

# 2019 Annual Meeting & Convention

# T A M P A

September 5-7, 2019 • Hilton Tampa Downtown

## **Advocacy in Gender-Based Asylum Cases**

Panel discussion will analyze how the current immigration court changes in practice are impacting working conditions for Immigration Judges and how creating Article I courts for immigration cases would improve the adjudication of cases and increase due process. Speakers will use clips from the film *St. Judy* to illustrate the importance of zealous advocacy in developing asylum case law in the federal courts. Attendees will learn the origins and implementation of international treaty obligations under asylum law and their effective implementation for asylum seekers, including the role of UNHCR and the U.S. asylum office.

- Stephanie Moncada-Gomez, Attorney, Kozyak Tropin & Throckmorton (moderator)
- Beth S. Persky, Attorney, Law Office of Beth S. Persky
- Mimi Tsankov, Grievance Chair, National Association of Immigration Judges
- Judith L. Wood, Attorney, Law Office of Judith Wood

## **Bankruptcy-Proof Your Case: Bankruptcy Basics for Federal Court Litigators**

For most non-bankruptcy practitioners, the implications of a bankruptcy being filed are not thought about in the beginning of a transaction, settlement, or judgment but rather only after their client is faced with a bankruptcy filing and the effects of the discharge on their particular debt. This esteemed panel of bankruptcy judges will share their decades of experience as creditor's rights or debtor's counsel, as well as their time on the bench to share tips and tricks to "surviving" bankruptcy. This program is targeted to non-bankruptcy and bankruptcy practitioners alike to educate them on how to best advise their clients outside of bankruptcy to ensure that if a bankruptcy is filed their client's rights are protected and will "survive."

- Russell Blain, Shareholder, Stichter, Ridell, Blain & Postler, P.A. (moderator)
- Hon. Roberta A. Colton, Bankruptcy Judge, U.S. Bankruptcy Court Middle District of Florida
- Hon. Caryl E. Delano, Bankruptcy Judge, U.S. Bankruptcy Court Middle District of Florida
- Hon. Catherine Peek McEwen, Bankruptcy Judge, U.S. Bankruptcy Court Middle District of Florida
- Hon. Michael G. Williamson, Chief Bankruptcy Judge, U.S. Bankruptcy Court Middle District of Florida

## **Big Data, Big Problems: How the Federal Government Mines Data in Criminal and Civil Prosecutions**

Four panelists--two federal judges, a former U.S. Attorney, and a former Assistant U.S. Attorney--will discuss their experiences in how the government is increasingly using data to identify and develop criminal and civil prosecutions. Attendees will learn how federal

healthcare cases are being developed largely on the basis of data analytics. Similarly, mortgage fraud cases, government contract cases, money laundering, securities, and other cases are all being built from sophisticated data mining. Attendees will not only learn about the government's increasing use of data but also how defense counsel are harnessing data for their own defenses and trial presentations. Attendees will hear from seasoned defense attorneys who will offer perspective on how they use data both to drive prosecutorial decisions and how to develop trial theories. Finally, attendees will discover how courts and judges are using data to shape their sentencing decisions.

- Jason Mehta, Partner, Bradley Arant Boult Cummings LLP (moderator)
- Lee Bentley, Partner, Bradley Arant Boult Cummings LLP
- Hon. Virginia Covington, District Judge, U.S. District Court for the Middle District of Florida
- Hon. William Jung, District Judge, U.S. District Court for the Middle District of Florida

### **Cryptocurrency Comes of Age: Notable Recent Regulatory Actions and A Look Ahead**

As the price of Bitcoin increased from \$433 in 2016 to nearly \$20,000 in late 2017 and then back to under \$4,000 by 2019, state and federal regulators scrambled to analyze how virtual currencies fit into the existing regulatory framework. While small fortunes were made and lost in a landscape that evoked memories of the "tech wreck" in the early 2000s, regulators have become increasingly involved in understanding the technology and taking action to police activity that allegedly fell within their jurisdiction. This presentation will first provide an overview of the key terminology, including blockchain technology, virtual currencies, hot and cold wallets, and smart contracts. The discussion will then focus on recent regulatory actions taken by federal regulators, including the SEC and CFTC, and how those actions are continuing to shape the regulatory landscape.

- Jordan Maglich, Associate, Quarles & Brady LLP (moderator)
- Scott A. Masel, Attorney-Advisor, Enforcement, U.S. Securities and Exchange Commission

### **Cutting Edge Developments at the Intersection of Bankruptcy and Intellectual Property Law**

The U.S. Supreme Court will soon be deciding a case that will have profound effects on bankruptcy and IP law and practitioners (Mission Products). In addition to the implications of this case, the panel will be discussing other significant cases that SCOTUS and other federal courts have decided that effect patent, trademark and copyright matters, as well as cutting edge issues in specific substantive areas that impact both BK and IP practitioners, such as sales free and clear of licensing agreements, and the enforceability of covenants not to compete and franchise agreements in bankruptcy. Attendees will determine how practitioners can better protect their clients if bankruptcy of a counter party ensues.

- Hon. Charlene Honeywell, U.S. District Court Judge, Middle District of Florida (moderator)
- Daniel Fogarty, Shareholder, Stichter, Riedel, Blain & Postler P.A.
- Rob Rando, President, Rando Law Firm
- Hon. Alan Trust, U.S. Bankruptcy Judge, Eastern District of New York

### **Cybersecurity Compliance: The Next Wave of FCA Enforcement?**

This presentation is geared toward practitioners who want to understand the enforcement issues that may arise from the cybersecurity provisions now required in Department of Defense contracts. Experienced panelists will address potential areas of legal exposure and risk for noncompliance with cybersecurity requirements. The program will help attorneys “talk the talk” in this area by providing an overview of the NIST cybersecurity framework, FAR and DFARS contract terms, system security plans, and forthcoming regulations from civilian agencies. After discussion, attendees will understand how the civil False Claims Act could become a tool for enforcement of cybersecurity requirements, including the theories of liability and damages that might be pursued in a qui tam lawsuit.

- Jennifer Short, Partner, KaiserDillon PLLC (moderator)
- Alicia Lynch, Chief Information Security Officer, SAIC
- Johana Reed, Counsel, McMahon, Welch and Learned, PLLC

### **The Demand for Diversity in Federal Practice: What We Know, Where To Go, How To Grow**

A truly diverse legal profession requires a broad and sustained commitment to inclusion. Clients require their legal teams to be diverse—and they bring their power to bear by rewarding law firms that promote and reward inclusive teams. Law firms are heeding the call, recognizing that meaningful diversity requires active engagement in recruiting, mentoring, and perhaps most importantly, retaining diverse lawyers. And federal courts have long taken the lead to ensure that the histories and challenges of diverse populations remain at the forefront of our collective conscience and ongoing work. Join nationally recognized leaders in the field of Diversity & Inclusion as they discuss the demand for D&I, best practices, and how to achieve actionable data, improvements and results. The program will conclude with an interactive question and answer to address the future of D&I and the potential impacts D&I might have on other industry and sectors of society. This panel is endorsed by the FBA ADR Section.

- Tara Norgard, Partner, Carlson Caspers Vandenburg & Lindquist, PA (moderator)
- Steve E. Baker, Partner, Quintairos, Prietor, Wood & Boyer, P.A.; Board Member, NAMWOLF
- Charbel J. Barakat, Chief Counsel, Florida Region, D.R. Horton, Inc.
- Barbara Stevens, Vice President and Corporate Counsel, Prudential Financial

### **Establishing, Maintaining, and Navigating the In-House and Outside Counsel Relationship**

One of the most significant, yet often misunderstood, relationships in the legal profession is that between outside and in-house counsel. In-house counsel serve as attorneys at corporations, nonprofits and governmental entities. In-house counsel are the gateway between their clients and outside counsel retained to assist in the representation of these organizational clients. A productive partnership is essential to successful representation. Panelists will address strategies for maintaining a communicative relationship, billing arrangements, and best management practices. Attendees from all backgrounds will benefit from this discussion, as this symbiotic relationship is a critical component of many attorneys' practices.

- David Andrew Greene, Partner, Fox Rothschild LLP (moderator)
- Nicole Deese Newlon, Partner, Johnson, Cassidy, Newlon, & DeCort, P.A. (moderator)
- Amy Chai, Assistant Vice President, Legal Advocacy, National Association of Home Builders
- Marcos Hasbun, Partner, Zuckerman Spaeder LLP

- Debbie Satyal, Director, Assistant General Counsel, Office Depot, Inc.

### **The Family Reunification Cases: Traditional and Creative Advocacy**

Between 2018 and the present, families seeking asylum under United States laws have been separated prior to hearings on credible fear against persecution or torture, the first step towards assessing whether to grant asylum. These separations have been the subject of challenges to the constitutionality and propriety of the hearings, and raised attendant constitutional challenges rooted in substantive due process concerns due to the separations themselves. The panelists will discuss the strategies behind successful litigation on behalf of these families, including effective ways (and the proper procedural mechanisms) for seeking temporary restraining orders and preliminary injunctions, effective negotiation tactics to employ when adverse to the United States in civil matters, and successful methods for advocating on behalf of clients outside of the Judiciary.

- Christina "Tina" Woehr, Assistant Federal Public Defender, District of Arizona
- Manoj Govindaiah, Director of Litigation, RAICES
- Clayton LaForge, Associate, Latham & Watkins, LLP

### **Federal Equity Receiverships: Toto, We're not in Bankruptcy Anymore!**

The presentation will provide information about Federal Equity Receiverships including the creation, purpose, procedures and administration. Panelists will cover the authority of receivers, claims processes, receivership litigation (including clawback litigation), due process and equitable considerations. Further discussion will compare and contrast receivership with a bankruptcy case and highlight their similarities and differences.

- Burton Wiand, Of Counsel, Wiand Guerra King P.A. (moderator)
- Ira Bodenstein, Partner, Fox Rothchild LLP
- Jared Perez, Shareholder, Wiand Guerra King P.A.

### **Marijuana Legalization: Workplace Woes Over Weed and Beyond**

The attitude toward the use of marijuana for recreational and medicinal purposes is changing rapidly across the country. Federal law, however, specifically the Controlled Substances Act, continues to classify marijuana as a Schedule I controlled substance. The hash of laws is not only complicated for prosecutors, state officials, law enforcement officers, and individuals, but it also creates a host of questions and issues, some without any clear answer, for employers. This program will explore the legal landscape surrounding marijuana laws in the United States, including a discussion led by the Deputy Solicitor General of the State of Nebraska regarding the novel constitutional law case filed by the States of Nebraska and Oklahoma against Colorado in the United States Supreme Court under the Supremacy Clause. The program will also explore the many challenges employers and their legal counsel can expect to face situations regarding medical versus recreational use laws, background checks, disciplinary policies, impairment and drug use policies, at-work vs. personal time activities, disability accommodations, and even discrimination against marijuana users.

- James R. Hammerschmidt, Principal, Paley Rothman Goldstein Rosenberg & Cooper, Chtd. (moderator)
- D. Jack Blum, Attorney, Polsinelli
- David A. Lopez, Deputy Solicitor General, State of Nebraska
- Whitney Sedwick Meister, Corporate Counsel, Best Western Hotels & Resorts

## **Navigating the Sea of Complex Litigation Issues in FLSA Collective Actions**

The panel of experienced FLSA practitioners will discuss key issues involved in litigating collective actions under the Fair Labor Standards Act, with an eye toward how those practices differ from Rule 23 class actions, how they are affected by recent Supreme Court decisions on arbitration, and how the challenges of representative discovery affect arguments about decertification, summary judgment, and trial in these cases, as well as the ethical issues that arise, including solicitations and advertisements versus investigations, and ex-parte communications with putative class members.

- Kevin David Johnson, Shareholder, Johnson Jackson LLC (moderator)
- Anne-Marie Estevez, Partner, Morgan, Lewis & Bockius LLP
- Sarah Schalman-Bergen, Shareholder, Berger Montague

## **Noteworthy SCOTUS Decisions for General Counsel, Business Litigators, and Jurists**

Panel discussion will capture a broad appeal of interests, by touching on three areas of law that are relevant for businesses, general counsel, outside counsel, business litigators, and jurists. Panelists will bring a varied perspective, representing three practice areas from the association: Intellectual Property Law, International Law, and Labor & Employment Law. Attendees will receive a recap of important cases in these areas of law, focusing mainly on decisions of the 2018 Term of the Supreme Court of the United States, and on cases will be decided during the 2019 Term of the Supreme Court of the United States (as a preview).

- Donna Phillips Currault, Member, Gordon Arata Montgomery Barnett (moderator)
- Roger S. Kobert, Partner, Weiss Serota Helfman Cole & Bierman P.L.
- Oliver Alan Ruiz, Partner, Malloy & Malloy, P.L.
- Sarah C. Yerger, Counsel, Barley Snyder

## **Powerful Witness Preparation**

Effective witness preparation dramatically improves the way that facts are delivered, whether in a deposition or hearing, or to a judge or jury, and few in the country are as adept at teaching lawyers to prep witnesses than nationally respected speaker and writer Dan Small, a partner at Holland & Knight, former federal prosecutor and author of the best-selling *Preparing Witnesses: A Practical Guide for Lawyers and Their Clients*, published by the American Bar Association (4th edition, 2014). Speakers will cover the key gaps between witnesses and counsel, the most common mistakes witnesses (and lawyers) make, as well as practical, real-world techniques for avoiding them. Attendees will develop general techniques plus specific guidance for different witness scenarios and the "Ten Rules" for being an effective witness.

- Daniel Small, Partner, Holland & Knight (moderator)

## **Round Peg and Square Hole? Class Actions in an Appellate Court, the U.S. Court of Appeals for Veterans Claims**

In 1989, Congress created the U.S. court of Appeals for Veterans Claims (CAVC), providing judicial review for veterans for the first time. It is a federal appellate court. In 2017, the Federal Circuit held that the CAVC had the authority to hear class actions as an initial matter at the appellate level. It is the only federal appellate court (perhaps the only one) with such authority. The panel will explore the opportunities and challenges associated with the use of aggregate litigation procedures designed for trial courts in an

appellate setting. In particular, since Federal Rule of Civil Procedure 23 does not apply to the CAVC, the panel will consider how this absence affects the CAVC's efforts to incorporate aggregate litigation into the appellate process.

- Jason P. Stearns, Partner, Freeborn & Peters LLP (moderator)
- Hon. Michael P. Allen, U.S. Court of Appeals for Veterans Claims
- Amy B. Kretkowski, Chair, U.S. Court of Appeals for Veterans Claims Rules Committee; Adjunct Professor, University of Iowa College of Law; Private Practitioner, Veterans Law Office of Amy B. Kertkowski
- Barton F. Stichman, Executive Director, National Veterans Legal Services Program
- Adam Zimmerman, Professor of Law & Gerald Rosen Fellow, Loyola Law School

### **Wading into the Gray: When Good People Make Bad Decisions**

In a world where corporate scandals dominate news headlines, fines for criminal misconduct have grown to billions of dollars and calls for individual heads to roll ring loudly in the halls of government, how do you advise and protect your clients so they are not in the center of the next corporate criminal scandal? And how do you assure that you and your own associates don't wade into gray areas and cross ethical lines? The panel will identify inflection points in law and business decision making and in compliance processes where questions, interventions, knowledge, relationships and legal advice could have helped them make better, more ethical decisions. This panel has both significant intellectual and practical content and its primary objective is to increase the professional legal competency of attorneys in ethics and professionalism, skills, law practice management and/or areas of professional practice.

- Serina Vash, Business and Ethics Advisor, Managing Partner, Herman Jones LLP (moderator)
- Rashmi Airan, Ethics Consultant, Ethics Integrated

### **"What? Like, it's hard?" The Millennial Perspective on Securing a Civil Protective Order**

Securing a civil protective order can be an uphill battle at times. This especially can feel true for a young attorney or attorney new to federal practice. This presentation will explore protective orders that oversee the entire exchange of discovery as well as those that stop the disclosure of privileged information. The goals of this presentation are to: 1) educate the audience on the proper judicial standard; 2) provide an overview of best practices; 3) identify strategic uses of protective orders; and 4) highlight common mistakes and how to avoid them. Approaching this presentation from the millennial perspective, attendees will leave the presentation with confidence in the protective order process.

- Anitra Raiford, Attorney, Shook Hardy & Bacon LLP
- Ashley Tinsley, Associate, Johnson Jackson LLC

### **When Congress Investigates: Breaking Down the Nuts and Bolts of Congressional Investigations**

The 116th Congress began this year with a historical bang -- when the most women in history were sworn in as lawmakers and Democrats wrested control of the House of Representatives to form a newly divided government. With a new Democratic majority in the House, investigations are humming at a breakneck pace, including on topics such as: data privacy, antitrust, the Internet of Things, social media platform liability, drug pricing, theft of trade secrets, economic espionage (with a focus on China), climate change, and of course, the White House and the Administration. This panel will address

the who, what, where, when, and how of congressional investigations, and how your clients should have a fundamental understanding of the similarities – and dissimilarities – between congressional investigations and other law enforcement investigations.

- Josh A. Levy, Partner, Cunningham, Levy, Muse LLP; former Counsel to Senate Homeland Security and Government Affairs Committee
- Peter S. Hyun, Partner, Wiley Rein LLP; former Chief Counsel to Sen. Dianne Feinstein, Ranking Member on the Senate Judiciary Committee
- David Levis, Partner, O'Melveny & Myers; former Chief Oversight Counsel of House Energy and Commerce Committee
- William Pittard, Partner, KaiserDillon PLLC; former Acting General Counsel at U.S. House of Representatives