INTER ALIA
the Newsletter of the
Northern District of Ohio Chapter of the Federal Bar Association

# Top 10 Ways to Make a Federal Judge Cringe, Choke or Cry

*by Judge Jack Zouhary*

**1** Undocumented, miscited or misleading record references—or play loose with legal precedent. Heck, if you are wrong, the judge's law clerks will make the necessary corrections. For example, we all know where to find the Federal Rules of Evidence!

**2** Rambling briefs; lengthy quotes; lack of focus editing or organizing; filing a request for more pages the day before the brief is due—these show the court how much time and thought you have put into your writing. Remember to emphasize the most trivial details or irrelevant laws in all caps and bold font because the court is unable to figure out what is really important.

**3** Cut and paste pleadings or filings and refer to Ohio Rules or wrong parties. That will tell the court you are a busy lawyer with many cases in other courts.

**4** Do not concede the obvious—every case deserves a dispositive motion. Never file a focused motion for partial summary judgment or try to narrow the issues for trial.

**5** Ignore Local Rule 37.1 (discovery disputes). Battle every step of the way. Paper your opponent to death—the judge will be impressed with your combative spirit, and your client will take great pleasure in your increased billing.

**6** Do not waste the time to read or understand the CMC, scheduling, trial orders or any other order. Heck, the judge probably does not follow them (or does not mean what is in them) anyway.

**7** Come unprepared for the CMC, pretrials or settlement conferences. Discuss the case with your client for the first time outside in the hallway. Do not take the time to be familiar with your complaint or your answer. Never evaluate your case until the judge asks for your opinion in front of your client. It is a sure way to justify your hourly rate!

**8** Ignore the Federal Rules or the Local Rules. For example, Civil Rule 41(a)(c): "I need what before I file a dismissal?" And Civil Rule 55(b)(2): "I need what before a default is granted?" And Local Rule 37.1(a)(1): "What are 'sincere, good faith' efforts?"

**9** Motions to reconsider are really "motions to repeat." If the darn judge didn't get it right the first time, maybe your second effort with the same arguments will sink in.

**10** Be late. Keep the chamber staff, opposing counsel, court reporters and jurors waiting. It is a great way to make everyone appreciate how competent (and important) you are.

***Judge Jack Zouhary***
*is a a district judge for the United States District Court Northern District of Ohio.*

**Fall 2008**

# The President's Podium: Protecting Our Own

*by Anthony J. LaCerva*

As I finish my tenure as president of this fine organization, I offer this final column as reflections on ways to advance our mission. My overall theme, as it was when I assumed this office, is that we need to protect our own to make the Northern District of Ohio an even more rewarding and fulfilling place to practice.

First, I suggest that we continue to market the FBA brand to make clear that this is the organization for practitioners and judicial officers who are affiliated with the federal court. All of us can help improve and enhance the FBA brand by attending FBA-sponsored events and by promoting the FBA to our colleagues and friends. We need to promote our brand by increased use of signage, banners, our terrific newsletter and our great Web site. Additionally, while we can and should sponsor events in partnership with other organizations, we should strive to ensure that our chapter of the Federal Bar Association obtains the publicity and credit it deserves for our role in the event.

Next, I believe the time has come for our chapter to engage seriously in organized and concerted community service projects. In this regard, I have asked Diana Thimmig to take on new and additional responsibilities as chair of our renamed Publicity and Community Relations Committee. I have great confidence that Diana and her committee will provide our members with a valuable opportunity to provide service to others in the community in need but who cannot afford valuable legal advice and services. I am also confident that in doing so we will make sure that our organization and our members are rewarded for their efforts.

Last, I raise the issue of protecting attorneys who practice in our district by revisiting Local Rule 83.3, which affirmatively provides that "it shall not be necessary" for attorneys admitted before our court or admitted on a pro hac vice basis to associate with or designate local counsel. This rule is at odds with its counterparts in the Southern District of Ohio, the Eastern District of Michigan, the District of Delaware and many other courts throughout the country (including those in jurisdictions where many attorneys who appear here have their primary practices), which do impose a local office or local counsel requirement. I raise this for the sake of achieving consistency throughout our state, as well as to increase business opportunities for local lawyers.

I leave the leadership of this chapter to officers who are no doubt "ready to lead," namely Ellen Toth, Carter Strang, Kip Bollin, John Gerak and Al Vondra. Good luck, and let me know if there is any service I can provide to assist in advancing the mission of the FBA.

***Anothony J. LaCerva*** *is a member of the Litigation Department of McDonald Hopkins LLC and is the Immediate Past President of the Northern District of Ohio Chapter of the Federal Bar Association.*

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**ROSTER OF OFFICERS AND DIRECTORS**
**2008-2009**

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# Calendar of Events

Please visit our Web site at www.fba-ndohio.org for additional information pertaining to any of the events listed below.

**Nov.13, 2008**
2008-09 Investiture
Carl B. Stokes U.S. Court House, Cleveland

**Nov. 14, 2008**
Advanced Federal Practice Seminar
Carl B. Stokes U.S. Court House, Cleveland

**Dec. 2, 2008**
Federal Employment Litigation Seminar
Carl B. Stokes U.S. Court House, Cleveland

**Dec. 4, 2008**
Members-Only Networking Breakfast
Calfee Halter & Griswold, Cleveland

**Dec. 12, 2008**
Tackling the Gray Areas: Ethics, Professionalism and Substance Abuse Prevention
Carl B. Stokes U.S. Court House, Cleveland

**Feb. 21, 2009**
LASC Community Clinic

**March 5, 2009**
Members-Only Networking Breakfast
Roetzel & Andress LPA, Cleveland

# 2008-09 Investiture

The Northern District of Ohio Chapter of the Federal Bar Association is pleased to announce that it will be holding its swearing-in of officers and board members and the installation of 2008-09 Chapter President Ellen Toth, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., on Thursday, Nov. 13, 2008, from 5 p.m. to 7 p.m. on the 19th floor of the Carl B. Stokes U.S. Court House. If you are interested in attending, please contact the Chapter administration office at (877) 322-6364 or admin@fba-ndohio.org.

# Write an Article!

Members of the Northern District of Ohio Chapter of the Federal Bar Association are invited to submit an article for an upcoming issue.

If you are interested in writing an article, please contact me at (216) 706-3874 or sjett@taftlaw.com. The deadline to receive articles for the Winter 2009 issue is Nov. 21, 2008.

***Stephen H. Jett***
*Taft Stettinius & Hollister LLP*
*2008-09 Newsletter Editor*

# Inside This Issue




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# Clerk's Corner

*by Geri M. Smith*

**Request for Comment on Proposed Amendments to the Federal Rules of Practice and Procedure**

The Judicial Conference's Advisory Committees on Appellate Rules, Bankruptcy Rules, Civil Rules, Criminal Rules, and Evidence Rules are seeking public comment on proposed rules amendments. The Judicial Conference Committee on Rules of Practice and Procedure (Standing Committee) has not approved these proposals, and they have not been presented to the Judicial Conference or the Supreme Court. They are published for a six-month period of public comment from the bench and bar.

The full text of the proposed rules amendments and explanatory committee notes are set out in the request for comment pamphlets, which are posted at www.uscourts.gov/rules and are available on request from the secretary to the standing committee. The following synopses highlight significant aspects of the proposed Appellate, Bankruptcy, Civil, Criminal, and Evidence Rule amendments.

The rules committees welcome all comments, whether favorable, adverse or otherwise. We do not want to limit the public to agreeing or disagreeing; we also want alternative suggestions. Comments on these proposals will be considered carefully by the respective rules committees, which consist of experienced trial and appellate lawyers, scholars and judges.

Written comments or comments sent electronically must be received by the secretary to the standing committee no later than Feb. 17, 2009. Comments may be sent electronically to Rules_Comments@ao.uscourts.gov. Comments may be sent by conventional mail to the secretary at the address provided at the end of this brochure.

In addition to written comments, public hearings are also scheduled to provide opportunities to appear and comment on the proposals. Requests to appear at a public hearing must be received by the Secretary to the Standing Committee no later than 30 days before the scheduled hearing date. The dates and places of the public hearings are provided at the end of the brochure.

After the public comment period, the proposed amendments will be reconsidered in light of the comments received. Amendments require approval by the relevant advisory committee, the standing committee, the Judicial Conference and the Supreme Court, after which they are sent to Congress. Approved amendments will take effect on Dec. 1, 2010, unless Congress affirmatively acts to defer or reject them.

**I. Proposed Amendments to the Federal Rules of Appellate Procedure**

The proposed amendment to Rule 1 defines "state" to include the "District of Columbia and any United States commonwealth or territory."

Rule 29 is amended to conform to the proposed amendment to Rule 1, substituting the term "state" for the rule's current reference to "State, Territory, Commonwealth, or the District of Columbia." The rule is also amended to parallel recent changes to Supreme Court Rule 37.6, which establish disclosure requirements for amicus briefs.

Appellate Form 4 is amended to avoid asking for certain personal information. The amendment is consistent with privacy protections provided under the E-Government Act of 2002 and Appellate Rule 25(a)(5).

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## II. Proposed Amendments to the Federal Rules of Bankruptcy Procedure

New Rule 1004.2 requires that the entity filing a chapter 15 petition state on the petition the country of the debtor's main interests and list each country in which a case involving the debtor is pending.

The proposed amendment to Rule 1007 shortens the time for a debtor to file a list of creditors after an order for relief is entered in an involuntary case. The amended rule also extends the time for individual debtors in a chapter 7 case to file the statement of completion of a personal financial management course.

Rule 1014 is amended to apply the rule's venue provisions to chapter 15 cases involving foreign proceedings.

Rule 1015 is amended to apply the rule's consolidation and joint administration provisions to chapter 15 cases involving foreign proceedings.

Amended Rule 1018 includes proceedings contesting chapter 15 petitions for recognition of foreign proceedings among those subject to enumerated rules in Part VII of the Bankruptcy Rules. The amendment also clarifies the rule's application to contests over involuntary petitions and not to matters that are merely related to a contested involuntary petition.

The proposed amendment to Rule 1019 provides a new time period to object to a claim of exemption when a case is converted to chapter 7 from chapter 11, 12, or 13, unless the conversion occurs more than one year after the first order confirming a plan (even if later modified) or unless the case was previously pending under chapter 7 and the objection period had expired in the original chapter 7 case.

Amended Rule 4004 sets a new deadline for filing an objection to a debtor's discharge on the ground that the debtor had earlier received a discharge. The amended rule also prevents the entry of a discharge in chapter 11 and 13 cases until the debtor files a statement of completion of a personal financial management course.

Rule 5009 is amended to require the clerk to provide notice to individual debtors in chapter 7 and 13 cases that their case may be closed without the entry of a discharge if they fail to file a timely statement that they have completed a personal financial management course. The amended rule also requires a foreign representative in a chapter 15 case to file and give notice of the filing of a final report in the case.

Proposed new Rule 5012 establishes the procedure in a chapter 15 case for obtaining the approval of an agreement about communications in, and the coordination of the proceedings with, cases involving the debtor pending in other countries.

Under the proposed amendment to Rule 7001, a party may, in a motion only and not in a complaint, object to a discharge on the ground that the debtor had recently been granted a discharge in an earlier case.

The Rule 9001 amendment adds § 1502 to the list of definitional provisions in the Code that apply to the Bankruptcy Rules.

## III. Proposed Amendments to the Federal Rules of Civil Procedure

Rule 26 is amended to address two distinct topics. The first deals with expert witnesses who are not required to prepare a detailed report under Rule 26(b)(2)(B). Under the proposed amendment to Rule 26(a)(2), the party (not the expert witness) must disclose the subject matter of the expected expert testimony and a summary of the expected facts and opinions. The second topic applies the work-product protections of Rule 26(b)(3)(A) and (B) to limit discovery of drafts of expert disclosure statements or reports and, with three exceptions, of communications between expert witnesses and counsel regardless of form (oral, written, electronic, or otherwise). The exceptions are for those parts of the attorney-expert communications regarding compensation, identifying facts or data considered by the expert in forming the opinions, and identifying assumptions relied on by the expert in forming the opinions.

Rule 56 is revised to improve the procedures for presenting and deciding summary judgment motions and to make the procedures more consistent with those already used in many courts. The changes are procedural only and do not affect the standard for granting summary judgment. The proposed rule requires that unless the court orders a different procedure in a case, a party moving for summary judgment must submit a statement of facts that it asserts are not in genuine dispute and entitle it to summary judgment. The statement must list the asserted undisputed material facts in separate, numbered paragraphs, with citations to the record. The party opposing the motion must file a response to the

*(continued on page 14)*

***Geri M. Smith*** *was appointed the Clerk of Court for the U.S. District Court Northern District of Ohio on July 1, 1991, having joined the court in 1982. She serves as the chief administrative officer of the court as well as the administrative assistant to the Chief Judge. Smith is a member of the FBA-NDOC Board of Directors.*

# Proposed Amendment to Federal Rule 56

## Will the requirement of a joint statement of material facts facilitate motion practice?

*by Kerri Keller*

According to Oliver Wendell Holmes, Jr., "Lawyers spend a great deal of their time shoveling smoke." This perception may have motivated the proposed amendment to Rule 56 of the Federal Rules of Civil Procedure, which, if adopted, would require a party moving for summary judgment to submit a statement of undisputed material facts. This proposed revision seeks to improve the summary judgment procedure and to make it more consistent with the practices already followed in many federal courts.[1] The changes are procedural only and do not affect the standard for granting summary judgment.[2]

The proposed rule will require the movant to submit a statement of facts, which it asserts are not in genuine dispute and that entitle it to summary judgment.[3] This statement must list the asserted undisputed material facts in separate, numbered paragraphs and provide citations to the record.[4] The party opposing the motion must file a response to the statement, addressing each fact by accepting, disputing or accepting it in part and disputing it in part.[5] If a party fails to properly respond or reply, the court may afford the party the opportunity to properly respond, consider a fact undisputed for purposes of the motion or grant summary judgment if the motion and supporting facts (including those that are undisputed) show that the movant is entitled to summary judgment.[6]

The proposed amendment resulted from an empirical study conducted by the Federal Judicial Center on the summary judgment practices used in various courts.[7] Wide variances were observed in the ways different courts handled summary judgment practice.[8] The data showed that "the practice and procedures that the district courts have developed to comply with Rule 56 are much different from the rule text, which has not been significantly changed for decades."[9] The practices adopted by many district courts, although not entirely uniform, have indicated that the national rule is "no longer useful."[10]

Perhaps the national rule is no longer useful. But will the proposed amendment serve the interests of justice? Numerous district courts already have similar local rules in place, which indicates that the practice does ultimately facilitate the resolution of dispositive motions. For instance, the U.S. District Court for the Northern District of Illinois has a local rule that requires the moving party to submit a statement of material facts.[11] To comply with this rule, the statement of material facts must "consist of short numbered paragraphs, including within each paragraph specific references to the affidavits, parts of the record, and other supporting materials relied upon to support the facts set forth in that paragraph."[12] Important in this local rule is the caveat that all material facts set forth in the moving party's statement are deemed admitted unless controverted by the statement of the opposing party.[13] Although this rule seems to favor form over substance, it is strongly endorsed by the 7th Circuit for its usefulness in assisting the district courts with dispositive motions.

*The practices adopted by many district courts, although not entirely uniform, have indicated that the national rule is "no longer useful."*

For example, in *Smith v. Lamz*, the 7th Circuit found that the district court did not abuse its discretion in deeming admitted and considering only the defendant's statement of material facts where the plaintiff did not follow the local rules by submitting his own statement with citations to the record.[14] In Smith, the plaintiff discussed only what he deemed to be the pertinent issues and ignored the remainder of the facts set forth in the defendant's brief. The district court deemed the ignored facts admitted and the 7th Circuit upheld the ruling. In doing so, the 7th Circuit found that the plaintiff failed in his obligations under the local rules by not properly responding to the defendant's statement in the manner proscribed by rule. The 7th Circuit stated that the district court is not required to "wade through improper denials and legal argument in search of a genuinely disputed ma-

***Kerri Keller*** *joined Brouse McDowell in June 2007 as a new associate, and is focusing her practice in the areas of business and commercial litigation. Kerri worked as a Law Clerk for the Honorable John R. Adams, United States District Court Judge for the Northern District of Ohio, Eastern Division, from 2003 through 2007.*

terial fact" and that judges are "not like pigs, hunting for truffles buried in briefs."[15]

The benefits of such a requirement are easy to see. Aside from the obvious benefits to the court, requiring the parties to follow such a rule forces them to think critically about the case and focus on the material facts at issue. Also, by deeming uncontested facts admitted, courts can compel compliance with the rule.

There are, however, some potential drawbacks to such a requirement. Aside from being one more procedural hurdle through which a practitioner must jump, a review of cases from jurisdictions that already adhere to such a rule reveals that the focal point of summary judgment often becomes the parties' compliance with the formalities of the rule. For instance, in *Mohr v. Clarian Health Partners, Inc.*, the Southern District of Indiana noted the contest between the parties as to what facts were in dispute and material to the issues "was extremely tedious and picayune."[16] Rather than concisely identifying the material facts in dispute, the parties' statements of material fact complicated the matter instead of making it easier for the court. In Mohr, the court noted that the extraneous facts in the defendant's statement, while helpful for context, were not "balanced and tapered in the interest of judicial economy."[17] Furthermore, because the plaintiff contested every statement and unnecessarily "muddied the waters," it ultimately made it more difficult for the court to resolve the controversy.[18] Rather than assist the court, such statements clearly have the potential to make the court's job (and that of the parties) more difficult.

Similarly, in *Ruiz v. Caribbean Restaurants, Inc.*, the court expressed frustration where the plaintiff's statement of material facts was overwrought with argument, reiteration of the defendant's rendition of facts and other "superfluous information."[19] In choosing to publicly admonish the plaintiff and her counsel, the district court stated that the plaintiff's failure to follow the local rules caused it to waste a considerable amount of time ferreting through the record.

In light of its potential to complicate matters, the benefit of requiring a statement of material facts will be realized only if counsel and parties follow it in good faith with an eye toward its purpose, which is to assist and not frustrate the court.

Another potential downside to such a requirement is that it may result in additional motion practice above and beyond the motion for summary judgment. Motions to strike are often filed in response to statements of material fact. As one district judge noted,

> [t]he motion to strike has become the evil twin of the motion for summary judgment. . . Despite admonition from the bench and notable lack of success, counsel [seem] compelled to file motions to strike in response to motions for summary judgment, positing every conceivable objection to the opposing party's statement of material fact.[20]

In cases where the parties "quibble" over every single fact, disregard the local rules or engage in additional motion practice, the court may end up disregarding the parties' statements entirely. In Mohr, the court ultimately ended up examining the entire record anyway and exercised its "own independent judgment" in deciding to grant the motion.[21]

Thus, there are foreseeable scenarios in which the requirement would offer no discernable benefit. Without question, judges are often forced to weed through inartfully drafted motions and oppositions in search of the genuinely disputed material facts. In many instances, lawyers do spend more time shoveling smoke than clearly delineating the facts that are truly in dispute. Such devices place the sometimes daunting task of identifying the disputed facts on the court. The benefits to such a requirement, if ultimately put into action by counsel who not only comply with the letter but the spirit of the rule, could outweigh any hassles associated with compliance. It is, however, unlikely to always result in more a more efficient dispositive motion practice. Parties will almost certainly be faced with the need to file or oppose additional motions as a result of this procedure and, as the case law indicates, such a requirement may not ease the court's burden of sifting through the facts and the record.

*Without question, judges are often forced to weed through inartfully drafted motions and oppositions in search of the genuinely disputed material facts.*

Comments on the proposed amendment are being accepted through Feb. 17, 2009. Public hearings will be held in Washington, D.C. on Nov. 17, 2008; in San Antonio, Texas on Jan. 14, 2009; and in San Francisco, Calif. on Feb. 2, 2009. Written comments on the proposed rule amendments may be sent by mail to:

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

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# The Iron Lawyer

***by Rocco I. Debitetto***

Steven A. Goldfarb

Ann C. Rowland

Roger M. Synenberg

Eric Zagrans

The Cleveland Chapter of the Federal Bar Association hosted the first of what will be many *Iron Lawyer* competitions on Aug. 27, 2008, at the U.S. District Court for the Northern District of Ohio. Distinguished competitors Steven A. Goldfarb, Hahn Loeser & Parks LLP, Ann C. Rowland, assistant U.S. attorney for the Northern District of Ohio, Roger M. Synenberg, Synenberg & Associates LLC, and Eric Zagrans, Zagrans Law Firm LLC, dazzled a capacity crowd, including press from the *Cleveland Plain Dealer*, in their battle to capture the inaugural *Iron Lawyer* title.

*Eric Zagrans (left), whose case involved property damage due to new construction gone awry, claims his title as the inaugural Iron Lawyer from Kenneth Kowalski, clinical professor of law, Cleveland-Marshall College of Law.*

Iron Chefs are expected to deliver three-course international masterpieces using a secret ingredient in under an hour. The secret ingredient for the *Iron Lawyer* competition was closing arguments. Competitors were asked to serve up 20-minute closing arguments culled from cases they actually litigated—some of which took weeks to complete at trial. The cases represented a variety of civil and criminal issues including property damage, an elaborate corporate raiding scheme, a sophisticated check-kiting scheme and felonious assault. The lawyers met their challenge with vigor, delivering inspiring and educational closing arguments to a roomful of attorneys, a panel of four federal judges and a mock jury of 13 nonlawyers.

After concluding closing arguments, the jury excused itself to deliberate under the oversight of jury consultants Susan Macpherson and Jeremy H. Rose, Ph.D., of the National Jury Project. Unlike a typical courtroom galley, however, spectators were not left alone to contemplate the fate of the litigants, but instead treated to an interactive critique of the lawyers' performances by a panel consisting of Judge Dan. A. Polster, Judge Christopher A. Boyko, Judge Donald C. Nugent and Magistrate Judge Kenneth S. McHargh of the U.S. District Court for the Northern District of Ohio. Stellar performances all but obviated criticism, while input from the panel helped attendees learn from each lawyer's unique approach and refined tactics.

But the buffet of information did not stop there. After concluding the judicial panel, Macpherson and Rose offered further insight on the competitors' presentation style and efficacy, and a healthy portion of jury analysis focusing on proven closing argument techniques.

In the end, when the scent of victory filled the air, there could be but one winner chosen through anonymous votes cast by all attendees. Zagrans, whose case involved property damage due to construction gone awry, claimed his title as the inaugural *Iron Lawyer*. Given the extraordinary success of this innovative CLE, however, his challengers are surely close behind.

Be sure to tune in next year, when the secret ingredient will be …

***Rocco I. Debitetto*** *is admitted to practice law in Ohio, before the United States Supreme Court, Sixth Circuit Court of Appeals and U.S. District Court for the Northern and Southern Districts of Ohio. An associate with the firm, he focuses his practice in the Creditors' Rights, Reorganization and Bankruptcy Area. He is a member of the FBA-NDOC Board of Directors.*

*Pictures provided by Justin M. Croniser, Hahn Loeser & Parks LLP.*

# New Ohio Exemptions

***by Diana Thimmig***

Recently, the Ohio General Assembly passed Senate Bill 281 which increases the amount of property that a debtor may hold as exempt from execution, garnishment, attachment or sale for the satisfaction of a judgment. Under most circumstances, these exemptions are applicable to Ohio residents who become debtors in bankruptcy proceedings. Ohio's exemption law is generally set forth in R.C. 2329.66. The revisions will become effective on Sept. 30, 2008. This article is intended to highlight a few revisions which deal with the most commonly utilized exemptions.

Under the existing law in Ohio, a person filing for bankruptcy can keep up to $5,000 worth of equity in his or her home.[1] Only four other states have a $5,000 homestead bankruptcy exemption, and no state has a lower exemption. Many have argued that Ohio residents were greatly disadvantaged because the state's exemptions have not been revised since 1979. Under the new legislation, the homestead exemption is being increased to $20,200, bringing it more in line with current federal figures.

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With respect to automobiles, under the current law, a debtor can exempt up to $1,000 of equity in one motor vehicle.[2] The new law increases the motor vehicle exemption to $3,225.

Under the existing law, a debtor may exempt specific dollar amounts for various individual property interests; $200 for one item of wearing apparel, beds and bedding; $300 for one refrigerator; $400 for one item of jewelry and no more than $200 in every other item of jewelry.[3] The new law, however, provides a much more broadly defined exemption category with an aggregate dollar amount of $10,775 for most items and $1,350 for jewelry held primarily for personal, family or household use.

With regard to money received or the right to receive money for a personal bodily injury (excluding pain and suffering), under existing law, a debtor was able to claim as exempt the sum of $5,000. Under the new legislation, a debtor will be able to exempt the sum of $20,200.

Existing law provided for what is generally referred to as a "wild card" exemption which a debtor could claim in "other property."[4] The $400 cap, which a debtor could claim under his or her wild card exemption, is being increased to $1,075 under the new legislation. Moreover, to the extent that the debtor has any unused portion of his homestead exemption referenced above, the wild card exemption can be increased up to an additional $10,125. This wild card exemption is only applicable to bankruptcy proceedings. It does not apply to collection of debts from individuals and entities not involved in a bankruptcy proceeding.

Lastly, an exemption is available to a debtor for the debtor's professional books and tools of trade.[5] Under the current law, the maximum exemption is $750. Under the new legislation, however, the amount will be increased to $2,025.

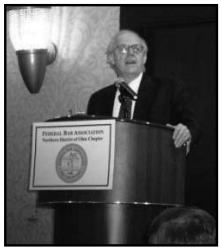
Ohio's amendment of the exemption laws was long overdue. Importantly, it should also be noted that Senate 821 also included an automatic adjustment to Ohio's exemption based on inflation. The first adjustment is scheduled to take place on April 1, 2010. Thereafter, exemptions will adjust every three years based on the consumer price index.

**Endnotes**

[1]R.C. 2329.66(A)(1)(b). In the case of a married couple who jointly hold title to the real estate, the homestead exemption is $10,000.
[2]R.C. 2329.66(A)(2).
[3]R.C. 2329.66(A)(3), (4)(b) and (4)(c).
[4]R.C. 2329.66(A)(18)
[5]R.C. 2329.66(A)(5)

***Diana M. Thimmig*** *is Partner-in-Charge, Cleveland Office, Roetzel & Andress. Ms. Thimmig focuses her practice on complex business and commercial litigation, bankruptcy cases, and insolvency proceedings. She is FBA-NDOC Membership Chair and a member of the FBA-NDOC Board of Directors.*

# More than 470 Attend State of the Court Luncheon



*Chief Judge Danny G. Boggs*

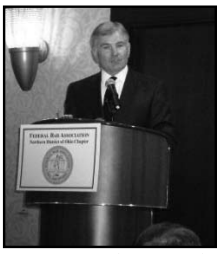
*Chief Judge James G. Carr*

*Chief Judge Marilyn Shea-Stonum*

The FBA Northern District of Ohio Chapter's Third Annual State of the Court Luncheon convened Sept. 22, 2008, at the downtown Cleveland Marriott. It was, once again, a massive success.

More than 470 attorneys and judges attended, including 35 firms and agencies participating as table sponsors. Sponsors received name recognition both at their respective tables and in the program, as well as continuous echoes of appreciation from the podium.

Chapter President Tony LaCerva opened the event, following which 6th Circuit Chief Judge Danny Boggs, Northern District of Ohio Chief Judge James G. Carr, and Northern District of Ohio Chief Bankruptcy Judge Marilyn Shea-Stonum reported on the state of the court. Magistrate Judges Greg White and Benita Pearson—both of whom were sworn in earlier this year—were welcomed respectively by Chapter Vice-President Carter Strang and Chapter board member Virginia Davidson. Both judges received honorary lifetime FBA and Chapter memberships and accompanying plaques.



*Magistrate Judge Greg White*

*Magistrate Judge Benita Pearson*

Chapter President-elect Ellen Toth concluded the event by inviting attendees to become FBA and Chapter members and encouraging them to attend the numerous upcoming Chapter events, details of which are available at www.fba-ndohio.org.

Special thanks to the Luncheon Planning Committee members Carter Strang, chair, and Ellen Toth, Steve Paffilas and Geri Smith. Their hard work and dedication not only made the State of the Court possible, but also ensured its continued success as a staple Chapter event.

# Employment Litigation Seminar

***by Ellen Toth***

The Chapter will be hosting its first ever Federal Employment Litigation Seminar on Dec. 2, 2008, at the Carl B. Stokes U.S. Court House. Topics will include FLSA collective actions; evidentiary issues in employment discrimination trials; amendments to FMLA for military families; and "do's and don'ts" in federal employment discrimination trials.

Speakers at the seminar will include the Hon. Donald C. Nugent, U.S. District Court, Northern District of Ohio; Thomas H. Barnard, Ogletree Deakins Nash Smoak & Stewart; Richard C. Haber, Haber Polk LLP; Mark S. Floyd, Thompson Hine LLP; Brian J. Kelly, Frantz Ward LLP; and Amy Glesius, Glesius Law.

For additional information and to register, please visit the Chapter's Web site: www.fba-ndohio.org.

***Ellen Toth*** *is an attorney with Ogletree Deakins Nash Smoak & Stewart PC in Cleveland. Ms. Toth is President of the Northern District of Ohio Chapter of the FBA.*

# Advanced Federal Practice CLE Features Northern Disrict Judges

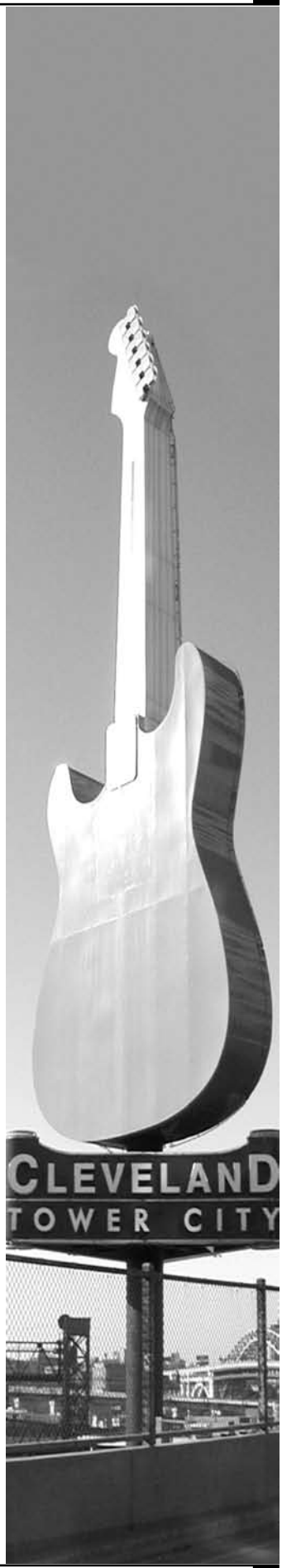
***by Carter Strang***

The Federal Bar Association Northern District of Ohio Advanced Federal Practice CLE will take place Friday, Nov. 14, 2008, at the Carl B. Stokes U.S. Court House, 7th floor auditorium in Cleveland from 8:30 a.m. to 11:55 a.m. 3.25 CLE hours have been approved by the Supreme Court of Ohio.

The CLE features U.S. Northern District Court judges Hon. Dan Polster and Hon. Christopher Boyko, along with prominent local attorneys who will discuss MDLs (including settlement issues, the Gadolinium MDL and federal-state interplay and analogues), consumer class action litigation, e-discovery and Rule 30 (b)(6) Corporate Representative Depositions.

Sign up now, as space is limited. Visit our Web site, www.fba-ndohio.org, for additional information and to register.

***Carter Strang** is Vice President of the Northern District of Ohio Chapter of the FBA. He is a partner in the Cleveland office of Tucker Ellis & West LLP. He is a trial lawyer who focuses on environmental, mass tort, product liability and real estate litigation. He has handled a broad range of matters in both state and federal court. He is a frequent lecturer and author regarding legal issues.*




# Rise and Shine

***by John Gerak***

On Sept. 4, 2008, the Northern District of Ohio Chapter of the Federal Bar Association held its quarterly networking breakfast at the law offices of Vorys, Sater, Seymour and Pease LLP. These events are designed to provide members of the Chapter with an opportunity to socialize in an informal setting, describe their areas of practice and the types of referrals that would be of particular interest to them. The next networking breakfast will be held Dec. 4, 2008, at the offices of Calfee Halter & Griswold in downtown Cleveland. There will also be a networking breakfast at Roetzel & Andress, LPA, Cleveland, on March 5, 2009.

If you are interested in attending, please contact the Chapter administration office at (877) 322-6364 or admin@fba-ndohio.org.

***John Gerak** is an associate in the Vorys Cleveland office and a member of the labor and employment practice group. He has represented employers in a broad range of labor and employment law matters. He is FBA-NDOC Secretary and a member of the FBA-NDOC Board of Directors.*

# Summer Associate and Law Clerk Reception

***by John Gerak***

On July 9, 2008, the Northern District of Ohio Chapter of the Federal Bar Association held its 5th Annual Summer Associate and Law Clerk Reception. The reception was attended by roughly 200 people, including approximately 150 summer associates, interns and law clerks. The Chapter would like to thank District Bankruptcy Judge Baxter, District Court Judges Oliver and Polster, and Magistrate Judges Vecchiarelli and White for their attendance. Without the support of the federal judiciary, events like this would not be possible. In addition, the Chapter would like to thank its generous sponsors for this event:

Baker & Hostetler LLP
Benesch Friedlander Coplan & Aronoff LLP
Brouse McDowell LPA
Calfee Halter & Griswold LLP
Collins & Scanlon LLP
Connelly Jackson & Collier LLP
Frantz Ward LLP
Hahn Loeser & Parks LLP
Jones Day
McDonald Hopkins LLC
Ogletree Deakins Nash Smoak & Stewart PC
Roetzel & Andress LPA
Squire Sanders & Dempsey LLP
Taft Stettinius & Hollister LLP
Thompson Hine LLP
Tucker Ellis & West LLP
Vorys Sater Seymour and Pease LLP

***John Gerak*** *is an associate in the Vorys Cleveland office and a member of the labor and employment practice group. He has represented employers in a broad range of labor and employment law matters. He is FBA-NDOC Secretary and a member of the FBA-NDOC Board of Directors.*

# Welcome New Chapter Members

Eric Allain, Johnson & Colaluca
Thomas Baker, Tucker Ellis &West LLP
Robert Blackwell, Blackwell Law Firm
Christopher Caryl, Tucker Ellis &West LLP
Carlo Ciccone, Attorney at Law
Christopher Fraser, Spitler Huffman
Francis Fungsang, Margaret W. Wong & Assoc.
Laura Hoffman, City of Parma
Sara Hutchins, Ogletree Deakins Nash Smoak & Stewart PC
Scott Kelly, Tucker Ellis & West LLP
Tonya Koenig, Tucker Ellis & West LLP
Deborah Lee, Margaret W. Wong & Assoc.
Kristie Lumakin, Margaret W. Wong & Assoc.
Susan McGrath, Attorney at Law
Richard McQuade, Blackwell Law Firm
Katie McVoy, Baker & Hostetler
Jennifer Moore, City of Parma Law Department
Risto Pribisich, McDonald Hopkins LLC
Jackeline Rodriguez, Blackwell Law Firm
Adam Russ, Frantz Ward LLP
Meredith Shoop, Littler Mendelson
Kristin Somich, Ogletree Deakins Nash Smoak & Stewart PC
Natalia Steele, Vorys Sater Seymour & Pease LLP
Chenping Su, Margaret W. Wong & Assoc.
Milos Veljkovic, Margaret W. Wong & Assoc.
Jane Warner, Tucker Ellis & West LLP
Mark Watson, Calfee Halter & Griswold LLP

# 3Rs Begins Third Year—Call for Volunteers

The nationally recognized and award-winning 3Rs program begins its third year of service to students in the Cleveland Metropolitan and East Cleveland school districts. The largest pipe line initiative of its type in the United States, 3Rs places teams of attorneys in 10th grade social studies classes once a month to discuss issues relating to the U.S. Constitution (Rights, Responsibilities and Realities—the 3Rs) and to provide career and personal counseling. A major focus of the program is to assist with Ohio Graduation Test preparation for the social studies component of that test, and the scores on that component have increased every year since 3Rs began.

Our Chapter received an FBA Chapter award for its participation in 3Rs. Thirty-seven Chapter members were 3Rs volunteers last year. Our Chapter vice-president, Carter Strang, is in his second year as chair of the 3Rs Committee, and Chapter members Hon. Patricia Gaughan and Hon. Dan Polster are also members of the 3Rs Committee. Former Chapter board member Hugh McKay originated the idea during his tenure as Cleveland Metropolitan Bar Association president, and the CMBA continues to fund and administer the program.

Orientation sessions for volunteers began in early October and the first classroom visit was October 24th. If you would like to volunteer, contact Carter Strang at cstrang@tuckerellis.com or Mary Groth at mgroth@cmba.com

(*Federal Rule 56, continued from page 7)*

Comments on the proposed rule amendment may also be sent electronically to Rules_Comments@ao.uscourts.gov.

**Endnotes**

[1]James C. Duff, Director, Preliminary Draft of Proposed Amendments to the Federal Rules of Practice and Procedure, Administrative Office of the U.S. Courts, A Summary for Bench and Bar (August 2008). "Other proposed changes include addressing the consequences of failing to respond or responding in a way that does not conform to the rule and recognizing the well-established practice of granting summary judgment on part or all of a claim or defense. Id. The Committee on Rules of Practice and Procedure is also specifically seeking comment on whether to retain the language in Rule 56 that a court "should" grant summary judgment when the record shows that the moving party is entitled to judgment as a matter of law, which recognizes limited discretion to deny summary judgment in such circumstances. Id. More information can be found online at http://www.uscourts.gov/rules.

[2]*Id.*

[3]Honorable Lee H. Rosenthal, Chair, Report of the Civil Rules Advisory Committee at pgs. 27-34, presented by the Honorable Mark R. Kravitz, Chair, Advisory Committee on Federal Rules of Civil Procedure (May 9, 2008, as supplemented June 30, 2008) (citing the full text of proposed Federal Rule of Civil Procedure 56(c)).

[4]*Id.* at 56(c)(2)(A).

[5]*Id*. at 56(c)(2)(B) and (C).

[6]*Id*. (citing proposed Rule 56(c)(6)(e)).

[7]Honorable Lee H. Rosenthal, Chair, Summary of the Report of the Judicial Conference Committee on Rules of Practice and Procedure, Agenda E-19, Summary (September 2008).

[8]*Id.*

[9]*Id.*

[10]*Id.*

[11]N.D. Ill. R. 56.1.

[12]*Id.*

[13]*Id.*

[14]321 F.3d 680, 682-83 (7th Cir. 2003).

[15]*Id*. at 683 (quotations and citations omitted).

[16]No. IP 99-0561-C T/K, 2001 WL 1712509 at *2 (S.D. Ind. 2001).

[17]*Id.* at *3.

[18]*Id.*

[19]54 F.Supp.2d 97, 103 (D. Puerto Rico 1999).

[20]*Randall v. Potter*, 366 F.Supp.2d 120, 121 at fn.1 (D. Me. 2005).

[21]*Mohr*, 2001 WL 1712509 at *3.

*(Clerk's Corner, continued from page 5)*

statement that addresses each fact by accepting, disputing, or accepting it in part and disputing it in part, either generally or for purposes of the motion only. The statement and response are separate from the briefs. Other proposed changes include addressing the consequences of failing to respond or responding in a way that does not conform to the rule and recognizing the well-established practice of granting summary judgment on part or all of a claim or defense.

Comment is especially sought on whether to retain the current language carrying forward the present Rule 56 language that a court "should" grant summary judgment when the record shows that the movant is entitled to judgment as a matter of law, recognizing limited discretion to deny summary judgment in such circumstances.

## IV. Proposed Amendments to the Federal Rules of Criminal Procedure

The proposed amendments to Rules 5, 12.3, and 21 implement the Crime Victims' Rights Act, 18 U.S.C. §3771.

Amended Rule 5 requires the court to consider the right of the victim to be protected from the defendant in deciding whether, and under what conditions, to release or detain the defendant.

The proposed Rule 12.3 amendment provides that a victim's address and telephone number should not automatically be provided to the defense when a public authority defense is raised. If a defendant establishes a need for this information, the court may order its disclosure or fashion an alternative procedure that provides the defendant with the information necessary to prepare a defense and also protects the victim's interests.

Rule 21 is amended to require the court to consider the convenience of victims—in addition to the convenience of the parties and witnesses and the interest of justice—in determining whether to transfer all or part of the proceeding to another district for trial.

Amended Rule 15 authorizes a deposition of a witness outside the United States without the defendant's physical presence in very limited circumstances: where there is a substantial likelihood that the witness's attendance at trial cannot be secured and it would be impossible to transport the defendant to the witness's location for the deposition.

The proposed amendment to Rule 32.1 codifies case law requiring a person, who is seeking release in a proceeding to revoke or modify probation or supervised release, to show by clear and convincing evidence that the person will not flee or pose a danger to any other person in the community.

## V. Proposed Amendment to the Federal Rules of Evidence

The proposed amendment to Rule 804 extends the corroborating circumstances requirement to all declarations against penal interest offered in criminal cases.

Public hearings are scheduled to be held on the amendments to

- Appellate Rules in Washington, D.C., on January 30, 2009, and in New Orleans, Louisiana, on February 11, 2009;
- Bankruptcy Rules in New York, New York, on January 23, 2009, and in San Francisco, California, on February 6, 2009;
- Civil Rules in Washington, D.C., on November 17, 2008, in San Antonio, Texas, on January 14, 2009, and in San Francisco, California, on February 2, 2009;
- Criminal Rules in Los Angeles, California, on January 16, 2009, and in Dallas, Texas, on February 9, 2009; and
- Evidence Rules in San Antonio, Texas, on January 13, 2009, and in Atlanta, Georgia, on January 26, 2009.

Those wishing to testify should contact in writing the Secretary at the address on the next page at least 30 days before the hearing.

Written comments on the proposed rule amendments sent by mail should be addressed to:

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
of the Judicial Conference of the United States
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544

Comments on the proposed rule amendments may also be sent electronically to Rules_Comments@ao.uscourts.gov.

In accordance withestablished procedures, all comments submitted on the proposed amendments are available for public inspection.

The text of the proposed rule amendments and the accompanying Committee Notes can be found on the United States Courts Web site at www.uscourts.gov/rules. For further information, copies of this brochure or the Request for Comment pamphlets, or other materials, contact:

John K. Rabiej, Chief
Rules Committee Support Office
Administrative Office of U. S. Courts
Thurgood Marshall Federal Judiciary Building
Washington, D.C. 20544
(202) 502-1820

# Information Regarding the Completion of Vouchers Submitted under the Criminal Justice Act

**CJA Forms 20 and 30**
**August 2008**
**This document complements and supplements the instructions to CJA vouchers.**

**CJA Forms and Instructions**
(available at www.uscourts.gov/forms/uscforms.cfm)

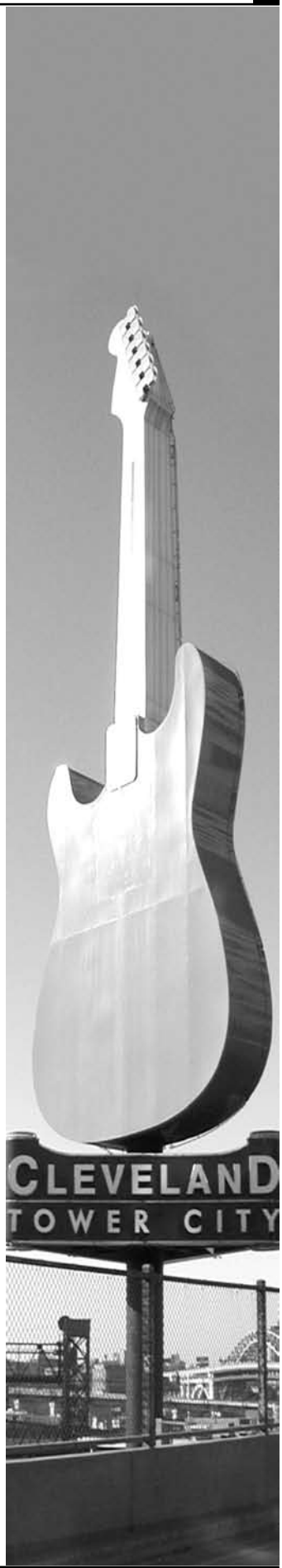
- CJA Form 20 (www.uscourts.gov/forms/CJA/CJA20.pdf): Appointment and Authority to Pay Court-Appointed Counsel, and corresponding CJA Form 20 instructions (www.uscourts.gov/forms/cja20.html).
- CJA Form 30 (www.uscourts.gov/forms/CJA/CJA30.pdf): Death Penalty Proceedings: Appointment of and Authority to Pay Court-Appointed Counsel, and corresponding CJA Form 30 instructions (www.uscourts.gov/forms/cja30.html) To receive payment, CJA Form 20 or 30 must be completed properly. Please read the instructions to the forms carefully when submitting a voucher. Attorneys must maintain contemporaneous time and attendance records for all work performed as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the panel attorney's final voucher for a case. Any overpayments are subject to collection, including deduction of amounts due from future vouchers.

**Panel Attorney Payment Voucher Guidance**

- Panel attorneys should review their vouchers to ensure that they do not contain errors, duplicate payment claims, or other improper charges. Attorneys should also review their billing practices to ensure that claims are appropriate.
- A panel attorney may not submit duplicate bills for time spent in common on more than one CJA representation. For example, if an attorney is traveling to provide services for more than one person under the CJA, he or she may not bill the entire travel time and expenses on each payment claim. (When claims are prorated among vouchers, the supporting materials must cross reference the cases. See paragraph 2.24 of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume 7, Guide to Judiciary Policies and Procedures (www.uscourts.gov/defenderservices/Section_A.cfm), and the instructions for items 3-6 of CJA Forms 20 and 30 regarding when the proration of time is required.)
- With respect to mileage expenses, the number of miles and the origination and destination of the travel must be submitted as part of the supporting documentation (see instruction 17 to CJA Form 20 and instruction 16 to CJA Form 30 for other information and documentation that is required for travel expenses).

**Reference Materials**
For additional information regarding payment for attorney fees and expenses, please see the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume 7, Guide to Judiciary Policies and Procedures, which is available at http://www.uscourts.gov/defenderservices/ Section_A.cfm.

- Chapter 2—Appointment and Payment of Counsel
- Chapter 6—Representation in Federal Death Penalty Cases and in Federal Capital Habeas Corpus Proceedings



FEDERAL BAR ASSOCIATION
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