# FBA Memphis/MidSouth Chapter Newsletter

Volume 6 September 2014

*Chapter Website: www.fedbar.org/Chapters/Memphis-Mid-South-Chapter*

## Upcoming FBA Events

## Annual Federal Practice Seminar

**Friday, October 17, 2014**
**At the University of Memphis, Cecil C. Humphreys School of Law**
**Speakers and Seminars Include:**

**Appellate Practice in Federal and State Court: A Judicial Perspective**
***Judge Julia Smith Gibbons, U.S. Court of Appeals for the Sixth Circuit***
***Justice William C. Koch, Jr., Tennessee Supreme Court (ret.) and Dean of the Nashville School of Law***

**Implicit Bias in the Legal Profession**
***Judge Mark W. Bennett, U.S. District Court – Northern District of Iowa***

**A Conversation with Michael Waldman**
**Mi*chael Waldman, President of the Brennan Center for Justice at New York University School of Law and former director of Speechwriting for President Bill Clinton***

**Motion Practice 101: Pre-Trial Motions in the Western District of Tennessee**
***Angie C. Davis, Baker, Donelson, Bearman, Caldwell & Berkowitz***
***William "Billy" Ryan, Donati Law, PLLC***

**CJA Break Out Session and Business Meeting**
***Thomas Gould, Clerk of the U.S. District Court – Western District of Tennessee***
***Arthur E. Quinn, Quinn Law Firm***
***Michael J. Stengel, Stengel Law Firm***

**Litigating with Other People's Money: Commercial Litigation Funding, Ethics and Law**
***Lucian T. Pera, Adams and Reese LLP***
***Gretchen Lowe, Chief Financial Officer, Westfleet Advisors***

**Judges' Panel**
***District Judges and Magistrate Judges of the Western District of Tennessee will discuss a wide range of topics related to federal practice, including the Court's revised ADR plan.***

***Registration Materials and Full Brochure Attached at the End of the Newsletter***

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## Memphis Mid-South Chapter Awarded Presidential Achievement and Newsletter Recognition Awards

The Federal Bar Association awarded the Memphis Mid-South Chapter with two distinguished awards this year. The Chapter received the Presidential Achievement Award for its work in advancing the goals of the Chapter. The Chapter also received a Newsletter Recognition Award in the "outstanding" category for its prior newsletter publications. Congratulations to the Chapter and its Board for the continued good work on behalf of its members and the National Federal Bar Association.

# President's Message

By: Craig A. Cowart

The Memphis/Mid-South Chapter of the Federal Bar Association is having a great year. We have several exciting events planned to close out the year. We hope you will join us for the great programming and networking opportunities available through our Chapter.

Our annual Memphis Trial Practice Summer Seminar is always a popular and successful program, and this year was no different. The Summer Seminar was held at the Federal Courthouse in Memphis on August 29, 2014 and featured a number of outstanding presenters and topics. A highlight of the seminar was the panel discussion from all four of the Western District Magistrate Judges addressing the new mediation program and other topics of interest. Thanks to everyone who attended the Summer Seminar and Ben Scott of the Memphis/Mid-South Chapter for his work in coordinating the seminar.

On October 17, we will present our annual Federal Practice Seminar. The event will be held at The University of Memphis School of Law and will provide outstanding programming and an excellent opportunity for networking. Registration materials are attached at the end of this Newsletter, so go ahead and mark your calendar, submit your registration, and plan on attending. Also look for more information about an Ethics CLE program in December that will be presented in conjunction with the annual Chapter election.

Our Chapter is pleased to announce that our collaboration with The University of Memphis School of Law to create a student division has progressed very well. We have been working with a core group of students over the last several months, and the law student division is set to start its own activities this fall. We are excited to play a part in providing an avenue for law students to learn more about federal court practice during their years in law school. We also look forward to continuing to provide a monetary award to the law student achieving the highest grade in the Federal Courts class.

The commitment, work, and dedication of our Chapter officers, board members, and members make the success of our Chapter a reality. We are also very appreciative of the support shown to our Chapter by the outstanding speakers at our events. Finally, our Chapter enjoys incredible support from our judges and court personnel. Thank you all for your willingness to assist our Chapter.

If you are not already an FBA Member, we would love for you to join our Chapter. You can join online at www.fedbar.org or obtain an application from any Board member. We look forward to seeing you at upcoming events!

# Judicial Profile
# Honorable James D. Todd

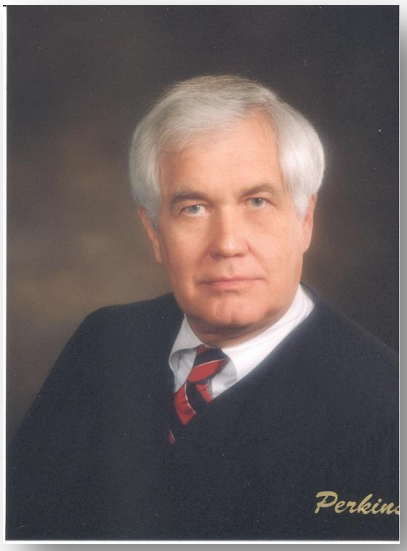
**By Judge Brandon O. Gibson**

Robert Frost once wrote "I took the road less traveled by, and that has made all the difference." The same could be said of the Western District's "most senior" Senior Judge, James D. Todd. Judge Todd is a native of West Tennessee and graduated from Lexington High School. Being influenced by the Russian launch of the Sputnik satellite in his early teenage years and believing that science would be the wave of the future, Judge Todd majored in Chemistry at Lambuth College and subsequently earned a Master of Science in Chemistry at the University of Mississippi. Originally planning to attend medical school, Judge Todd changed his mind and enrolled in dental school. Two quarters of dental school was enough for him, and he moved to Florida to teach Chemistry.

After a few years of teaching Chemistry, Judge Todd decided he wanted to work in the FBI, but was not accepted. He then decided he would have a better chance of working in the FBI if he had a law degree, so he applied to law school and was accepted at the University of Memphis. Judge Todd taught Chemistry during the day at Memphis University School and attended law school at night. In total, he taught Chemistry for seven years before completely switching paths to the legal field and never again applying for a job with the FBI.

Instead, after law school, Judge Todd began working at the Jackson law firm of Waldrop, Hall & Tomlin, where recently retired Tennessee Court of Appeals Judge David Farmer was also an associate. Later, current Chief Judge J. Daniel Breen also joined the firm as an associate. After practicing law for eleven years, in September 1983, Judge Todd was appointed by then-Governor Lamar Alexander to the Circuit Court bench, serving Madison, Chester, and Henderson Counties. Less than two years later, he was appointed to the federal District Court by President Ronald Reagan.

Looking back down the road he traveled, Judge Todd notices at least three things that have changed during his time on the bench. First, the atmosphere of civility has changed dramatically.




Judge Todd remembers when depositions and hearings were set by agreement, not by notice, as well as a time when lawyers did not need to follow up a phone conversation with a letter or email. He also recalls when lawyers would fight tooth and nail in court but be able to separate themselves from their cases enough to enjoy a drink with the opposing lawyer after court. He is concerned with the lack of civility today and encourages lawyers to find ways to get along with opposing counsel even when their clients cannot.

Second, Judge Todd notes that there is currently a greater emphasis on pre-trial work than on actual trials. He recalls a time when a lawsuit involved a complaint, an answer, a deposition or two, and a trial; nothing more. Today, there are fewer trials, more cases, more discovery, and more depositions. The third noticeable change Judge Todd witnessed in his career is the advancement of technology. "When I started, we used carbon paper," he recalled. Now, a federal district judge could, if s/he so chose, enter Orders from a cruise ship or a Starbucks in Hawaii.

***Continued on page 5.***

# Judicial Profile
# Honorable James D. Todd (continued)

Few judges have witnessed the importance of technological advances as personally as Judge Todd did in May 2003. On May 4, a tornado ripped through downtown Jackson, tearing the roof off the federal courthouse and exposing files and computers to wind and water. The night of the tornado, Judge Todd made his way downtown to survey the damage. Gradually, despite much destruction in Jackson and despite the complete absence of electricity or cell phone service, Judge Todd noticed that the entire court staff, their spouses, and some members of their families were working to cover electronics and save what was left to be salvaged. Their efforts saved tens of thousands of dollars of equipment. At that time, the Court still used paper files, which court staff had to re-create through various means, including asking attorneys involved in cases to provide the court with motions and orders that were previously filed. The Western District of Tennessee's Clerk's office won a National Director's Award for Excellence in 2004 for their response to the tornado. Now, due to technology advances, all the documentation in a particular case would be safe in the case of a natural disaster, a fact that causes even the scientifically-inclined Judge Todd to marvel.

Judge Todd enjoys the road less traveled, indeed. He is likely the only federal district judge who has ridden a motorcycle in all forty-eight continental states and four foreign countries. When he assumed senior status on May 20, 2008 (his 65th birthday), the cake at his reception was adorned with motorcycles, Mickey Mouse, and a miniature replica of his grandson, Ben. Judge Todd is the husband to Jeanie, and they have been married forty-nine years. They have two children, a son who is a firefighter, and a daughter who is a teacher. In his spare time, Judge Todd loves to read, watch movies, and spend time engaging in mock debates with Ben. He also spends an inordinate amount of time impressing his friends with his skills on Words With Friends, a game he began playing after discovering his artistic skills on Draw Something were less than stellar. The "road less traveled" seems to have turned out quite well after all.

# SIXTH CIRCUIT CRIMINAL LAW CASE UPDATE

*United States v. Sadler*, 750 F.3d 585 (6th Cir. 2014)

The husband and wife defendants operated several pain management clinics through which they distributed sham painkiller prescriptions. The wife, Nancy, also ordered hydrocodone and other drugs directly from pharmaceutical companies using a fake name. She paid the going rate for the drugs and had them delivered to the clinics, which were not licensed to dispense controlled substances. The court affirmed nearly all of defendants' convictions but vacated Nancy's wire fraud conviction, holding that the government had not proven that Nancy deprived the pharmaceutical companies of money or property. Because Nancy had paid full price for the drugs and had only deprived the pharmaceutical companies of "what might be called a right to accurate information before selling the pills," her actions, while criminal in other respects, did not constitute a wire fraud violation.

*United States v. Payton*, 754 F.3d 375 (6th Cir. 2014)

By the time he was 35, Payton had been convicted of 13 bank robberies. In 2011, within a year after he was released from prison, he robbed four more banks. A jury convicted him on several counts. At sentencing the guidelines were 210 to 262 months. The government asked for a 300-month sentence, and the district court gave him 540 months, focusing on "Payton's brazen recidivism and the threat he posed to the public."

The court vacated the sentence and remanded, because the district court "failed to adequately respond to Payton's argument that his advanced age diminishes the public safety benefit of keeping Payton in prison an extra twenty years beyond the recommendation of the Guidelines." The court wrote: "A sentence that more than doubles the Guidelines recommendation, stacks twenty years on to the government's request, and keeps the defendant in prison until he is ninety one years old requires explanation about why such a sentence is 'sufficient, but not greater than necessary' to achieve the goals of sentencing."

*United States v. Toviave*, -- F.3d --, 2014 WL 3800322 (6th Cir. 2014)

Toviave brought four young relatives from Togo to live with him in Michigan. He made them cook, clean, do laundry, and babysit. He beat them (with hands, plunger sticks, ice scrapers, and broomsticks) if they misbehaved or failed to follow his instructions. A jury convicted Toviave of forced labor, in violation of 18 U.S.C. § 1589. The court reversed, because "treating household chores and required homework as forced labor because that conduct was enforced by abuse either turns the forced labor statute into a federal child abuse statute, or renders the requirement of household chores a federal crime."

# Changes Ahead: Proposed Amendments to the FRCP

## By Mary H. Morris, Burch Porter & Johnson, PLLC

If change is the only constant in life, then the Federal Rules of Civil Procedure are no exception. The Advisory Committee on Rules of Civil Procedure ("Advisory Committee") has crafted new proposed amendments to the Rules, and they are arguably the most significant since 1993. The debate surrounding them has been vigorous, drawing more than 2,300 public comments and maximum-capacity crowds at hearings in three different cities (Washington, Dallas, and Phoenix). The changes as initially proposed are available online at: http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/civil_rules_redline.pdf.

The Judicial Conference of the United States is the national policy-making body of the federal courts. Within the Judicial Conference, rule changes begin in the appropriate advisory committee and then are forwarded to the Judicial Conference Committee on Rules of Practice and Procedure ("Rules Committee"). The proposed amendments discussed in this article were approved by the Rules Committee in May 2014 and forwarded to the Judicial Conference for consideration during its current (September 2014) session. The Judicial Conference is expected to act any day now. If approved by the Judicial Conference, the proposed amendments will be considered by the Supreme Court and then Congress, with the amendments potentially taking effect on December 1, 2015.

The proposed changes are numerous, focusing on such areas as scheduling, proportionality in discovery, specificity in discovery responses, and sanctions for failure to preserve data. Even Rule 1 is affected, with the proposed rule stating that the rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." The underlined portion is a new addition that is intended to emphasize that the parties share in the responsibility to employ the rules in that manner. "Effective advocacy is consistent with – and indeed depends upon – cooperative and proportional use of procedure." (Proposed Advisory Committee Note to Rule 1. Advisory Committee Notes referenced herein are available at the hyperlink above.) Changes are also suggested to Rules 6, 16, 26, 30, 31, 33, 34, 37, and 55, along with proposed abrogation of Rule 84 and the Appendix of Forms.

**Scheduling**

The proposed amendments aim to speed up the beginning of a lawsuit and encourage the parties to engage in more meaningful communication earlier. Proposed Rule 4(m) decreases the time period for serving a defendant from 120 days to 90 days. After service, Rule 16 currently allows for a scheduling conference to occur "by telephone, mail, or other means." The proposed amendment deletes that language and adds a Note encouraging "direct simultaneous communication" between the court and the parties, whether "in person, by telephone, or by more sophisticated electronic means."

Proposed Rule 16(b)(2) keeps the requirement that the judge "must issue the scheduling order as soon as practicable," but sets the expected time frame at 90 days after any defendant has been served or 60 days after any defendant has appeared, whichever is earlier. These periods are reduced from 120 and 90 days, respectively.

Proposed Rule 16(b)(3)(B)(v) provides that the scheduling order may require that "before moving for an order relating to discovery, the movant must request a conference with the court." Our Local Rules here in the Western District require parties to confer with one another before filing such a motion, and involving the Court at that stage could be a significant difference, should any judges here choose to include that in their scheduling orders. The Advisory Committee Note states that "[m]any judges who hold such conferences find them an efficient way to resolve most discovery disputes without the delay and burdens attending a formal motion[.]"

**Document Productions**

Proposed Rule 26(d)(2) allows a party to serve document requests before a Rule 26(f) conference, although they will be deemed served as of the date of the Rule 26(f) conference, with the response deadline running from that conference date. This is intended to allow the parties to have a more meaningful conference, armed with knowledge about which categories of documents the opponent will seek.

Every litigator has likely encountered a response to a Rule 34 document request that looks something like this: "Objection on the grounds that this request is overbroad, seeks privileged documents, and is not reasonably calculated to lead to the discovery of admissible evidence. Subject to those objections, responsive documents will be produced." The recipient may be left wondering if any documents will actually be withheld on the basis of the listed objections and when any documents will appear. The suggested changes to Rule 34 aim to eliminate that type of response. Specifically, proposed Rule 34(b)(2)(B) and (C) would require a party's response to state the grounds for the objection with specificity, indicate whether documents will be withheld on the basis of the stated objections, and state a reasonable date for production. According to the Note to Rule 34, the Advisory Committee hopes that this will "end the confusion that frequently arises when a producing party states several objections and still produces information, leaving the requesting party uncertain whether any relevant and responsive information has been withheld[.]"

**Proportionality**

The "proportionality" amendments have garnered a great deal of attention and controversy. In the hearings on the proposed amendments, speakers mentioned the word "proportionality" (or a variant) more than 600 times. ("The Debate over the Proportionality and Specificity Amendments," by Whit D. Pierce, DRI For the Defense, July 2014, available online at http://smithmoorelaw.com/the-debate-over-the-proportionality-and-specificity-amendments.)

According to the Pierce article, "The proposed proportionality [amendments to Rule 26] and specificity amendments [to Rule 34] split lawyers roughly along representational lines. The defense bar generally supports the proportionality amendment and opposes the specificity amendment, while the plaintiffs' bar generally supports the specificity amendment and opposes the proportionality amendment."

Currently, Rule 26(b)(1) emphasizes the broad scope of discovery: "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . . For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Buried in current Rule 26(b)(2)(C)(iii) is a proportionality provision, requiring courts to limit discovery when "the burden or expense of the proposed discovery outweighs its likely benefit," considering five listed factors.

The proposed Rule 26(b)(1), in redline, reads:

> **(b) Discovery Scope and Limits.**
> (1) **Scope in General**. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the amount in controversy, the importance of the issues at stake in the action, the parties' resources, the importance of the discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. ~~including the existence,~~

~~description, nature , custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial of the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to limitations imposed by Rule 26(b)(2)(C)~~

Thus, the Advisory Committee has moved the proportionality requirement from its obscure place in 26(b)(2)(C)(iii) to a more prominent position. According to the Committee Note, the goal is to "reinforce[] . . . the obligation of the parties to consider these [proportionality] factors in making discovery requests, responses, or objections."

The amendment narrows discovery by eliminating a court's ability to "order discovery relevant to the subject matter involved in the action." Instead, discovery would also be limited to the "any party's claim or defense," and therefore be cabined by the pleadings.

Additionally, the amendment would eliminate the familiar phrase "reasonably calculated to lead to the discovery of admissible evidence" while still noting that information does not need to be admissible to be discoverable. The Advisory Committee Note to Rule 26 states that the "reasonably calculated" phrase "has been used by some, incorrectly, to define the scope of discovery" and "has continued to create problems."

One area of debate is whether the proposed amendments to Rule 26 constitute a change from the status quo or a mere clarification. The Advisory Committee views the amendments as a clarification, stating in its Note to Rule 26 that they "do[] not change the existing responsibilities of the court and the parties to consider proportionality." Lawyer Michael Cairns, speaking at the Dallas hearing, agreed. "[I]t emphasizes what most people forget is already there. By moving [it] up into 26(b)(1) it gives proportionality the emphasis that I believe it should have rather than have [it] be buried in a small Roman numeral phrase several lines below." (Public Hearing on Proposed Amendment Tr. (Dallas) at 9.)[i]

Cairns and other defense lawyers (including in-house counsel for Ford, General Electric, Shell, and other large corporations) spoke of the high volume of data available due to electronic storage. Donald Lough, an in-house lawyer for Ford Motor Company, said, "It's quite common for us to preserve, collect, and produce millions of pages of documents in a typical case to see only a few dozen marked as exhibits at trial . . . . [W]e do find that courts too often delay the most critical relevance decisions until it's too late. We often have to produce excessive discovery, . . . then at trial time we talk about relevance, and all those documents that we produced were excluded. Nothing can be more wasteful than that." (*Id.* at 249.) As the Pierce article noted, a deputy general counsel for Microsoft offered specific figures. According to Microsoft's 2013 records, the company preserved an average of 59 million pages per lawsuit, filtered and de-duplicated over 10.5 million pages, physically reviewed 350,000 pages, and produced 87,500 responsive pages. Of those 87,500 pages, only about 0.1 percent would be used at trial. Thus, for each page used in evidence, Microsoft produced 1,000 pages, reviewed 4,000 pages, processed 120,000 pages, and preserved 670,000 pages. (Public Hearing on Proposed Amendments Tr. (Phoenix) at 80.)

Those opposing the proportionality amendment described their negative experiences with similar rules in state jurisdictions. "What happens is that all a party has to do to halt discovery is object that it's not proportional. Then it's up to the party seeking discovery to make the case for proportionality . . . giving the plaintiff . . . the burden . . . . The defendant has all the documents. The game of 'hide the ball' begins," said Ralph Dewsnup, a lawyer from Salt Lake City. Public Hearing on Proposed Amendment Tr. (Dallas) at 25. Others opposing the amendments pointed to a Federal Judicial Center Survey which stated that discovery costs in most cases are roughly aligned with the

monetary stakes, with the plaintiff's median cost being 1.6% of the amount at stake and the defendant's median cost being 3.3% of the amount at stake. (Pierce article, *supra*.) Some plaintiffs' attorneys worried that litigants whose cases are low in monetary value would be excluded from federal court, and some expressed concern that the monetary value of the case would be the overriding factor in the proportionality determination. (*Id.*)

Additionally, in the interest of controlling litigation costs, the Advisory Committee initially proposed amendments to Rules 30, 31, 33, and 36 to provide new limits on discovery tools. These changes would have reduced the presumptive number of depositions per case from 10 to 5, reduced the length of depositions from 7 hours to 6 hours, reduced the number of interrogatories from 25 to 15 per party, and added a limit of 25 to requests for admission. Those proposed limits, however, have now been eliminated from consideration due to the public's strenuous objections to them.

**Sanctions for Preservation**

The Advisory Committee has completely rewritten Rule 37(e)(1). Currently it states:

> **Failure to Preserve Discoverable Information.** Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

The newly proposed Rule 37(e)(1), by contrast, states:

> **Failure to Preserve Discoverable Information.** (1) Curative measures, sanctions. If a party failed to preserve discoverable information that should have been preserved in the anticipation or conduct of litigation, the court may:
>
> (A) permit additional discovery, order curative measures, or order the party to pay the reasonable expenses, including attorney's fees, caused by the failure; and
>
> (B) impose any sanction listed in Rule 37(b)(2)(A) or give an adverse-inference jury instruction, but only if the court finds that the party's actions:
>
> (i) caused substantial prejudice in the litigation and were willful or in bad faith; or
>
> (ii) irreparably deprived a party of any meaningful opportunity to present or defend against the claims in the litigation.

One would expect sanctions to be somewhat more rare under the new proposed version. The Note explains that this proposal is intended to resolve a circuit split of sorts, given that courts in different federal circuits have established different standards for sanctions in the data-preservation context. "These developments have caused litigants to expend excessive effort and money on preservation in order to avoid the risk of severe sanctions if a court finds they did not do enough." The Committee states that the proposed rule "does not affect the validity of an independent tort claim for spoliation if state law applies in a case and authorizes the claim."

**Conclusion**

Even modest rule changes can have a significant effect on federal practice, and the amendments being proposed are more significant than most. There is no doubt that the Advisory Committee is doing everything in its power to encourage attorneys to act reasonably and practically to resolve disputes as efficiently as possible, conserving the resources of both litigants and courts. How much power the rules can have to effect change remains to be seen.

[1] The transcript of the Dallas hearing is available online at http://www.uscourts.gov/uscourts/rulesandpolicies/rules/public-hearings/civil-hearing-transcript-2014-02-07.pdf.
The transcript of the Phoenix hearing is available online at http://www.uscourts.gov/uscourts/rulesandpolicies/rules/public-hearings/civil-hearing-transcript-2014-01-09.pdf.
The transcript of the Washington, D.C. hearing is available online at http://www.uscourts.gov/uscourts/rulesandpolicies/rules/public-hearings/civil-hearing-transcript-2013-11-07.pdf.

# 2014 MEMPHIS/MID-SOUTH CHAPTER OF THE FEDERAL BAR ASSOCIATION
## ANNUAL SEMINAR

## Friday, October 17, 2014
## University of Memphis
## Cecil C. Humphreys School of Law
## 1 North Front Street
## Memphis, TN

| | |
|---|---|
| 8:00 – 8:30 a.m. | **Registration and Breakfast** |
| 8:30 – 8:45 a.m. | **Welcome and Opening Remarks** |
| | *Chief Judge J. Daniel Breen, U.S. District Court – Western District of Tennessee*<br>*Craig Cowart, President of the FBA – Memphis/Mid-South Chapter*<br>*Matthew B. Moreland, National President of the FBA* |
| 8:45 – 9:45 a.m. | **Appellate Practice in Federal and State Court: A Judicial Perspective** |
| | *Judge Julia Smith Gibbons, U.S. Court of Appeals for the Sixth Circuit*<br>*Justice William C. Koch, Jr., Tennessee Supreme Court (ret.) and Dean of the Nashville School of Law* |
| 9:45 – 10:45 a.m. | **Implicit Bias in the Legal Profession** |
| | *Judge Mark W. Bennett, U.S. District Court – Northern District of Iowa* |
| 10:45 – 11:00 a.m. | **Break** |
| 11:00 – 12:15 p.m. | **A Conversation With Michael Waldman** |
| | *Michael Waldman, President of the Brennan Center for Justice at New York University School of Law and former Director of Speechwriting for President Bill Clinton* |
| 12:15 – 1:30 p.m. | **Lunch** |

| | |
|---|---|
| 1:30 – 2:30 p.m. | **Motion Practice 101: Pre-Trial Motions in the Western District of Tennessee**<br><br>*Angie C. Davis, Baker, Donelson, Bearman, Caldwell & Berkowitz*<br>*William "Billy" Ryan, Donati Law, PLLC*<br><br>**CJA Break Out Session and Business Meeting**<br><br>*Thomas Gould, Clerk of the U.S. District Court – Western District of Tennessee*<br>*Arthur E. Quinn, Quinn Law Firm*<br>*Michael J. Stengel, Stengel Law Firm* |
| 2:30 – 3:30 p.m. | **Litigating With Other People's Money: Commercial Litigation Funding, Ethics, and Law**<br><br>*Lucian T. Pera, Adams and Reese LLP*<br>*Gretchen Lowe, Chief Financial Officer, Westfleet Advisors* |
| 3:30 – 3:45 p.m. | **Break** |
| 3:45 – 5:00 p.m. | **Judges' Panel**<br><br>*District Judges and Magistrate Judges of the Western District of Tennessee will discuss a wide range of topics related to federal practice, including the Court's revised ADR plan* |
| 5:00 – 6:00 p.m. | **Judicial Reception**<br><br>*The FBA will host a reception for our judges and attorneys immediately following the seminar. Join us for appetizers, wine, beer, and soft drinks.* |

Price (includes breakfast, lunch & reception )

[ ] $190 FBA Members
[ ] $240 Non-Members
[ ] $95 Government Attorneys
[ ] FREE for CJA Panel Members
[ ] FREE for Federal Judicial Law Clerks

**REGISTRATION DEADLINE IS October 3, 2014 – Space is Limited**

Pending approval from the Tennessee Commission on Continuing Legal Education, attendees will receive 5.5 hours of CLE (general) and 1.0 hour of CLE (dual) credit in Tennessee.

## REGISTRATION FORM

Name: _____

BPR No.: _____

Address: _____

Email: _____

Phone: _____ Facsimile: _____

Please send registration with payment to:

**Michael C. McLaren, Butler Snow**
**6075 Poplar Avenue, Suite 500**
**Memphis, TN 38119**
**Michael.mclaren@butlersnow.com**

**Please make checks payable to "Federal Bar Association"**
The FBA will submit CLE hours for Tennessee.
Attendees are responsible for submitting CLE credit to other jurisdictions.