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U.S. COURT OF FEDERAL CLAIMS BAR ASSOCIATION



E-Newsletter Fall Edition | 2011

Dear Member,

We hope you enjoy our E-Newsletter. If you have any questions or comments or would like to submit an article for the newsletter, please contact editor Vo Johnson at voris.johnson@usdoj.gov.

Upcoming Events



October 18-19:
Western Conference of the Bench & Bar (Berkeley, CA)

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Western Conference of the Bench & Bar

For the first time in its history, the United States Court of Federal Claims is bringing its annual Judicial Conference to the West Coast. The court's 24th Annual Judicial Conference, Western Conference of the Bench and Bar, will be held on October 18 and 19, 2011, in Berkeley, California, at the Claremont Resort and Spa.

The court is working closely with the United States Court of Federal Claims Bar Association, the Federal Circuit Bar Association, the Berkeley School of Law, and numerous western state and local bar associations to put together an informative and timely program of topics and activities for all to enjoy.



Claremont Hotel, Berkeley, CA

This year's two-day program highlights many key areas of the court's jurisdiction, including bid protests, government contracts, patents, Fifth Amendment takings, and Indian law. There will also be more than a full day of concurrent programming featuring the court's vaccine jurisdiction. The court has additionally lined up two exciting luncheon speakers: Chief Judge Randall Rader of the United States Court of Appeals for the Federal Circuit and Assistant Attorney General Tony West of the United States Department of Justice's Civil Division.

There will also be social and culinary offerings at two evening receptions, providing conference

registrants with a unique opportunity to mix and mingle with judicial officers and members of the court's bar.

For up-to-date information about the conference, please visit our [conference website](#). The site will be updated periodically with the latest conference information, including the agenda, speakers, registration, hotel accommodations in Berkeley, and important announcements. Conference sponsorships are available through Bryant Snee, CFC Bar President, at president@cfcbar.org.

Letter from the Chief Judge



*Chief Judge
Emily C. Hewitt*

Members of the United States Court of Federal Claims Bar Association, greetings, and, from the point of view of the court year, Happy New Year! August and September brought the arrival of the court's new roster of law clerks and the start of the new year for our returning clerks.

The "Welcome Breakfast" on September 14, sponsored by the CFC Bar Association, gave our incoming clerks an opportunity to meet judges and clerks from other chambers, members of the court's administrative staff and Bar Association leaders, all while enjoying a delicious breakfast buffet.

Don Grove, on behalf of the plaintiffs' counsel bar, and Jim Gette, on behalf of the Department of Justice, greeted the new and returning clerks. In addition, Judge Allegra, the only judge of the court who also served as a clerk to a judge on the court, stated that his year as a clerk was his top-ranked year in his legal career, certainly an encouragement to clerks (if perhaps only for the short run).

In subsequent letters, I will describe the various areas of responsibility of the Clerk's Office, but here I want to mention three new staffers that you are most likely to meet when you litigate at the court or engage in activities of the CFC Bar Association:

Anthony Curry joined Operations as Case Administrator in August. Anthony served as a Clerk for the St. Louis County Courts from 1998-2003, as a Judicial Administration Assistant from 2003-05 for the Missouri Court of Appeals, Eastern District, and, since 2005, as a Case Administrator for the U.S. Court of Appeals for the Eighth Circuit.

James Harper joined the IT/Systems Office as our Courtroom Technology Coordinator at the end of August. James transferred to the court from the U.S. District Court for the Eastern District of Arkansas, where he had worked since 2001 as the court's Computer Technology Administrator.

Aimee Snow joined Hazel Keahey's office as Hazel's Executive Assistant in July. She will be working closely with Hazel and the court's staff attorneys. Previously, Aimee worked as a paralegal for Patton Boggs, LLP from 2001-05 and for Morrison & Forester, LLP from 2005-11.

The court also said a fond farewell in August to Staff Attorney Michelle Beecy, formerly a law clerk to Judge George Miller and an associate at Hogan & Hartson, LLP (now Hogan & Lovells, LLP).

The next major court event sponsored by the CFC Bar Association will be the court's 24th Annual Judicial Conference to be held on Tuesday and Wednesday, October 18th and 19th in Berkeley, California at the Claremont Hotel and Conference Center.

The opening panel will focus on the fast-paced world of bid protests at the court, chaired by Judge Wheeler, followed by a presentation by our ethics panel, chaired by Judge Williams: "Pre-trial Ethics: When Do Litigation Tactics Cross the Line?" Luncheon remarks on Tuesday will be delivered by Chief Judge Rader of the United States Court of Appeals for the Federal Circuit. Chief Judge Rader's luncheon remarks will be followed by panels on protecting intellectual property in government contracts, chaired by Judge Damich, and scientific evidence in the CFC, chaired by Judge Allegra. A reception will conclude the first day of the conference, which will feature entertainment by Pro Hac Vice, the rock band led by (yes) Chief Judge Rader. As they say, "be there or be square."

The Hon. Tony West, Assistant Attorney General for the Civil Division of the Department of Justice,

will speak at our luncheon on Wednesday, following morning sessions focusing on multiparty litigation, chaired by Judge Horn, and cutting-edge issues and valuation in rails-to-trails cases, chaired by Judge Firestone. The first afternoon session on Wednesday will focus on water rights and Fifth Amendment takings by a panel chaired by Robert Meltz. The afternoon session concludes with a panel on Indian Law in the Supreme Court's 2011 term, chaired by Judge Bruggink.

Concurrent sessions on both days will focus on the National Childhood Vaccine Injury Compensation Program, including a panel during the opening session on Tuesday addressing the new Institute of Medicine report on vaccine safety, chaired by Chief Special Master Campbell-Smith. Also on Tuesday, Dr. Ellen Wright Clayton of Vanderbilt University will speak on genetic variation and adverse events, Special Master Vowell will chair a panel on vaccine case settlements, and Vincent Matanoski of the Department of Justice will speak on vaccine judgments and payments. On Wednesday, the concurrent vaccine program will include a report by Chief Special Master Campbell-Smith, the "Ask the Special Masters" Panel and a meeting of the vaccine petitioners' bar.

The conference will then adjourn to an early evening session at Berkeley Law School, concluding with a reception for bench, bar, faculty and students.

The court thanks the CFC Bar Association for its generous sponsorship of the Judicial Conference!

Upcoming events: keep an eye out for a save-the-date announcement of the Law Day luncheon in early May.

With all best wishes,

Chief Judge Hewitt

President's Message



Bryant G. Snee

Have you heard that the 2011 Court of Federal Claims Judicial Conference will take place on October 18 and 19 at the Claremont Hotel in Berkeley, California? I hope so, because if you haven't, then I haven't done my job as the President of this Association. And, while we don't want to harangue anyone, I hope you have heard about the conference more than once and from different avenues. Our Association has been working closely with the Court to ensure that we get the word out to everybody who might have an interest in the Court - whether they practice routinely before the Court or have only the vaguest notions of the Court's jurisprudence.

If you have not yet decided whether to attend this year's conference, it is not too late. Let me offer you a few specific reasons why you should attend:

1. **It will be professionally rewarding.** I have been litigating at the Court of Federal Claims for almost 22 years and have attended many judicial conferences over the years. But in the past few years, the Court and the Association have worked very successfully to strengthen the panels and programs offered at the Judicial Conference. And as I watch the finishing touches being applied to this year's conference, I am confident that this upward trajectory will continue. This year's conference has a host of new topics and speakers, and it will be, I am sure, engaging and lively.
2. **The conference program will cover all of the bases.** The conference agenda contains a balance of panels addressing specific substantive practice areas and general procedural matters that will be of interest to all practitioners. To be sure, one of the major challenges in planning professional educational programs for our bar is that the Court has many different substantive practice areas and, typically, practitioners do not cross subject-matter disciplines. But, personally, I find panels or programs addressing areas outside of those in which I typically practice to be rewarding, because often times I can profit by identifying parallels or trends from one practice area that are relevant to the areas in which I practice. After all, while the practitioners may know well their respective subject areas, the judges

know them all. Finally, we specifically structured the registration process and fees to permit one to attend for a single day of the conference for those who can accommodate only one day into his or her schedule.

3. **California is a nice place for a conference.** The Court of Federal Claims is a court of national jurisdiction, and this year it is using its Judicial Conference to reach out to those who practice before, or are interested in, the Court but do not live in the Washington, D.C. area. Attorneys who are located in California make up one of the largest segments of those licensed to appear before the Court. In addition to the fact that the conference is co-sponsored by the University of Berkeley Law School - Boalt Hall, there are five other ABA-accredited law schools in the Bay area. All of them have been invited to send faculty and students. Yes, for those of us who reside on the East Coast, attending the conference does mean a long flight. But I find that being that far from the office and being immersed in an educational program for a couple days, while not a vacation, is certainly professionally rejuvenating.
4. **The conference is a good value.** We have worked diligently to keep costs as low as possible to ensure the widest possible participation. Indeed, our conference fees are generally lower than other similar, professional legal organizations. We do not plan or structure the conference to act as a fundraiser for the organization. Additionally, consistent with our status as a 501(c)(3) organization, and in furtherance of our educational mission, we offer a scholarship program for those unable to afford even the relatively modest conference we charge.

To make things easy for you, here is a link to the conference [registration site](#).

I sincerely hope that you will join us in Berkeley. It will be well worth your time. I look forward to seeing you in California.

Bryant Snee, President
U.S. Court of Federal Claims Bar Association
president@cfcbar.org

2011-12 Law Student Writing Competition Now Underway!

The Bar Association's Law Student Writing Competition for the 2011-2012 academic year has now been announced. The announcement and the rules for the competition can be found on our website by [clicking here](#).

The Law Student Writing Competition is central to the mission of the Bar Association: to promote public awareness of, and interest in, the United States Court of Federal Claims and its distinctive role in American jurisprudence. Indeed, the writing competition is a prime example of why we sought, and deserve, 501(c)(3) status as a non-profit, charitable organization. By conducting this competition, we hope to encourage legal scholarship directed at interesting topics that lie within the substance, procedure, or scope of the specialized jurisdiction of the Court.

This is our third year of conducting the competition. The 2010 winner was Mr. Craig Schwartz, then a third-year law student at Northwestern University. Mr. Schwartz's paper, entitled "How to Tame the Tucker Act Shuffle After Tohono O'odham," was recently published in the UCLA Law Journal Discourses (59 UCLA L. Rev. Discourses 2 (2011)), and can be read by [clicking here](#).

The 2009 winner was Mr. Timothy Wyatt, then a third-year student at Wake Forest University School of Law. His article, entitled "In Search of 'Reasonable Compensation': Patent Infringement by Defense Contractors with the Authorization and Consent of the U.S. Government" was published in the Federal Circuit Bar Journal (20 FEDCBJ 79 (2010)).

For this year's competition, we have adjusted the rules slightly to make it easier for students to compete. Most notably, we changed the submission deadline to June 29, 2012, to afford students an entire calendar year to complete their papers. This deadline is consistent with other major law student writing competitions. Additionally, we increased the prize amount to \$2,000 under the notion that a little extra incentive would not hurt.

So please help spread the word about the competition and encourage law students to submit papers. Whether you have law student interns in your office, have a close connection with your alma mater, or simply know some law students through family and friends - please tell them about

the Association's law student writing competition.

Rules Changes Now in Effect

On April 28, 2010, the United States Supreme Court approved amendments to the Federal Rules of Civil Procedure (FRCP), including changes to FRCP 26 and 56, as proposed by the Judicial Conference. These amendments became effective on December 1, 2010. The Court of Federal Claims, after a comment period, has adopted those changes to the FRCP, and made some additional changes of its own.

The changes to the Rules of the Court of Federal Claims (RCFC) affect:

- (i) RCFC 3.1, 4, 5.5, 15, 26, 56, 59, 83.1, and 83.2;
- (ii) Vaccine Rules 2, 16, and 17; and,
- (iii) Appendices A, C, and E.

In addition, the revised RCFC include a new Supplement to Appendix B ("Electronic Case Filing Procedure in Vaccine Act Cases") and new Form 14 ("Order Implementing Fed. R. Evid. 502(d)").

Rule 26, dealing with discovery, has been amended to provide work product protection for draft reports by testifying expert witnesses, and to protect discovery of communications between a testifying expert and the lawyer, with three exceptions.

Rule 26 now also requires disclosure, even for witnesses who are not required to prepare a written report, of the subject matter of the witness's testimony and a summary of the facts and opinions the witness is expected to offer.

Rule 56, dealing with summary judgment, has been amended with respect to the procedure for filing and resolving motions for summary judgment, although the standard for summary judgment is not changed.

Changes to the RCFC include a reminder in the Joint Preliminary Status Report (JRSP) instructions that Rule 502(d) of the Federal Rules of Evidence (FRE) is available, along with a sample order implementing FRE 502(d).

You can still find the Court's Notice of Proposed Rules Change on the Court's [website here](#).

The Court, in response to comments, also adopted two technical amendments (not covered by the Notice of Proposed Rules Change), including a requirement that counsel provide an electronic mail address.

You can find the Court's Notice of Adoption of the Proposed Rules Changes on the Court's [website here](#).

The RCFC as revised can be found there as well. The revised rules became effective July 15, 2011.

"Brown Bag" Program Held for Summer Associates & Interns

On July 20, 2011, the Bar Association sponsored a "Brown Bag" educational program aimed at law students, law clerks, summer associates and interns, as well as young lawyers. A panel of judges and both government and private practice attorneys conducted a "tour" of the Court's unique and varied substantive practice areas. The panel was chaired by Chief Judge Emily Hewitt, who was assisted - both in substantive discussion and with magic tricks - by Judge Loren Smith.

The program was well-attended with almost 50 guests, and was very well-received, as evidenced by the questioning which pulled the program well past its allotted time. The program was held in the Tayloe House, with lunch provided courtesy of the Association. Our deepest thanks to panelists Brad Fagg of Morgan Lewis & Bokius; Brook Andrews of the Environmental & Natural Resources Division, DOJ; Justine Daigneault of the Vaccine Injury Litigation Section, Civil Division, DOJ; Don Grove of the Nordhaus Law Firm; Allison Kidd-Miller, National Courts Section, Civil Division, DOJ; and Fred Crombie, Tax Division, DOJ; as well as to Chief Judge Hewitt and Judge Smith for an

excellent and worthwhile discussion.

Our next "Brown Bag" program is planned for November 2011; details will be forthcoming shortly.

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