U.S. COURT OF FEDERAL CLAIMS BAR ASSOCIATION

E-Newsletter
Spring Edition | March 2025

Dear Member,

We are pleased to share the Spring 2025 edition of the Court of Federal Claims Bar Association E-Newsletter. This issue explores the theme of *Collaboration and Compromise*, a cornerstone of effective advocacy and judicial practice. We are honored to feature insights from Chief Judge Elaine Kaplan, Bar Association President Julia Collison, Judge Robin Meriweather, Special Master Nora Beth Dorsey, and Staffer Summer Maynard.

In addition to these contributions from esteemed members of our community, this edition includes important updates and links to upcoming Bar Association events. We hope you find this newsletter both informative and engaging.

If you have any questions or comments, or would like to submit an article for a future newsletter, please email **newsletter@cfcbar.org**.

Need to join or renew your membership in the bar association? **Click here**.

Letter from the Chief Judge

In our adversarial system of justice, lawyers are imbued with the warrior ethos. Our legal training teaches us to be “zealous” advocates for our clients. Nonetheless, to serve our clients, lawyers must also understand the power of collaboration and compromise.

Take the case of Mary Smith (an obvious pseudonym). Ms. Smith is an older worker who has been with the same employer for many years. Her new supervisor, who is twenty-five years her junior, thinks her performance has been slipping. He has started to micromanage her, take away responsibilities, and re-distribute her work to younger colleagues. He has denied her a promotion. He has also been overheard making disparaging comments about the baby boomer generation, openly questioning

why they don't just "get out of the way already" and let the next generation have its chance.

Feeling underappreciated, not to mention harassed, Ms. Smith has hired a lawyer to file an age discrimination complaint. Her attorney thinks she has a strong case, particularly given her supervisor's disparaging comments about baby boomers. At the very least he thinks that he may be able to score a settlement that keeps her on the job, restores her responsibilities, pays her attorney fees, and perhaps affords her some compensation for the denied promotion.

Meantime, her supervisor is adamant that he wants to replace her. He feels offended by her threat to file a discrimination complaint. He will not even consider a settlement that keeps her on the job.
This seems like a case that cries out for settlement because—truth be told—while Ms. Smith doesn't appreciate being pushed out, she doesn't want to stay. In fact, she is ready to retire. But should her lawyer broach settlement as a possibility or would that betray weakness?

If the complaint had already been filed, this might be an appropriate moment for the presiding judge to hold a status conference and encourage the parties to take a week to talk settlement, either on their own, or with the assistance of a third party neutral. Obviously, the judge should be careful not to get too involved in the specifics of possible settlement terms or to do anything that suggests a lack of impartiality.

In the case of Ms. Smith, her attorney bit the bullet and brought up settlement. The employer was happy to receive a proposal that did not involve Ms. Smith remaining on the job. Ms. Smith agreed to retire, which was what she really wanted anyway. Her employer agreed to give her a retirement party at which she received an award, and colleagues past and present praised her contributions. The employer also agreed to pay her attorneys' fees, which were at this point fairly modest. So Ms. Smith was able to walk out on her own terms, with her head held high and her long years of service publicly acknowledged. And her employer got what it wanted too, along with avoiding the costs—financial and otherwise—of litigation.

The successful settlement in Ms. Smith's case was the product of her lawyer's ability to discern that what Ms. Smith really wanted (a dignified exit)—and the willingness of opposing counsel to collaborate with him on a creative proposal for achieving that end. Both counsel had to fend off their natural instincts to fight it out. And both parties had to be willing to set aside their positions and concentrate instead on their interests.

In short, there is no inconsistency between zealous advocacy and compromise. Where the parties collaborate with an eye to meeting everyone's interests to the greatest extent possible, that collaboration can yield results that serve both clients' interests better than a victory in litigation.

Chief Judge Elaine D. Kaplan

President's Message

Dear Colleagues,

Happy spring to our bar members across the country and to those enjoying the newly warm DC weather!

This month's theme of *Collaboration and Compromise* is particularly relevant to our bar association because in our line of work – civil litigation – most cases ultimately settle. Our members collaborate and come to compromise resolutions every day.

Compromising is the same in most cases. As it was once explained to me in a training, a good litigative compromise is one with which neither party is entirely satisfied.

Collaborating can be trickier. Every attorney has an innate negotiating style. *See Bargaining for Advantage: Negotiation Strategies for Reasonable People*, G. Richard Shell (3d. Ed., 2019). But regardless of style, the most successful negotiators are credible – they speak the truth and follow-through on their promises. It does not matter if you are the smartest person at the negotiating table if you are not credible.

Attorneys have a duty of candor to the Court. To be successful collaborators, we must also exhibit candor with one another. This is particularly true in the Court of Federal Claims where the attorneys on both sides of the "v." are often familiar to the Court and to each other. I feel privileged in my Court of Federal Claims practice to frequently face opposing counsel with whom I have established relationships and mutual respect.

On a final note, I acknowledge that some members of our bar association are facing unprecedented professional challenges. It is objectively uncomfortable to work without the resources you need or confidence in your job security. I sincerely hope that this work environment will improve by the next quarterly newsletter. And in the meantime, my thoughts are with you.

Julia Collison
President, Court of Federal Claims Bar Association

Ask the Judge!

Judge Robin M. Meriweather

1. What strategies do you employ to encourage meaningful compromise between litigants while ensuring that judicial impartiality remains uncompromised?

ANSWER: I find it helpful to check in with parties at key stages of the litigation to ask whether they are interested in mediating any disputed issues, and to revisit that issue even if the parties initially decline to pursue mediation or engage in settlement negotiations. In addition, I encourage parties to confer in an effort to narrow or resolve discrete disputes regarding scheduling matters or discovery. I have found that avoiding any involvement in substantive mediation or settlement discussions, or substantive knowledge of the details of those discussions, helps

to ensure judicial impartiality in cases over which I preside.

2. Alternative dispute resolution (ADR) has become an increasingly vital tool in resolving disputes efficiently. From your perspective, what factors contribute to the success or failure of ADR in the Court of Federal Claims, and how can judges help foster an environment where ADR leads to substantive resolutions rather than a procedural formality?

ANSWER: To be successful, ADR must occur at a time when all parties are open to compromise; normally, that is when all relevant parties can identify a substantial degree of risk in proceeding with the litigation. It can be difficult for judges to determine when it is the "right time," as we are not privy to all the information that informs the parties' risk assessments.

Attempting to gauge the parties' sincere interest in mediation before conducting ADR sessions can help increase substantive resolutions. The presiding judge can assess this orally at status conferences or hearings, and the judge conducting ADR can probe more deeply with each party before substantive ADR sessions.

3. Judicial efficiency is often measured by case resolution speed, yet meaningful collaboration between parties can take time to yield productive outcomes. How do you navigate any tension between the judiciary's responsibility to manage dockets efficiently and the need to provide litigants with the space to explore compromise?

ANSWER: Giving litigants time and space to explore compromise furthers judicial efficiency by reducing the time and resources that judges devote to cases that can be resolved by the parties. If a case has been stayed for settlement negotiations, setting periodic "check in" points, such as status reports or status hearings, can help encourage parties to timely conclude those negotiations. In addition, ADR is a useful process that can rekindle informal negotiations that have stalled or accelerate those that are proceeding too slowly

4. Zealous advocacy is a cornerstone of the legal profession, but when does aggressive litigation strategy become counterproductive to achieving a favorable outcome? What guidance would you offer to attorneys who struggle to reconcile their duty to vigorously represent their clients with the practical and strategic benefits of collaboration—both with opposing counsel and the court?

ANSWER: Determining how aggressive of a litigation strategy to pursue is a very subjective decision that will vary attorney by attorney and case by case. I would encourage attorneys to periodically ask themselves whether the strategy or tactics they are employing serve their client's broader interest in the case, and to remember that not every disagreement is a gladiatorial match that must be fought "to the death."

5. From your experience, what are the most significant legal, psychological, or procedural barriers to compromise in litigation, and what steps can courts, attorneys, and litigants take to overcome them?

ANSWER: In my experience as a magistrate judge and litigator, most parties need to "be heard" before they are willing to compromise a disputed issue or legal claim. The court can provide a forum for that to occur before the ultimate

resolution of a case. Sometimes that means allowing a defendant to present a dispositive motion before scheduling ADR, and in other cases having an opportunity to present oral argument on a motion may enable parties to consider a compromise. ADR provides an excellent forum for each side to present their arguments and concerns to the mediator, and I believe that is one of its greatest benefits relative to direct negotiation and settlement talks between the parties.

Quick Answer Round

1. Grammar: Oxford comma or no Oxford comma?

ANSWER: Oxford comma.

2. Scheduling: digital calendar or manual calendar?

ANSWER: Digital calendar.

3. While working: background noise (music/podcast) or silence?

ANSWER: Background noise.

4. Lunch: bring or buy?

ANSWER: Bring.

5. Music: best concert you have attended?

ANSWER: The Roots.

Ask the Special Master!

Special Master Nora Beth Dorsey

1. What strategies do you employ to encourage meaningful compromise between litigants while ensuring that judicial impartiality remains uncompromised?

ANSWER: The art of listening to the parties is a powerful tool when working toward compromise. In the context of collaboration and compromise, listening is an action that requires hearing and focus. It requires pushing away distractions, preconceived opinions, or personal viewpoints. Listening results in hearing and understanding. For example, if the injured party or opposing counsel is angry, consider how can you respond to the anger in a positive way to work toward compromise.

Another strategy involves identifying and articulating the end goals of the plaintiff/petitioner. For example, to some injured plaintiffs/petitioners, money damages may not seem like a successful end to the litigation. Money does not restore a person to their former life—their life before the incident at issue. In that situation, it might be helpful to explore what a positive future looks like and how

settlement funds could help achieve that future.

Information shared with the mediator/neutral through the process of listening and determining goals as described above should not be shared with the other party or any third party without express authorization.

2. Alternative dispute resolution (ADR) has become an increasingly vital tool in resolving disputes efficiently. From your perspective, what factors contribute to the success or failure of ADR in Vaccine Program Proceedings, and how can judges help foster an environment where ADR leads to substantive resolutions rather than a procedural formality?

ANSWER: Important factors include a sincere desire to resolve the case, an open mind, patience, and flexibility. Judges and special masters are charged with ensuring that ADR is conducted fairly, that the parties and participants are respectful toward each other, and that the participants stay focused on what is important and not get sidetracked by less relevant issues. At the end of the proceedings, the plaintiff/petitioner should know what the defendant/respondent was willing to pay, even if that number was not acceptable.

3. Judicial efficiency is often measured by case resolution speed, yet meaningful collaboration between parties can take time to yield productive outcomes. How do you navigate any tension between the judiciary's responsibility to manage dockets efficiently and the need to provide litigants with the space to explore compromise?

ANSWER: In an ideal world, in every meritorious case the parties should be encouraged to talk about resolving the matter through settlement early in the litigation. For example, in Vaccine Program cases, matters that should resolve without experts or lengthy litigation are assigned to the Special Processing Unit ("SPU") on the Chief Special Master's docket. In these cases, proffers/settlements are achieved faster due to the emphasis on early resolution.

In cases that require experts to prove an element of the claim, opportunities to explore ADR can be built into case management processes. After the expert reports are filed, the judge or special master can assess the strength of the reports to determine whether early resolution is feasible. In the alternative, the parties can consult to determine whether ADR is appropriate before continuing with litigation.

4. Zealous advocacy is a cornerstone of the legal profession, but when does aggressive litigation strategy become counterproductive to achieving a favorable outcome? What guidance would you offer to attorneys who struggle to reconcile their duty to vigorously represent their clients with the practical and strategic benefits of collaboration—both with opposing counsel and the court?

ANSWER: When "winning" becomes the desired objective, counsel may lose sight of their client's goals relative to outcome. While clients are entitled to zealous advocacy, the advocacy should align with goals specifically expressed by the client. Those goals should be consistent with the applicable statute or policy, permitted by Court Rules and guidelines, and the applicable ethical guidance.

Collaboration is not "giving up" or "giving in" when it is the best means of

achieving a client's goals. Courtroom success is a requisite skill for an excellent lawyer, but so is the ability to collaborate with your opposing counsel if doing so better serves the client.

5. From your experience, what are the most significant legal, psychological, or procedural barriers to compromise in litigation, and what steps can courts, attorneys, and litigants take to overcome them?

ANSWER: Assuming the case is meritorious, a common barrier is insufficient case development. As a result, the opposing party will probably not be interested in compromise. The party with the burden of proof should file quality expert reports with opinions supported by facts, supportive literature, and other foundational evidence. The reports should also acknowledge unfavorable facts and explain why such facts don't mandate an unfavorable outcome.

Another barrier may be a client's unreasonable expectations. A mediator/neutral can be a valuable person to provide an independent point of view about the risks of going to trial.

Quick Answer Round

1. Grammar: Oxford comma or no Oxford comma?

ANSWER: Oxford comma.

2. Scheduling: digital calendar or manual calendar?

ANSWER: Digital calendar.

3. While working: background noise (music/podcast) or silence?

ANSWER: General background noise is okay but not music/podcast.

4. Lunch: bring or buy?

ANSWER: Depends on whether I have any good leftovers.

5. Music: best concert you have attended?

ANSWER: Rolling Stones.

Ask the Staffer!

Summer Maynard

1. Can you explain your role at the Court of Federal Claims and what a typical day looks like for you?

ANSWER: My main duties consist of data collection and review, specifically through the monthly case management reports and data collected from the cover sheets. I assist the Bar with putting on Law Day, maintain COOP documents and assist in updating the COFC Rules documents on a yearly basis.

2. Can you describe the work you did prior to your current role at the Court of Federal Claims?
ANSWER: I worked at the AO and assisted the Probation and Pretrial Services Office in managing the evidence-based practices program, specifically STARR. I maintained which offices and officers were participating, scheduled training, assisted with the budget, and assisted with program material. Prior to that I was an administrative assistant for PPSO.
3. What do you find most rewarding about working at the Court of Federal Claims?

ANSWER: The comradery between the people I work with.

4. How do you collaborate with judges, attorneys, and other staff to ensure the smooth functioning of the Court?

ANSWER: I think since the USCFC is a smaller court, we possibly know our co-workers' communication and work style better than bigger courts. Because of this we can tailor our correspondence and requests to collaborate on the bigger picture of providing service to public.

5. What advice would you give to someone interested in pursuing a career in public service or working in the judiciary, especially at a specialized court like the Court of Federal Claims?
ANSWER: I think it's better to be a "jack of all trades" and be involved in a lot of things rather than get pigeon-holed into one line of work. You can have your main duties but don't be afraid to branch out and work with different departments and people.

Quick Answer Round

1. Grammar: Oxford comma or no Oxford comma?

ANSWER: Oxford comma.

2. Scheduling: digital calendar or manual calendar?

ANSWER: Manual.

3. While working: background noise (music/podcast) or silence?

ANSWER: Podcasts or audiobooks.

4. Lunch: bring or buy?

ANSWER: Bring.

5. Music: best concert you have attended?

ANSWER: Green Day.

Upcoming Events

May 14, 2025 – Law Day: "The Constitution's Promise: Out of Many, One"
Speaker: Cliff Sloan
Information and Registration **here**

May 14, 2025 – Young Lawyers Division Happy Hour
Proper 21 on K Street
Information **here**

October 23, 2025 – U.S. Court of Federal Claims 36th Annual Judicial Conference
National Press Club
Information **here**

Membership

Need to join or renew your membership? Click **here**.

Important Announcements from the Court

Please visit the home page of the Court's **website** for important announcements.

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U.S. COURT OF FEDERAL CLAIMS BAR ASSOCIATION

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