



U.S. COURT OF FEDERAL CLAIMS BAR ASSOCIATION



E-Newsletter

Spring Edition | April 2020

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.

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Letter from the Chief Judge



*Chief Judge
Margaret M. Sweeney*

Greetings, members of the United States Court of Federal Claims Bar Association.

The year began auspiciously for the court. We were very pleased to welcome two new judges--Judge Matthew H. Solomson and Judge Eleni M. Roumel. In addition, we planned an exciting Law Day Observance Luncheon on May 12 with former Solicitor General Paul D. Clement as the keynote speaker and had begun preparations for several other events to occur later in the year, including the court's annual judicial conference scheduled for October 5.

Then, unexpectedly, COVID-19 appeared, disrupting our lives in ways that were, for many of us, unimaginable. I speak for everyone at the court in wishing you, your family, and your loved ones good health and good spirits during this difficult time.

Despite the challenges presented by the pandemic, the court has been able to maintain close-to-normal operations. We are very fortunate to have a fully developed Continuity of Operations Plan, initially championed by then-Chief Judge Patricia E. Campbell-Smith, that provides a framework for ensuring that the court can maintain essential operations in an emergency (indeed, it has a section devoted to pandemics). The court has conducted off-site COOP exercises to refine the plan, and has implemented various practices and procedures, such as a comprehensive telework policy, to ensure its efficacy. Thus, although we experienced a few small hiccups along the way, with the hard work of the court's staff, we have been able to transition to a new way of doing business without much difficulty.

I want to specifically highlight some of the steps the court took to ensure that it could

continue to adjudicate cases as the current situation unfolded. In early March, behind the scenes, court staff began to discuss and develop specific plans to provide for uninterrupted court operations. Then, on March 16, in conjunction with the Federal Circuit, the court restricted public access to the Howard T. Markey National Courts Building to ensure the health and safety of court personnel and those doing business with the court. Two days later, the court suspended the paper filing requirement in pro se cases, allowing all parties in such cases to file documents electronically, to further minimize the health and safety risks posed by the pandemic.

Moreover, the court's judicial officers have continued to effectively manage their cases. Working remotely, judges and special masters have entertained motions, facilitated settlements, and issued decisions. Additionally, to the extent possible under the circumstances, they have been able to conduct proceedings using telephone and video conferencing. These technical capabilities--remote access, telephone conferencing, and video conferencing--are made possible by the court's talented IT staff and through the infrastructure provided by the federal judiciary, which has ensured that its 30,000 employees can continue their important work to support the essential functions of the federal courts.

Finally, I am pleased to report that the court was able to contribute to the nation's efforts to fight COVID-19. Inspired by the news that district courts in Florida discovered stockpiles of personal protective gear that they were able to donate to local hospitals, court staff undertook an inventory of the court's emergency supplies to identify items that would be suitable for donation. They located 40 N95 respirator masks, 150 particulate masks, 500 procedural masks, and 58 Tyvek suits that could be used by health care workers at local hospitals. On April 7, our staff personally delivered half of those items to MedSTAR Washington Hospital Center and the other half to Children's National Hospital, with both hospitals expressing their gratitude for the donation of this much-needed equipment. We know that many of you are making similar contributions in your communities, and we applaud those efforts.

In closing, although some of our methods have changed, please rest assured that the court is doing everything within its authority to ensure that cases are fully and fairly adjudicated, and that the rule of law is maintained. In addition, the Bar Association's Board of Governors continues to meet regularly to discuss future events. We were disappointed that we had to cancel next month's Law Day Observance Luncheon, but hope that we can proceed with events scheduled for later this year, including the judicial conference. I look forward to reconnecting with you when it is safe to do so, and I am confident that with the enthusiasm and resilience of its members, the bar will emerge from these extraordinary circumstances as strong as ever.

Kind regards,

Margaret M. Sweeney
Chief Judge

President's Message



James Boland

Dear Members,

To echo Chief Judge Sweeney, 2020 is not the year we envisioned. It was with great disappointment that the Court and Bar Association canceled this year's Law Day Observation Luncheon. The Board of Governors recognizes that travel restrictions and social distancing requirements implemented in response to the COVID-19 pandemic will likely impact our ability to organize Bar Association events in the near future. The Board continues to meet on a regular schedule and will make decisions regarding

future events, including the judicial conference scheduled for October 5, based on current

conditions.

Earlier this year, prior to COVID-19, the Bar Association was looking forward to publishing a new schedule of CLE-accredited educational programs with lunch provided. While the future conditions are unknown, we are currently planning webinar and in-person events on July 14 (fundamentals of vaccine practice), September 17 (bid protests), and November 18 (practice and presentation skills for new practitioners). Please stay tuned for future announcements. I would encourage any member who is interested in organizing an event this year to contact me or other members of the Board of Governors—we would welcome your contribution.

We were also in the early stages of planning what we anticipate will be a new annual Bar Association Summer Reception for members only. This reception would provide an additional opportunity for members to socialize with each other and the Court. We were especially looking forward to hosting a reception this summer to provide the Bar Association an opportunity to meet the Court's newest judges, including Judge Eleni Roumel, Judge Matthew Solomson, and Judge David Tapp. If conditions prevent us from hosting an event later this summer or even in the fall, we will have to wait until 2021 to begin this new tradition.

On behalf of the Bar Association, thank you for your continued support and contributions. We hope you stay safe and healthy during this time.

Best regards,

James Boland
President, Court of Federal Claims Bar Association

Ask the Judge!

We hope you enjoy the latest in our series, "Ask the Judge," which we hope will provide interesting insights from Court of Federal Claims judges and special masters on a variety of topics. Thank you to Judge Matthew Solomson for serving as the latest participant in this series!

1. This month's newsletter is about the importance of the Rule of Law in times of crisis. You've had a legal career that's touched nearly every aspect of law, from in-house Chief Legal and Compliance Officer of a Fortune 50 company, to counsel in government contracts litigation groups for two law firms, to Trial Attorney with the US Department of Justice in the Commercial Litigation Branch, Adjunct Professor at the University of Maryland Francis King Carey School of Law, and now serving as a Federal Judge in the US Court of Federal Claims. You have experienced the Rule of Law from multiple perspectives. How has that informed your view of ability of the Rule of Law to be a force of stability during a national crisis?

RESPONSE:

I hope this isn't conforming to some judicial or attorney stereotype, but we first must define our terms. One definition of rule of law describes the term as referring to the principle under which all persons, institutions, and entities are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated. I would add to that list understandable, predictable, and stable. Our role in the judiciary requires us to contribute to all those elements (except, of course, for promulgating law). During a national crisis, stability is particularly important, and that means trying to keep the machinery of justice moving forward as quickly as we would in normal circumstances. In that regard, given my background both representing clients doing business with, and litigating against, the government - as well as representing the government itself - I can assure you that everyone wants their disputes resolved yesterday. Litigants no doubt think that cases take too long and cost too much as it is, and my view is that we as judges should do everything we can to be sensitive to those concerns at all times, and particularly during this health crisis, when some measure of delay and inefficiency is unfortunately inevitable.

2. Did your view of the role of Rule of Law evolve as you transitioned from private sector to public sector? If so, how?

RESPONSE:

Perhaps in one respect. There is a debate within the legal community - including politicians, judges, attorneys, and academics (and in the popular press) - regarding the proper role of the judiciary. Is the job of a judge to be a baseball umpire, calling balls and strikes as best we can? Or is that a poor metaphor because objectivity is impossible and the application of legal concepts to facts is not a mechanical process, subject to scientific verification? Those issues weigh heavily on me because they're theoretical, until you're wearing a robe and issuing orders that impact lives and, in the cases before our court, the public fisc. That said, I remain committed to the umpire metaphor. While attorneys are ethically obligated to frame the law in the manner most helpful to their clients, and while academics train law students to ask what they think the law should be, I would suggest that a judge should ask what the law is. I think the mindset is important. Even where a case asks us to decide an issue where there is no clear answer, we should view ourselves as being constrained or compelled by the right answer, as opposed to what we might want the outcome to be, or what we might hold if we were the legislature (or perhaps the Supreme Court). As one of my mentors once put it, the law may not be math or physics (in terms of its ability to be applied objectively), but neither is the law like poetry. Part of cultivating the rule of law - and our citizenry's confidence in it - is fostering the belief that judges, although human, are doing their best to be as objective as possible.

3. You've written a treatise on the US Court of Federal Claims. What, do you believe, is the unique role of the Court of Federal Claims with respect to the Rule of Law in the United States?

RESPONSE:

That's an easier question than the last one.

Our court has been referred to as "the keeper of the nation's conscience," and "the People's Court." I've recently started to research the provenance of those descriptions, but the basic point is that the U.S. Court of Federal Claims plays a unique role in deciding claims - albeit primarily monetary claims - against the United States itself. Not everyone on this planet - not by a long shot - has the great honor and privilege of living in a country where they can call their government to account for its dealings. I am particularly sensitive to that reality, given that my ancestors, who immigrated to this country in the late 1800s and early 1900s, fled persecution by their own (former) governments.

More granularly, the Court's subject matter jurisdiction and the particular categories of claims we consider - as bar members are well aware - often require highly specialized experience to litigate. If I recall correctly, both Judge Allegra (of blessed memory) - for whom I clerked and who graciously wrote a foreword for the treatise - and I advised in the treatise that counsel litigating cases in our Court must have a sound and thorough understanding of the Court's subject matter jurisdiction and procedures. If I may say so, that would be good advice in any court or with respect to any legal subject, but it is particularly true in litigating against the sovereign.

4. What role does the Bar play in promoting and protecting the Rule of Law in times of crisis?

RESPONSE:

Whether members of the bar are in-house, represent private parties in the Court, or represent the government - whether at the Justice Department or a government agency - everyone supports the Rule of Law by doing their job ethically and well. Excellent lawyering really does help the Court make better decisions, even if one side is always disappointed with the result. And better decisions - however someone wants to define that - enhance the law, at a minimum by providing citizens and their government more clarity in their arrangements on a going forward basis.

5. What is the role of judges in promoting and protecting the Rule of Law in times of crisis?

RESPONSE:

I apologize for plagiarizing my answer to the first question, but we need to keep the wheels of justice turning as fast as we possibly can to remove uncertainty, resolve disputes, and let everyone know that the judicial branch is not taking a vacation. It's trite, perhaps, but justice delayed is justice denied ... particularly if interest isn't recoverable (that's intended as sovereign immunity humor).

Rapid Fire Round!

6. Mac or PC?

RESPONSE:

Both - Mac for home use; PC for work.

7. Top-three songs on your Spotify/i-tunes playlist?

RESPONSE:

God's Country; May We All; Something to Be Proud Of. (Yes, I like patriotic/sentimental country music.)

8. Federer or Nadal?

RESPONSE:

Neither. I enjoy watching tennis in the summer months, but I don't have much of a preference in any professional sports, much to my son's frustration (he votes for Nadal, however).

9. Rehoboth, Ocean City or Dewey Beach?

RESPONSE:

None. I've only been to those beaches a few times and not since high school. My family prefers the beach in Hilton Head, SC, where we've been vacationing for nearly 23 years.

10. Stay-at-Home Binge: books or television?

RESPONSE:

My wife is a children's librarian, so I feel compelled to respond with books, but the truthful answer is TV. My defense is that I read and write all day for a living.

Ask the Special Master!

We hope you enjoy the latest in our series, "Ask the Special Master," which we hope will provide interesting insights from Court of Federal Claims special masters on a variety of topics. Thank you to Special Master Brian Corcoran for serving as the latest participant in this series!

1. This month's newsletter is about the importance of the Rule of Law in times of crisis. You've had a legal career that's touched both private sector litigation and government service in the US Department of Justice, Special Master, and now Chief Special Master. You have experienced the Rule of Law from multiple perspectives. How has that informed your view of ability of the Rule of Law to be a force of stability during a national crisis?

RESPONSE:

As the pandemic continues, it is important that citizens see their government functioning as before. The federal courts serve a vital role in providing such reassurances - not only by remaining "open" to a large extent, but by continuing to perform their duties at a professional level. My private sector experience helps me understand how important it is

for individuals to not lose access to judicial processes (since the need to adjudicate disputes does not abate); my government experience has taught me the significance of ensuring that the courts (including the Office of Special Masters) keep providing the same level of neutral adjudicative services they would under normal conditions.

2. Did your view of the role of Rule of Law evolve as you transitioned from private sector to public sector? If so, how?

RESPONSE:

Yes. As a private practice attorney, I worried mostly about zealous (but ethical!) service to my clients - "winning" the case for them. After I started at the Justice Department, however, I began to understand better how competent legal work on behalf of one party to a dispute is only one facet of the overall adjudicative process. Government lawyers also like to win cases, but they have to keep in mind policy considerations that are not as self-evident in the private sector. This gave me a far better appreciation of the overall "rule of law," and the specific role tribunals play in maintaining stakeholder faith in that concept.

3. You've performed pro bono representation in civil rights cases and employment discrimination actions, and at the DOJ you obtained injunctions against fraudulent tax preparers and promoters of illegal tax schemes. Do you see the Rule of Law as a tool to level the playing field for marginalized and at-risk members of society and how important is it in times of national crisis, such as the COVID-19 pandemic?

RESPONSE:

Definitely. The Vaccine Program exists to do just that for individuals who believe they have been injured by a vaccination - and in fact is intended to provide a more expedited process to do so. The Court of Federal Claims itself takes great pride in its role as the "People's Court," existing so that U.S. citizens have a specific means of judicial redress against their own government. OSM also take special care to address the concerns of pro se litigants. In all of these regards, we are hopefully demonstrating through the judicial process that, win or lose, citizens will be heard by their government - a message with special resonance in difficult times like these.

4. What role does the Bar play in promoting and protecting the Rule of Law in times of crisis?

RESPONSE:

By continuing to litigate claims and perform legal tasks for petitioners, even under the duress of working from home or dealing with deadline extensions forced upon us all by circumstance, the Vaccine Court Bar is extremely important in helping OSM process claims and resolve cases, which in turn increases people's confidence in the rule of law.

5. What is the role of special masters in promoting and protecting the Rule of Law in times of crisis?

RESPONSE:

We have to keep doing our jobs as well as we can - decide cases fairly and correctly from a legal standpoint, promptly issue compensation and fees awards, and remain responsive to the needs of petitioners generally. Although we have been mostly teleworking throughout the crisis, the "Vaccine Court" remains open as before, and we hope to find creative ways to continue to perform hearings going forward, even if more parties/witnesses have to be heard by videoconference.

Rapid Fire Round!

6. Mac or PC?

RESPONSE:

The Court is a PC world, with a few permitted Apple peripherals - phones and pads. But I'd take Apple exclusively if I could.

7. Top-three songs on your Spotify/i-tunes playlist?

RESPONSE:

These days I am listening a lot to Robert Earl Keen, Miles Davis, and classic Brazilian Bossa Nova.

8. The Big Green or The Lawn?

RESPONSE:

I'm very fond of both of my institutions of higher learning - but I will admit that Dartmouth's combination of frigid New Hampshire winters and dark, smelly fraternity basements had a pathologic effect on me that I have never escaped.

9. Chili: Beans or no beans?

RESPONSE:

No beans ever.

10. Stay-at-Home Binge: books or television?

RESPONSE:

I try to read one work of fiction a month, but looking at words all day at work makes it hard to eyeball even more in my off hours. TV is easier on the mind as a general matter.

Ask the Staff!

We hope you enjoy the latest in our series, "Ask the Staff," which we hope will provide interesting insights from Court of Federal Claims staff on a variety of topics. Thank you to Debbie Samler for serving as the latest participant in this series!

1. This month's newsletter is about the importance of the Rule of Law in times of crisis. You're a Judicial Support Specialist. How would you define your job? How has your job informed your view of ability of the Rule of Law to be a force of stability during a national crisis?

RESPONSE:

I spent many years in the Operations division of the Clerk's Office, in various capacities, before becoming a Judicial Support Special. I now report directly to the Clerk of Court and am responsible for maintaining our bid protest assignments, pre-filing notices and notifications to the court once a protest has been filed. I also enter judgments for both General Jurisdiction and Vaccine cases and work with the Finance division in preparing travel authorizations and approving travel vouchers for court employees. I also assisted with the opening of new complaints, and when the National Childhood Vaccine Injury Act gave the court jurisdiction over vaccine cases, I spent many long hours with other members of the Clerk's Office trying to get the thousands of cases we received organized and processed in as timely a manner as possible in order to get them to the Special Masters. We ended up having a sort of production line in order to process them as efficiently as possible. During that time, there were many days that I didn't leave work until 10 or 11 at night.

Due to my spending so many years in Operations, I have a good knowledge of court procedures and rules, and use my knowledge to assist chambers, the Clerk and staff attorneys with any help they may need. Being able to work remotely in all aspects of my job has allowed me to process filings, enter judgments, serve the parties either electronically or via U.S. mail, and assist chambers, court staff and the public via email or phone in a timely and efficient manner so that all elements of the Rule of Law are preserved during a national crisis.

2. Has your view of the role of Rule of Law in society evolved since you started in the 1980s? If so, how?

RESPONSE:

Before being employed by the Court in 1982, I had very little knowledge of what the Rule of Law was all about. Now that I've been with the court for so many years, I feel that it is up to the court to make sure that all litigation is heard and decided in a timely and unbiased manner. All litigants need to be treated with respect and courtesy.

3. You've had a front row seat for the evolution of the Court of Federal Claims. How has the Court changed since you started? How has your work changed?

RESPONSE:

When I started at the court, the entire Clerk's Office consisted of approximately 12 people to get everything done. That included the human resources, finance and the handling of all documents that came into the court. Now, there are over 40 people in the Clerk's Office, and it's broken down into different divisions to make sure all aspects of the court run smoothly. Due to all the changes going on with the creation of the Court of Federal Claims, I basically taught myself how to do just about everything that had to do with the filing of documents, court proceedings, the entering of judgments, etc. Until 2003, all court filings were filed in paper as were all court docket sheets, reports needed for stats, etc. All entries on the docket had to be typed using a typewriter, and all filings had to be physically stamped with file stamps. Being old school, I at first resisted the new technologies, but eventually embraced them, finding it so much easier to research filings for the court and public, create reports with the click of a button, etc. Because of technology, I'm now able to work from home (or just about any place in the world) and connect with coworkers, judges, special masters and the public with ease. I have found that the downside to advances in technology is that unless an effort is made, there is less face to face interaction with court staff.

4. What is your favorite part of your job?

RESPONSE:

Interacting with chambers and the other divisions of the Clerk's Office and Staff Attorneys' Office to help them do be able to do their jobs efficiently. I love being able to work on special projects the Clerk or Chief Judge has asked to me to be a part of.

5. We understand your passion is rescuing dogs. Tell us about the groups you're involved in, your dogs, and why this became your passion.

RESPONSE:

I started volunteering with the Humane Society of Calvert County in 2005, right after Hurricane Katrina, when a call went out for foster homes for dogs they had rescued from the aftermath. Shortly after starting to volunteer, I was asked to become a board member on the Board of Directors, and for the majority of my time on the board, I held the position of Secretary. I fostered dogs and cats and spent most weekends volunteering at HSCC's kennel helping out in anyway I could and eventually became an adoption counselor which allowed me to pull dogs and cats from our local kill shelters and find them their forever homes. I also represented HSCC at different animal related events that were held in the area. These events ran the gamut from adoptathons to fundraising events to education seminars. In late 2018, I was asked to be part of the Friends of the Linda L. Kelley Animal Shelter that was being formed to assist the new animal shelter in Calvert County with financial needs that the county budget wouldn't cover. We become an official non-profit in early 2019 and I serve on the board as Secretary. We basically provide funds to help the shelter with medical issues so that all animals have a chance of leading long and healthy lives. We also provide supplies to enable the shelter to save as many animals as possible. As we get more established and raise more money, we also want to be able to provide monetary assistance to help bring justice to those animals that end up as victims of animal cruelty. I'm not entirely sure why this became a passion of mine, other than I believe that all animals deserve loving homes and that the public needs to be educated about all the misperceptions that are out there about various breeds.

Rapid Fire Round!

6. Mac or PC?

RESPONSE:

PC

7. Top-three songs on your Spotify/i-tunes playlist?

RESPONSE:

I don't have spotify/i-tunes playlists, but my favorite types of music are oldies or country.

8. Big dogs or little dogs?

RESPONSE:

I really have no preference as long as we connect. Most of my dogs have been in the medium/large size range.

9. How many pets do you have and what kinds?

RESPONSE:

I currently have 7 cats (thanks in part to my daughter's love of rescuing strays when she was in college) and 2 dogs, a beagle and puggle mix. Two of the cats and both dogs are former fosters that ended up finding their forever home with me.

10. Stay-at-Home Binge: books or television?

RESPONSE:

Books

Important Announcements from the Court

Vaccine Petitions

Electronic Service on Secretary of Health and Human Services

Due to the COVID-19 public health emergency, petitioners may, until further notice, serve the Department of Health and Human Services with petitions electronically. Contact [Carole Marks](#) at HHS for instructions.

Civics Resources for Quarantined Teachers, Parents, and Teens

If your community is under quarantine due to the COVID-19 virus, distance learning provides an avenue to keep both you and your homebound teen occupied. To help better understand the Federal Judiciary, the Administrative Office of the U.S. Courts has created an educational page with links to videos and other materials on various civics related topics. [Online Tools Make Civics Accessible to Teachers, Parents, and Teens](#)

Suspending Paper Filing Requirements in Pro Se Cases

Based on declared public health emergencies impacting Washington, D.C. and the National Capital Region, and ongoing efforts to mitigate community transmission and the impact of COVID-19, there is an immediate need for the United States Court of Federal Claims to take steps to limit the number of court personnel who are required to be available to process filings submitted through the U.S. Mail, by messenger, or in the court's night box. Providing pro se litigants with the ability to submit and be served with filings electronically will reduce the number of court staff required to process paper filings, which will minimize the risk to the health and safety of both court staff and the public conducting business with the court. For more information, please see the [General Order](#).

COVID-19 Public Access Restriction

Based on declared public health emergencies impacting Washington, D.C. and the National Capital Region, and ongoing efforts to mitigate community transmission and the impact of COVID-19, there is an immediate need for the United States Court of Federal Claims to restrict public access to the Howard T. Markey National Courts Building. These restrictions will be in place as a temporary measure in response to the COVID-19

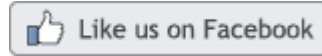
pandemic and to minimize the risk to the health and safety of both court staff and the public conducting business with the court. For more information, please see the [Administrative Order](#).

Coronavirus (COVID-19) Update

The United States Court of Federal Claims (USCFC) is actively monitoring new developments regarding the Coronavirus (COVID-19). Please click [HERE](#) for more information.

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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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