery disputes promptly thereafter. Some suggested a “call in hour” or “motions day”-type practice to provide practitioners with certainty as to when their discovery disputes would be heard by the presiding judge, or a discovery “hotline” for emergency or deposition-type disputes. Others encouraged use of special masters in complex e-discovery cases or mandatory new practitioner seminars on e-discovery.

Most universally, participants suggested modifications to discovery motions practice. Complaining of the delay and cost related to filing motions to compel under Local Rule 104.8, suggestions ranged from shortened timelines and truncated briefing to preliminary phone conferences with the presiding judge. Such practices are instituted predominantly on a judge-by-judge basis. Indeed, some federal judges have already instituted such practices to hasten the rate at which discovery disputes are addressed and resolved. For example, many judges encourage telephone conferences prior to the filing of motions to compel in discovery disputes. Such preliminary conferences enable a judge to rule promptly on less complicated matters, and to focus subsequent briefing of more convoluted issues. This approach saves precious time and resources for the parties, their clients, and the judge. Some judges in other jurisdictions go so far as to prohibit filing of motions to compel prior to such a conference, and, participants noted, others allow only short, one to two page motions on an abbreviated briefing schedule. At least one Florida judge adheres to a different approach, automatically scheduling discovery disputes for 20 minute hearings on Friday mornings upon receipt of a short notice of hearing that summarizes the dispute.

To the federal practitioner in Maryland, the predominant best practice suggested at the 2009 Bench-Bar Conference is to contact chambers when a dispute is still young and has not yet eaten up a substantial portion of your client’s budget—indeed, many judges are receptive to a phone call or phone conference in advance of motions to compel. Of course, there remain some discovery disputes that benefit from full-blown motions practice, but many disputes benefit from less formal, more timely, and more cost-effective resolution. Particularly in this economic climate, the practitioner can reduce the cost of discovery to their clients, and in doing so can reduce the burden on judicial resources—a winning situation for all involved.

Heather R. Pruger is a 2009 graduate of the University of Maryland School of Law, and serves as law clerk for Magistrate Judge Susan K. Gauvey during the 2009-10 term. Ms. Pruger attended the 2009 Bench-Bar Conference. This account is based on her recollections and independent research, and incorporates several quotations as recorded by Lynn E. Calkins, partner at Holland & Knight, in her Executive Summary of the Conference, which is forthcoming on the website of the U.S. District Court for the District of Maryland (<http://www.mdd.uscourts.gov/>). Ms. Pruger can be contacted at hpruger@gmail.com.

Important Revisions to the Discovery Guidelines for the United States District Court for the District of Maryland, Effective December 1, 2009

By Paul W. Grimm, U.S. Magistrate Judge

Important revisions made to the Discovery Guidelines for the District of Maryland went into effect December 1, 2009. These revisions, which were approved by the Court after being recommended by the Court's Local Rules and Forms Committee, constitute the first significant, substantive changes to the Guidelines since their adoption in 1995. The revisions were drafted by a committee of experienced practitioners, with assistance from two magistrate judges. Following publication for review by the bar at large, the proposed revisions were finally adopted by the Court as a whole. All lawyers who practice in the District of Maryland should be familiar with these revisions.

Guideline 1, which deals with the conduct of discovery in general, was revised extensively. Language was added to Guideline 1.a. to remind counsel that Fed. R. Civ. P. 26 requires that discovery be relevant to a party's claims and defenses, proportional to what is at issue in a case, and not excessively burdensome or expensive when compared to the likely benefit of obtaining the discovery sought. Further, Guideline 1.a. was revised to remind counsel and parties that they have an obligation to cooperate in planning and conducting discovery to ensure that it is proportional, and that they are obligated to adjust and modify the discovery they seek on a case-by-case basis to comply with this obligation. Further, Guideline 1.a. now encourages counsel to submit for Court approval their agreements regarding the conduct of discovery, and to submit promptly to the Court for resolution any significant disagreements about the discovery plan. Guideline 1.a. states that "the Court will make itself available with reasonable promptness, in response to a brief, written request for a discovery management conference that identifies the issues for consideration."

Guideline 1.c. fleshes out in more detail what is meant by the duty to cooperate during discovery, stating: "Cooperation and civility include, at a minimum, being open to, and reasonably available for, discussion of legitimate differences in order to achieve the just, speedy, and inexpensive resolution of the action and every proceeding. Cooperation and communication can reduce the costs of discovery, and they are an obligation of counsel." Guideline 1.d. now reminds parties and counsel of their obligations under Fed. R. Civ. P. 26(g), the so-called "Rule 11" of discovery,¹ and states that "[a]ll discovery requests, responses and objections are governed by the requirements of Fed. R. Civ. P. 26(g) and counsel and parties are expected to be familiar with the requirements of the Rule."

Guideline 1.e. contains some important new language that highlights the need for lawyers to bring unresolved discovery disputes promptly to the attention of the Court for resolution after informal efforts to resolve them by counsel prove unsuccessful. It states, relevantly, that "[a] failure to do so may result in a determination by the Court that the dispute must be rejected as untimely." Mindful of the expense and time that discovery motions practice can entail, Guideline 1.e. now provides that "[c]ounsel may bring the unresolved dispute to the Court's attention by filing a letter, in lieu of a written motion, that briefly describes the dispute, unless otherwise directed by the Court." Moreover, Guideline 1.f. acknowledges the concern—often expressed by counsel—that a key component to conducting cost-effective and proportional discovery is the prompt resolution of discovery disputes by the Court. It states:



Upon being notified by the parties of the unresolved discovery dispute, the Court will promptly schedule a conference call with counsel, or initiate other expedited procedures, to consider and resolve the discovery dispute. If the Court determines that the issue is too complicated to resolve informally, it may set an expedited briefing schedule to ensure that the dispute can be resolved promptly.

Guideline 2, which deals with stipulations setting discovery deadlines, provides that the Court will consider "requests to impose milestone dates for motions, such as spoliation motions, and motions in limine (including Daubert motions) that do not normally otherwise have automatically-imposed deadlines." Guideline 4.e., which deals with scheduling of depositions, now states that "[u]pon reasonable request, and where reasonably practicable, in order to expedite the deposition questioning, a deponent should produce documents including ESI,² properly requested in a notice of deposition and accompanying subpoena, if any, a reasonable time prior to the deposition," and adds that the Court may take into consideration a failure to do so in determining whether to order additional time to depose a witness fairly, if the failure to produce the documents or ESI in advance hindered the examination.

Guideline 5 adds a new provision focusing on the procedure and obligations relating to Fed. R. Civ. P. 30(b)(6) "designee" depositions. It provides guidance regarding the content of a proper 30(b)(6) deposition request and the obligation of the party served with the notice to designate the best person (or persons) to testify for the organization, and it states that "each such individual

1 For an extensive discussion of Rule 26(g) and the key role it plays in governance of how discovery is conducted in federal cases, see *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354 (D. Md. 2008).

2 "ESI" is the universally-used abbreviation for "electronically stored information."

[designated to testify] should be identified, a reasonable period of time before the date of the deposition, as a designated witness along with a description of the area(s) to which he or she will testify.”

Guideline 10, which pertains to interrogatories and requests for production of documents, and the written responses thereto, contains some important new language. Specifically, subsections iii and iv of Guideline 10.d. address the proper way to provide a privilege log when, pursuant to Fed. Rule 26(b)(5), a party refuses to provide discovery on the basis of attorney client privilege or work product protection. The revised guideline allows a party declining to provide discovery on the basis of privilege or work product protection to designate categories of documents, rather than each individual document, in the privilege log, provided that each document in the category is within the privilege or protection claimed, and shares common characteristics with the others in the category. It also states that if only part of a document or communication is privileged or protected, the portion that is not must be produced if relevant to the discovery requested, and otherwise within the scope of discovery. Additionally, Guideline 10.d.iv. imposes a duty on the party that initiated the discovery request to review promptly the written response received, and to notify promptly the producing party of any deficiencies in particularizing

the basis of the privilege/protection claimed, or in the use of “category designations.” If done, then the responding party is under a duty to provide, with reasonable promptness, sufficient factual information to establish the factual basis for each claim of privilege/protection that has been challenged. The guideline provides that a failure to do so “may result in a determination by the Court that the party asserting the privilege or work product protection has failed to particularize it as required by Fed. R. Civ. P. 26(b)(5), resulting in a waiver of any privilege/protection that has been claimed.”

Finally, Guideline 10.e. articulates what has long been required by the discovery opinions of this District,³ that if a party “asserts that requested discovery is unduly burdensome or expensive, the party making that assertion is expected to disclose, promptly, and with particularity, the facts on which it relies to support that contention.” Failure to do so waives the objection.

Collectively, the recent changes to the Court’s Discovery Guidelines make significant, substantive changes to the Guidelines, and all counsel should take the time to read them carefully, and comply with them, since compliance, or failure to do so, will be cited to the Court as a reason for granting discovery relief, including sanctions. Additionally, the revised Guidelines recognize the parties’ and counsel’s legitimate need for the Court to resolve promptly and expeditiously discovery disputes that the parties themselves have not been able to resolve. Finally, the Guidelines memorialize the duty to cooperate during discovery, which is a sea change in the traditional manner in which discovery has been practiced in the past, to universal criticism.

3 See, e.g., *Mancia*, 253 F.R.D. 354, which collects authority for the proposition that boilerplate, non-particular objections to discovery requests violate Rule 26(g) and fail to state a proper objection.

CALENDAR OF EVENTS

April 6, 2010

Luncheon with Maj. General William K. Suter, Clerk of the U.S. Supreme Court
Tremont Grand Historic Venue, 225 N. Charles St. Baltimore, MD 21201
Reception at 11:30 am; Ceremony at 12:00 pm
\$40 members of Young Lawyers Section of the FBA; \$50.00 FBA members;
\$60.00 non-members
For more information, contact Sharon Snyder at sasnyder@ober.com.

April 16, 2010

Open Doors to the Federal Courts, a moot-court program for local high school students
Organized by Judge Susan K. Gauvey and Mark Saudek, Esq.

April 16, 2010

University of Baltimore Law Forum: “The confrontation clause and the hearsay rule, what hearsay exceptions are non-testimonial”
University of Baltimore Law School; 4:00 pm
Presentation by Magistrate Judge Paul Grimm, Professor Jerome Deise, (*University of Maryland School of Law*). Panel discussion with Judge Lynn A. Battaglia of the Maryland Court of Appeals, Judge John Miller of the Circuit Court for Baltimore City, Scott Shellenberger, State’s Attorney for Baltimore County, and defense attorney Joe Murtha. Moderated by University of Baltimore Law School Professor Lynn McLain. Reception to follow. Free with required reservation. RSVP to ublawforum@ubalt.edu.

April 23, 2010

Nuts and Bolts of Criminal Practice program
Organized by Stephanie A. Gallagher, Stanley J. Reed, and Paula Xinis.

April 23, 2010

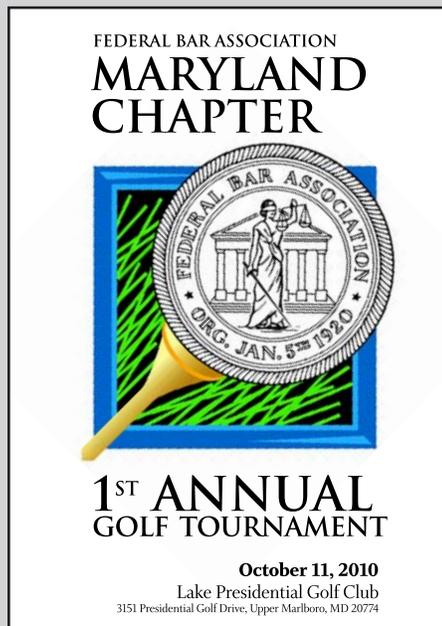
Bail to Jail: A Primer on Federal Criminal Law
US District Court, 101 West Lombard Street, Baltimore, MD 21201
Program 1:00 - 5:30 pm; Reception 5:30 - 7:00 pm
\$25.00 FBA members; \$35.00 non-members
Space is limited. RSVP to Jessica Straw (jstraw@zuckerman.com) by April 16, 2010.

May 14, 2010

Introduction to the Federal Courthouse Program
United States District Court for the District of Maryland, Southern Division
Organized by Celeste Bruce and Dawn Resh.

October 11, 2010

1st Annual FBA Maryland Chapter Golf Tournament
Lake Presidential Golf Club 3151 Presidential Dr., Upper Marlboro, MD 20774.
For more information, contact Sharon Snyder at sasnyder@ober.com.
Organized by President-Elect Linda Thatcher.



RECENT EVENTS



January 25, 2010

**Luncheon Honoring Judges
Legg, Chasanow and Davis.**

Seated left to right:
Judge Andre M. Davis,
Gerard P. Martin, Esquire,
Judge Catherine C. Blake,
Judge Deborah K. Chasanow,
Geoffrey H. Genth, Esquire,
Chief Judge Benson E. Legg,
Rignal W. Baldwin, Jr., Esquire.

January 29, 2010

**Investiture Ceremony for
Chief Judge Deborah K.
Chasanow**

