



U.S. COURT OF FEDERAL CLAIMS BAR ASSOCIATION



E-Newsletter

Winter Edition | December
2017

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 email newsletter@cfcbbar.org.

Need to join or renew your membership in the bar association? [Click here](#).

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Letter from the Chief Judge



*Chief Judge
Susan G. Braden*

Please [click here](#) to read the report of Chief Judge Susan G. Braden to the U.S. Court of Federal Claims Bar Association.

President's Message

Happy holidays to all! These are exciting and busy time at the Court of Federal Claims and for the Bar Association. The court's docket continues to grow. Indeed, the aftermath of Hurricane Harvey has brought more than 140 new cases to the court in the last few months. The Bar Association is also very



Edward J. Passarelli

active and has a growing membership base, gaining over 50 members in the last two months alone.

We are fresh off of our Annual Meeting of the Membership/Election & Holiday Social, which took place on December 7, 2017, at the Dolly Madison House. The gathering was not only well-attended by the bar membership, but also was attended by Judge Mary Ellen Coster Williams and Judge Loren Smith. In addition to catching up with old friends, the Bar Association elected an impressive slate of candidates, which can be found [here](#), to leadership positions, along with a new President of the Young Lawyers Division. Thank you to all who attended!

The Bar Association also recently announced the publication of the Sixth Edition of the Deskbook for Practitioners as a service to its members, the court, and all others with an interest in the court. We had true experts in their respective fields author each of the chapters in the Deskbook. It was a combined effort of government and private practitioners who have devoted many years to litigation practice before the Court of Federal Claims. We know you will gain substantial value and appreciate the perspectives on issues of law and practice addressed in the new edition. This volume provides a historical context for the court's work, including an overview of the Tucker Act, first enacted in 1887, which ushered in the court's modern era. It provides a thorough and up to date discussion of all the practice areas within the court's jurisdiction. It also provides a guide to many of the laws that define the court's authority to adjudicate claims against the sovereign and furnishes starting points for further research on the diverse issues addressed by the court. We know that you will appreciate and find the newest edition of the Deskbook for Practitioners an invaluable guide and resource in your practice before the court. If you are a current member of the Bar Association and have not already requested a copy of the new Deskbook, send a message to sandy@cfcbbar.org and include your current postal mailing address.

As this is my outgoing President's Message, I want to thank you for your support and again ask you to consider becoming involved in the Bar Association's many activities - attending or helping to plan Brown Bag educational programs, serving on a substantive committee, or writing a piece for the Newsletter, for example. And I welcome your suggestions and comments on any topic relevant to the Bar Association, at president@cfcbbar.org.

Best regards,

*Edward J. Passarelli
President, Court of Federal Claims Bar Association*

Ask the Judge!

We have a new feature in the newsletter, "Ask the Judge," which we hope will provide interesting insights from Court of Federal Claims judges on a wide variety of topics. Thank you to Judge Elaine D. Kaplan for serving as the first participant in this series!

1. What are your most favorite and least favorite aspects of being a Court of Federal Claims judge?

Judge Kaplan: My favorite aspect of being a judge on the Court of Federal Claims is the intellectual challenge of working through difficult legal issues. I enjoy writing and I also enjoy presiding



Judge Elaine D. Kaplan

over proceedings in court. It's remarkable how different the view is from the bench as compared to the view standing at the lectern. It's really a lot of fun (in a nerdy kind of way) when counsel are well prepared, able to respond to my questions (of which there are usually quite a few), and able to present their cases in a way most favorable to their client. Good lawyering makes my job so much easier.

My least favorite aspect of being a judge is the isolation of it. When I first got here it was a relief to have empty email and voice mail in-boxes. It was also terrific to have the time to think instead of just react. But there is certainly a down side to all of that as well. As time has gone on I appreciate more the wisdom of those who warned me that being a judge can sometimes be a bit lonely and I realize that I need to think about ways to address that.

2. Identify the one federal or state court judge, living or dead, whom you admire the most and explain why.

Judge Kaplan: I admire a number of judges but if I had to pick one, it would be Patricia Wald, formerly the D.C. Circuit's Chief Judge. I appeared in front of Judge Wald on a number of occasions and observed her in many cases where I was not doing the argument myself. Judge Wald was brilliant and well-prepared. She always asked insightful questions and she always treated all counsel with the utmost respect, even when they didn't necessarily seem up to the task. And she has spent her entire long and distinguished career in public service.

3. When did you first realize that you might be interested in being a federal judge?

Judge Kaplan: I am not sure I ever really thought about it much until a few years before I was nominated. I never really had a clear strategy in my legal career about where I wanted it to go next or end up. I generally just took advantage of opportunities as they were presented to me. With respect to a judicial appointment, it seemed like the right move for me after so many years of practicing law and I had been working with folks in White House Counsel's office who thought I would be a good candidate. So I went for it.

4. What suggestions do you have for attorneys who file briefs in the Court of Federal Claims? More specifically, what distinguishes an effective brief from one that is not and what percentage of briefs do you find to be especially helpful and well-written?

Judge Kaplan: An effective brief is one that is clearly and concisely written and organized in such a way as to lead from point A to point B in a logical fashion. I recommend providing a summary of argument that actually tracks your argument. Use topic sentences. Only cite cases that are actually on point and then use parentheticals so I know why you cited the case before I even read it. Provide citations to the record for every assertion that is based on the record-it's kind of aggravating to have to hunt for it. Do multiple drafts to edit out extraneous stuff and eliminate bombast, particularly snarky comments about the other party (which are more fun for you to write than for the judge to read). I would say about one third of the briefs I receive are very well written and helpful, another third are adequate. A final third not so much.

5. Before you became a judge, you worked at senior legal positions in the Government and in private practice. What did you enjoy most about each? What were the major differences between the two?

Judge Kaplan: I was the general counsel at OPM from 2009-2013 and from 1998-2003 I

was the head of an independent agency, the Office of Special Counsel. My time in private practice was primarily with the National Treasury Employees Union, most recently as its Deputy General Counsel. What I enjoyed most about my time at OPM was the opportunity to work with people across the executive branch to use the law to promote the President's agenda. I worked on some very important and high profile issues with some terrific colleagues-lawyers and non-lawyers alike. And I learned a tremendous amount about how our government functions (and sometimes fails to function). My term as Special Counsel was a little different in that I headed up an independent investigative and prosecutorial agency-I wasn't part of a team as I had been at OPM, I was more of an outside watchdog. I enjoyed serving as Special Counsel because I believed in the agency's mission and because I felt that it had an untapped potential to do good. I also had no boss, which was kind of nice. NTEU is the place where I really matured as a lawyer. I got to brief and argue cases at all levels in the federal courts, and we worked on a lot of cutting edge issues involving freedom of speech, privacy, separation of powers, as well as labor and employment law. NTEU was a special place to work-a very dedicated and talented group of people with whom I formed a number of life-long friendships.

The difference between working at NTEU and in my government jobs is this: I was acutely aware as OPM's GC and as Special Counsel that I had an obligation as a government official not to do anything, say anything, (or appear to do or say anything) that would conflict with the public trust placed in me and/or reflect poorly on the President. Of course, in private practice it is also critical to comply with one's ethical obligations. But being a political appointee in Washington DC is not unlike swimming in a bowl full of piranha. It therefore calls for an even greater level of vigilance.

6. *What do you do for enjoyment and/or relaxation in your spare time?*

Judge Kaplan: I like to cook. I also like to hike and ride my bicycle. I enjoy the beach quite a bit; we have a house in Rehoboth Beach, Delaware and I try to spend as much time as possible there when the weather is good.

7. *You have resided in the Washington, DC area for the majority of your professional career. Who are your favorite DC sports teams and why?*

Judge Kaplan: I have actually resided in Washington, DC for my entire professional career-I came here in 1976 to go to law school (at Georgetown) and I never left. My favorite DC team is the Washington Nationals (and I have the bobblehead collection to prove it). I have been a big baseball fan since I was a kid in Brooklyn but after I moved here to DC I stopped following baseball because we had no team. I just couldn't bring myself to root for the Orioles. Once the Nats came to town I rediscovered the game. Unfortunately, the Nationals cannot seem to get past the first round of post-season playoffs, but hope springs eternal.

Randolph W. Thrower Award

The 2017 Randolph W. Thrower Award, which is presented annually by the Court of Federal Claims Bar Association to an individual who provided "exceptional service to the Bar," was awarded on December 7, 2017 to [Jeffrey Chiow](#), a shareholder at the law firm of Rogers, Joseph and O'Donnell, PC. Jeff was recognized for his many contributions to the Bar Association, including his outstanding and tireless service as Editor of the recently



L-R: Senior Judge Loren Smith, Jeffrey Chiow, and Edward Passarelli

released Sixth Edition of the Deskbook for Practitioners.

The award is named for the first president of the Bar Association, Randolph Thrower, who passed away in 2014 at the age of 100. A fascinating read on his storied legal career can be found [here](#), and includes an account of Thrower's resignation as Commissioner of the Internal Revenue Service during the Nixon Administration in 1971, years before Thrower became our first Bar Association president in 1987.

Congratulations, Jeff!



Randolph W. Thrower, shown during a Capitol Hill appearance in 1970

Recap of Brown Bag Lunch Series: E-Discovery



On October 24, 2017, the Young Lawyers Division hosted an E-Discovery Brown Bag at the Federal Circuit Bar Association. Panelists included Judge Mary Ellen Coster Williams (United States Court of Federal Claims), Sarah Himmelhoch (Sr. Litigation Counsel for E-Discovery, DOJ Environment & Natural Resources Division), Michelle Litteken (Government Contracts & Litigation Association, Piliero Mazza), and Allison Stanton (Director of E-Discovery, FOIA & Records, Office of the Assistant Attorney General, DOJ Civil Division).

Our distinguished panel covered the basics of e-discovery, its prevalence, and emerging issues. The Brown Bag was well-attended both in-person and online via the webcast option, graciously provided by the

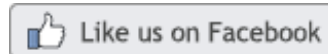
Federal Circuit Bar Association.

Did You Know?

The Court of Federal Claims Bar Association's first meeting was held on May 11, 1987 at the Washington Hilton Hotel. An April 1987 memorandum referencing the first meeting ([and available here](#)) was recently discovered by current Bar Association President, Edward Passarelli, who wrote the memo. Although much has changed in the 30 years since the Bar Association's founding, Bar Association dues have not. The annual rate for membership in 1987 was \$35 for government attorneys and \$50 for private attorneys - and those rates have only increased \$10 in 30 years!

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The Bar Association has a Facebook page where we will post the latest news, events and other important information. Click on the link below and when you get to our page click "Like" so you can stay informed.



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