FEDERAL BAR ASSOCIATION

Tampa Bay Chapter

Volume 1, Issue 2 Spring 2015

President's Message

By Peter B. King, Esq.

It's hard to believe that we are already midway through 2015. Where does the time go? For the Tampa Bay Chapter of the Federal Bar Association, the mid-point of the year is a time of reflection and assessment, and gauging whether we are on track for the goals we set at the beginning of the year. Thanks to the outstanding efforts of our volunteer board and committee members, I am pleased to report much good news.

Our Chapter set a goal of adding 100 new members this year. It is a lofty goal, representing a growth rate of nearly 30% for our 350-member Chapter. Through April, we have added 41 new members, putting us on pace to add more than 120 by year end. If we achieve our goal, then this will have been the largest annual growth spurt on record for our Chapter. Many of our volunteers deserve our thanks and appreciation for keeping us on task, in particular Membership Committee co-chairs Erin Jackson and Mamie Wise, who have coordinated the efforts which have kept us on pace. Thanks to the efforts of Jason Stearns, our Law Student divisions at Stetson and Cooley law schools are up and running, and have already sponsored several events. We have been provided valuable leadership "on the ground" by law students Angela Tormey and Cynthia Christie, and advisor Victoria Cruz-Garcia (Cooley), and David Wright and Ryan Hedstrom (Stetson), who have organized events at their schools. We are very thankful for their commitment and initiative, and excited about the influx of new law student members.

Many of our other events have likewise resulted in interest and new members, including our January event, "Staying in the Game: Women, Leadership, and the Law" (Katherine Yanes and Erin Jackson), our ongoing Brown Bag Lunch Series (Carlton Gammons and Mary Mills), events organized by our YLD (Lauren Pilkington Rich and Traci Kostner), and our Mentoring Program (Caroline Johnson-Levine and Richard Martin). Thanks to those folks for their outstanding work.

We are well along in the Sustained Dialogue series that followed the Staying in the Game event, in which more than 75 participants are gathering in small groups on a regular basis to explore the unique challenges women face in their advancement and leadership in the profession. At the wrap-up event at the end of the year, these groups will reconvene and present potential solutions for retaining talented women in the law and enhancing the quality of professional life.

Just last week we completed the 24th Annual Federal Sentencing Guidelines Seminar, which has long been recognized as the preeminent seminar of its kind in the country. Mark Rankin, the chair of the event, was pleased to report attendance of over 200. Also last week, Judge Merryday gave a terrific presentation at our Brown Bag Lunch Series, focusing on best practices and reminding the attendees of the fundamentals of effective advocacy. We are always grateful for participation by the judges.

Our Chapter's ambitious agenda continues through the summer with our Brown Bag Lunch Series (June 10 featuring Michael Allen, Associate Dean for Academic Affairs, Stetson Law School), an investiture reception honoring U.S. Attorney Lee Bentley (June 11), a combined YLD/Mentoring Program CLE event especially geared for newer lawyers and summer clerks and interns coupled with a mid-year meet-up of our mentors and mentees (July 17), and a swearing in ceremony for new admittees to the federal court (July 22). Check the website for more details and upcoming events, www.federalbartampa.org.

I welcome all of our new members, thank you for joining, and encourage you to get involved. Our Chapter provides lots of opportunities for networking and leadership, so if you are interested in getting the most value out of your participation, please don't hesitate to contact me (pking@wiandlaw.com) or any of our board members. We hope to see you at one of our events.

In This Issue

Spotlight: FBA Pro Bono Committee

Michael P. Matthews is a partner at Foley & Lardner LLP, where he serves as chair of the Tampa Litigation Department. Mr. Matthews has also served as Chair of the Pro Bono Committee of the Tampa Bay Chapter's Pro Bono Committee since 2011.

Can you give us a brief overview of the Pro Bono Program and your tenure in charge of the program?

I have served as the Chair of the Pro Bono Committee of the Federal Bar Association, Tampa Bay Chapter since 2011. In the last four years, we've brought our pro bono program into the 21st century, including the creation of an online request form posted on our website for litigants to use to request assistance, research and drafting of the Middle District of Florida's Pro Se Litigation Manual (an updated version of which is now used by the court and is posted on the court's website), and a new system for posting pro bono opportunities to members electronically.

How does the Pro Bono Program work?

The goal of the program is to match up volunteer attorneys with litigants seeking pro bono assistance. Requests for assistance most often come from the judges of the Tampa Division of the U.S. District Court for the Middle District of Florida, but we also get requests directly from litigants, through our online request form or otherwise. We then review the case file and prepare a summary of the pro bono opportunity which is sent to all of our members, including a brief summary of the case, the status of the case, and what the request for help is. Our members can then pick and choose which opportunities they are interested in and have time for, and we then put them in contact with the requesting party. The scope of our program is only civil litigation matters, not criminal, and is limited to the Tampa Division of the federal court, not state court or other courts.

Is there a particular type of case that appears more frequently than others in the Pro Bono Program? If so, why?

We have had a wide variety of cases over the years. The most common cases tend to be prisoner abuse cases and small commercial litigation disputes, but we have also had social security cases, cases seeking educational services for disabled children, Federal Tort Claims Act cases, and a variety of others.

What advice would you give to those who might be interested in participating in or supporting the Pro Bono Program?

Watch your emails for the subject line "Pro Bono Opportunity" and respond quickly! Opportunities are typically first come first served, and with some cases we have had quite a few responses, often within minutes of posting. Anyone who is a member should be receiving such emails periodically as opportunities arise.

Does the program cover any fees or expenses incurred by volunteer lawyers?

No, our association does not; however, to the extent costs are incurred, reimbursement from the Bench Bar Fund may be requested (in advance of incurring the costs).

What are some of the biggest obstacles facing the Pro Bono Program?

We are purely a volunteer program and rely solely on the goodwill of our members and their interests and time constraints, so occasionally it takes time, effort, and persuasion to try to find a volunteer for a difficult case. Thankfully, we have been able to staff nearly all of the requests that have come in, due to the incredible generosity and volunteerism among our members.

What would you say are your greatest accomplishments thus far in the Pro Bono Program?

As a program, I hope that we have made improvements to our process that will last for a long time to come. In particular, sending opportunities as they arise to our entire membership has made staffing more efficient than the old model, in which we relied on a small group that filled out a form indicating a general interest in pro bono. But personally, my favorite accomplishments are the ones I and my colleagues at Foley & Lardner have achieved when we have been the volunteers taking the cases. While I enjoy running the process of the program and seeing our members go out and take cases and get great results, I find actually working on the cases to be the most rewarding part.

Are there some recent examples of pro bono work or accomplishments you can share?

We're very proud of the Pro Se Litigation Manual we helped create, which is now available to everyone on the court's website along with the court's online pro se portal. Our volunteer attorneys have also had great success in their cases, for example, achieving many favorable settlements for prisoners who have alleged abuse.

Does the Pro Bono Program offer any resources for pro se litigants?

Yes, pro se litigants should review the Pro Se Litigation Manual and the court's other pro se online resources at https://www.flmd.uscourts.gov/pro_se/default.htm.

What's next for the Pro Bono Program?

Anne-Leigh Moe is working with a team exploring the possibility of offering even more help to pro se litigants, through periodic clinics staffed by attorneys. In the meantime, we will keep on matching requests for help with volunteer attorneys. Our members have been terrific about volunteering their time and effort to the program, which we hope continues for many years to come.

In Pictures

The Brown Bag Lunch series has gotten off to a great start. On March 18, 2015, John L. Badalamenti and Adeel Bashir discussed their representation of local fisherman John Yates that ultimately resulted in a ruling in their favor by the U.S. Supreme Court. Mr. Bashir remains an assistant Federal Public Defender, while Mr. Badalamenti was recently appointed by Governor Scott to the Second District Court of Appeal. This was followed by a presentation on May 27, 2015 by Judge Steven D. Merryday, who discussed best practices for lawyers and offered valuable advice about the fundamentals of effective advocacy.

The U.S. Attorney's Office hosted "Bring Your Child to Work Day" on April 23, 2015. The event was well-attended by dozens of children, and included stops in the courtroom and a tour of the Sam Gibbons U.S. District Courthouse.

Profile: Donna L. Elm, Federal Defender

Donna Elm is the Federal Defender for the Middle District of Florida, appointed by the U.S. Court of Appeals for the 11th Circuit to four-year terms in 2008 and 2012. Prior to this position, she served in the Maricopa County Public Defender's Office and the Arizona Federal Public Defender's Office.

Can you give a brief overview of your background?

I am the federal Defender for the Middle District of Florida. I have held this position for almost seven years. I serve on some national committees, including a joint working group with DOJ developing an e-discovery protocol, the Defender IT working group which I chair, and finally the Steering Committee of Clemency Project 2014. Previously, I was an AFPD in the District of Arizona. Before that, I did county public defense work for a dozen years in Maricopa County, rising to be their Chief Trial Deputy. I worked briefly for a small firm in civil practice after a clerkship with the Arizona Supreme Court. This is my second career; my first career was as a therapist. Over the years in Arizona, the Arizona Supreme Court appointed me as a trial-level Hearing Officer for attorney discipline cases. I was also appointed Chair of the Arizona State Bar's Criminal Law Committee and served on the judicial nominating committee for Maricopa County for seven years. I was deeply involved with the NACDL affiliate (Arizona Attorneys for Criminal Justice), up through President of that organization. I taught widely in CLE courses, and was an Adjunct Professor of Law at Arizona State for three years. I also publish fairly extensively.

How does the Public Defender's Office rank among other offices in federal districts in terms of staffing and workload?

Our office's staffing and workload was recently assessed in a national staffing study as a matter of fact. They found that we were substantially understaffed compared to other organizations. There is an effort now to try to correct that, and I hope to have more resources shortly. However, despite that, my office continues to take every case that the Court asks us to take.

The Public Defender's Office faced dire times in the wake of federal budget cuts that took place several years ago, including staff reductions and cuts in CJA fees. Can you comment on the state of the Public Defender's Office today and whether it is better off than it was in 2013?

We were an especially hard hit office during sequestration. I lost about 15% of my staff right away plus we had to do furloughs 10% of the time, and many did additional voluntary Leave Without Pay to help spare fellow employees from layoffs. It was a very black era in the Office.

Today, we still are about 10% below where we were before sequestration, but as I said, we are adding staff this summer. We hope to have gotten back to our pre-sequestration level by the end of this fiscal year. Are we better off? That's like asking a person who was run over by a truck if, now that he has recovered, he is better off?

What are some of the biggest current issues facing both the Public Defender's Office and the clients it represents?

There are several big current issues. First are the "Drugs-2 Retro" cases, the U.S. Sentencing Guidelines amendment allowing most drug offenders to get a 2-level reduction in the Sentencing Guidelines. We have close to 4,000 cases as I understand it. Managing that large an influx of cases is a very complex and demanding undertaking; thankfully, we are working with a fine group at Probation and the U.S. Attorney's Office, and there is a true spirit of collaboration. Thankfully, the judiciary is very supportive as well. Second, we are in the very early stages of exploring the development of a Capital Habeas Unit. This was started by strong leadership of Judge Corrigan, with the full support of Judge Whittemore and Chief Judge Conway. Third, we continue to have an enormous number of child pornography cases (one of the largest in the country) that are certainly difficult to handle. They are quite costly and require extensive work. Lastly, there has been a reduction in the number of mortgage fraud cases and simple drug sales cases. This has enabled us to concentrate more on the other federal cases on our plate.

The focus seems to be shifting from "tough on crime" to a "smart on sentencing" stance that seems to place increased emphasis on alternatives to incarceration and reducing recidivism. Is that consistent with what you are seeing, and how much progress has been made?

It is. The "overcriminalization" movement that has seen support from both sides of the political aisle has brought to the country's attention the costs of incarceration and whether the benefits from it are well-justified. We see it playing out in the series of U.S. Sentencing Guidelines reductions (Crack Retro I & II, now Drugs Retro), changes in the sentencing laws, attempts to get people out of prison early, the President's clemency initiative, and other issues. This is a very important and necessary development, and represents part of the critical checks-and-balances that make our government so strong.

What would you say are some of your greatest accomplishments during your tenure as Federal Defender?

Surviving sequestration was the greatest trial I had, hands down. Making sure we provided high quality representation despite all we were going through was a difficult undertaking, and one that I am terribly proud of my staff for doing so well. Building the Office to the point of national recognition and reputation was another goal that I think we have come a long way on.

Your Office recently received national publicity when a case involving a local fisherman made it to the Supreme Court and was ultimately decided in your client's favor. Can you talk

about that process, and how your Office was able to handle that added workload?

John L. Yates v. United States, 574 U.S. ____ (2015), was a wonderful case. My team did a terrific job, and brought issues before the Court and the public that (incidentally) squared precisely with the overcriminalization movement. We had some terrific *amici* (NACDL, Cause of Action, Chamber of Commerce, and many others) who filed briefs on a dozen different issues of concern. We were blessed with the most determined and stalwart client imaginable. The effort needed to do a great job on a Supreme Court case is immense. As soon as certiorari was granted, we identified a team (including John Badalamenti who argued the case, Adeel Bashir who was the primary brief writer, Rosemary Cakmis, Craig Crawford, and I who worked with them, and paralegals John Glenn and Jan Reed) and mobilized. It takes a village, as the saying goes. If not more. We had moot courts all over the country, many persons reviewing the briefs, and organization of media, *amicus* filings, and all the administrative aspects of such a big undertaking. Fortunately, my team did a terrific job, and the outcome was good for John Yates, our office, and I would say the country.

The Justice Department recently announced its Clemency Initiative, which is expected to result in a sentence reduction or release for thousands of prisoners. How is the Public Defender's Office handling these initiatives, and what can we expect going forward?

I am on the Steering Committee for the Clemency Initiative, but we are prohibited from representing any defendants in their clemency applications. On the other hand, we are reviewing our previous client's files to determine whether they might benefit from clemency, and gathering information for pro bono lawyers who can represent them in clemency.

What advice would you give to a lawyer considering applying to the Public Defender's Office?

I would advise them to love the type of work we do. To understand the frailty of humanity, that even the best people can do bad things, and that there can always be hope of change, or rehabilitation. We want to know that our people understand and respect the humanity of our clients, despite things that they have done. I suggest getting a start in criminal practice and getting as much trial work as possible so as to have that under the belt. Then high quality of writing and legal analysis is a must for this practice. Finally, it is important to have an understanding and appreciation of everyone's roles in this criminal justice venture, so as to work together in an adversarial system toward the goal of American justice.

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A Discussion With Judge Anne C. Conway

For the last eight years, U.S. District Judge Anne C. Conway has served as the Chief Judge for the Middle District of Florida where she has been responsible for overseeing the administration of day-to-day judicial matters while maintaining a full caseload. Judge Conway's term will expire later this summer, when U.S. District Judge Steven Merryday is set to assume the Chief Judge position.

You've previously remarked that your transition to Chief Judge was much harder than your transition from a lawyer to a judge. What is required of you as a Chief Judge, and how do you balance your position as Chief Judge with your active caseload?

I decided early on that I would not reduce my caseload, and thereby burden my colleagues, when I became Chief Judge. Most chief judges do reduce their caseloads, because being chief is often a full-time job. I rely a lot on my career law clerks, Steve Branyon and Christine Bilodeau, to help me manage all of the chief judge-related duties that I have—they do a great job of keeping me on track and allowing me to focus exclusively on my cases when I really need to. Seemingly every day brings a new challenge, but my core responsibility is to be available to the judges and court staff of our district whenever they encounter a problem or need to communicate with me. I also spend a lot of time working with the Clerk's office and various government entities—the U.S. Marshals Service, U.S. Attorney's Office, the Federal Public Defender's Office, Pretrial Services, Probation, GSA, etc.—to ensure that our Court runs smoothly and that its needs are being met. Luckily, I have the best court operations team in the country to help me with these tasks. I also spend an inordinate amount of time responding to initiatives and inquiries from the Administrative Office of the U.S. Courts, surveys from the Federal Judicial Center, and letters from disgruntled litigants who think the chief judge is the boss of all of the other judges in the district.

As far as managing my caseload, I have tried to keep the focus on getting each case to a resolution on the merits as efficiently as possible. We try not to spend more time than we have to on non-dispositive motions, and we emphasize mediation as an effective tool to resolve complicated cases. For the most part, attorneys in this district are good about resolving issues privately when they can, and clearly setting out their dispute for the Court to decide when they cannot.

What are some of the biggest issues and challenges you've faced since beginning your term in 2008?

Without question, the financial crisis and ensuing federal budget crunch created a number of challenges. In many ways, our district was one of the hardest-hit by the collapse of the housing and financial markets, and all of our judges and court staff responded admirably to the initial uptick in complicated cases arising out of that. Because Washington was unable to bridge partisan differences over the federal budget, we had to deal with a lengthy hiring freeze and, sadly, our clerk's office had to let a handful of staff go. Things hit bottom when we were under "sequestration," but thanks to the heroic efforts of our Clerk of Court, Sheryl Loesch, we managed to avoid furloughing anyone or delaying civil trials, which were both very real possibilities at that time. Thankfully, the economic and budgetary pictures are much brighter these days, but some ill effects of the "Great Recession" linger. Our district accepts many more pro se filings now than before the crash, many of which are based on home foreclosures and credit collections during the crisis. Although generally well intentioned, these litigants are unfamiliar with federal law and rules of procedure, so their cases demand more of our time than if they were brought by attorneys. I would encourage every member of the FBA, especially the younger ones, to work with the Civil Pro Se Project to counsel these litigants and help ease the burden they create for the courts.

As you are well aware, the Middle District is consistently ranked as one of the busiest districts in the country. What added challenges do you face as Chief Judge in such a large and busy district?

There are advantages and disadvantages to being Chief Judge of a large, busy district like ours. On the one hand, I enjoy working with so many diverse and interesting colleagues on a broad array of issues. On the other, our size (geographically and in number of personnel) makes it tough to attend as many of the events around the district as I would like to. Also, being as busy as we are makes us more vulnerable to shocks—there's just less capacity to handle something like the Engle tobacco cases when we are already dealing with per-judge caseloads that are higher than the national average and significantly above what the Judicial Conference recommends.

What are you most proud of during your term as Chief Judge?

I realized when I looked at the list of my predecessors that I had pretty big shoes to fill as the Chief Judge of the Middle District, and that was before the crash of 2008. I am most proud of the way our judges and court staff came together to respond to external challenges like budget cuts, tobacco litigation, and delays in filling judicial vacancies. I am also happy to note that, despite these challenges, we have remained at or near the top of the Eleventh Circuit and the nation in terms of the number of cases we have handled and the efficiency with which we have resolved them.

Your term as Chief Judge came just before what you described as a period of 'doom and gloom' that coincided with an economic slowdown and ensuing budgetary woes. Can you give a sense of how you were able to deal with this situation? All signs seem to signal that the Middle District was fortunate in avoiding a worst-case scenario.

It's a little cliché, but an institution like our district is only as strong as the people who devote themselves to it. Our judges and

court staff proved that to be true during the dark days of the financial and budgetary crises. For a short period of time during sequestration, we were forced to rely on filing fees and modest savings we had set aside in anticipation of a government shutdown. When Congress finally ended the shutdown, we were just a few days away from having to furlough some employees and force others (quote-unquote critical personnel) to work without pay. We were able to avoid that result only because of the foresight of our Clerk and her staff, and the commitment of our judges to help manage avoidable expenses like overtime for court security personnel. The support of the FBA was also critical in communicating the urgency of our budgetary situation, and the importance of judicial efficiency and unimpeded access to courts, to Congress and the public.

The rise of technology in the legal world has been unprecedented during the past decade. How has the Court adapted to this transition, and what trends do you see going forward?

Advances in communications technology have been a game-changer for the judiciary. Thanks to the internet, wifi, and my trusty iPad, I'm now able to review briefs, enter orders, and correspond with my chambers staff from almost anywhere in the world. Our clerk's office has done a remarkable job in digitizing the information we need to do our jobs, which greatly benefits the judges, law clerks, attorneys, and litigants in our district. That said, I believe that overuse of technology can have deleterious effects on civility and cooperation among the members of our bar—sometimes, lawyers seem less capable of working out problems via email than they were in the old days of telephone calls and in-person meetings. So I'll continue to require lead counsel to meet and confer in person at an early stage in almost every case, and enforce the letter and spirit of Rule 3.01(g) as much as possible.

One of the biggest issues in the Middle District in recent memory has been a delay in filling judicial vacancies, which has a direct effect on caseloads. Do you believe that adequate progress has been made in filling vacancies?

I am grateful for the way that our Senators, Bill Nelson and Marco Rubio, have come together to fill all of the current vacancies in the Middle District. Here again, the support of the FBA has been crucial, especially in helping to arrange meetings for some of our judges to convey the precariousness of the situation to key people in Washington. Our caseload per active judge, while still well above the national average, is now a bit lower, allowing us to respond to motions and advance cases more quickly. Of course, filling vacancies with qualified judges is far more important than filling them quickly, and I am happy to report that our nominating commission and Senators have hit a pair of home runs in Judges Byron and Mendoza, the two most recent appointees. I hope that this spirit of cooperation will continue, but I note with some trepidation that both Judge Steele and I will be taking senior status in less than three months. I should also point out that the urgency of immediately filling each vacancy would subside somewhat if Congress would authorize and fill any of the additional six judgeships for the Middle District that the Judicial Conference has recommended for the past several years.

What are some of the other challenges going forward for the Middle District and the federal judiciary as a whole?

As I have mentioned before, civil pro se filings continue to increase at a pace exceeding attorney filings. I suspect the increasing cost of litigation is the major culprit, but we need to come up with a better way of addressing these litigants, while still protecting their rights, before they overwhelm the judiciary. Another challenge is the absence of meaningful trial—or even hearing—experiences available to young lawyers. If they care about the future of their firms and the profession, more-senior lawyers should think creatively to come up with ways to put younger attorneys in front of judges and juries.

Next year will mark your 25th anniversary on the bench. What have been some of the highlights for you during this tenure?

It's difficult to narrow twenty-five years on the bench into a few highlights, but I will say that I have gotten great satisfaction from presiding over several really interesting trials with terrific lawyers—a criminal case in which F. Lee Bailey represented the defendant comes to mind—and taking on some ancillary assignments, like sitting with the Eleventh Circuit and serving on national judicial committees. I have also been blessed with tremendous law clerks and courtroom staff over the years, all of whom I am still in touch with, and I have enjoyed mentoring them and even officiating some of their weddings. Perhaps most of all, I'm grateful to have served with so many fantastic colleagues—I truly feel as if I'm part of an extended "court family" in the Middle District.

Judge Merryday is set to assume the Chief Judge position in the coming months. What is one piece of advice you would give him?

Judge Merryday is a first-rate judge and colleague, so I have no doubt that he will succeed in this role. The best advice I can give him is to trust the court staff and agency heads to do their jobs; you'll drive yourself crazy if you try to micromanage a vast and busy district like ours.

Committee Updates

Brown Bag Lunch Series

The "Brown Bag Luncheon" series has become one of the most well-received continuing programs of the Tampa Bay Chapter of the Florida Bar Association. The Brown Bag Luncheons provide a unique opportunity for members to meet, have lunch with, and ask questions of local practitioners in an informal setting.

On March 18, 2015, John L. Badalamenti and Adeel Bashir gave a presentation on their representation of local fisherman John Yates that culminated in a favorable ruling from the U.S. Supreme Court. On May 27, 2015, Judge Steven D. Merryday gave a presentation on best practices for trial lawyers and tips for effective oral advocacy. Our next Brown Bag Lunch is scheduled for June 10, 2015, and will be hosted by Michael Allen, Associate Dean for Academic Affairs at Stetson University College of Law. Dean Allen will preview the marriage equality issues before the Supreme Court in *Obergefell v. Hodges*.

Law School Liaison

Stetson College of Law, represented by its student liaisons David Wright and Ryan Hedstrom, hosted a luncheon on April 2, 2105, for its law students to learn about the Federal Bar Association. FBATBC board members Peter King, Lauren Pilkington-Rich, Carlton Gammons, and Jason Stearns attended the event and spoke to over 50 law students and faculty members. The law students and faculty were very interested in hearing about the FBATBC's involvement in the local legal community, including the "Brown Bag Luncheon" series, the Young Lawyers Division events, and the FBA mentoring program.

2015 has been a great year for membership, due in no small part to the active engagement of the law students in our local community. The FBATBC would like to thank Stetson Associate Dean Michael Allen and Career Services Director Cathy Martin for their efforts in making this event a huge success.

Young Lawyers Division

If you're looking to get more involved with the FBA, the Young Lawyers Division ("YLD") is looking for additional volunteers to serve on the YLD Committee. Committee members will help plan and assist with future YLD events in the areas of CLEs, networking, membership, and pro bono.

The YLD and Brown Bag Lunch Committee invite you to attend a federal judicial clerkship panel on Friday, July 17, 2015 at the Sam M. Gibbons U.S. Courthouse in the Jury Assembly Room (3rd Floor) at 12:00 p.m. This brown bag lunch and panel is FREE to members of the FBA. This clerkship panel will be geared toward law students, judicial interns and young lawyers who are interested in applying for federal clerkships. The panel will include several former judicial law clerks who will speak about the application process and other benefits of serving as a judicial law clerk. The panel will be moderated by former law clerk Lauren Pilkington-Rich and Professor Jason R. Bent, Chair of the Stetson University College of Law Clerkship Committee.

The YLD invites you to attend its 2015 Federal Court Practice Seminar on Friday, July 17, 2015 at the Sam M. Gibbons U.S. Courthouse in the Jury Assembly Room (3rd Floor) at 1:00p.m. (immediately following the brown bag lunch/clerkship panel). This seminar is a great opportunity to learn the in's and out's of federal court practice. The seminar will cover topics ranging from pro bono opportunities in federal court, removal and jurisdiction, to preserving issues for appeal. The seminar will include presentations by prominent federal court practitioners as well as members of the judiciary. The seminar will be followed by a reception. Details will be posted on the FBA's website.

The YLD invites you to attend a one-hour CLE "What You Need to Know About Practicing in the Middle District of Florida." The CLE will be held on Wednesday, July 22, 2015 at the Sam M. Gibbons U.S. Courthouse in the Jury Assembly Room (3rd Floor) at 11:00a.m. (immediately following the attorney admissions ceremony). This CLE is FREE to members of the FBA. This is a great opportunity for newly-admitted attorneys and young lawyers to become familiar with the Middle District of Florida. The presentation will include a discussion of the local rules in the Middle District and practice pointers from a member of the judiciary.

Please contact Traci Koster at TKoster@BushRoss.com or Lauren Pilkington-Rich at Lauren.PilkingtonRich@RaymondJames.com for additional information, to R.S.V.P for an event or to volunteer.

Mentoring Program

The Federal Bar Association is committed to fostering mentoring relationships with its members. Mentors and mentees are matched during the year on an ongoing basis. The goal of the program is to match younger attorneys with five years or less in the profession with more senior colleagues in their practice area to provide advice about professionalism, practice development and overall career development. On July 17, 2015, after the YLD Federal Court Practice Seminar, hosted by the FBA, the FBA is also hosting a mentor-mentee meet up at Le Meridien between 5 and 7 p.m. All FBA mentors and mentees are encouraged to attend. This a great opportunity to catch up as we pass the half-way point of the year. If you would like to take part in the mentoring program or have any questions regarding the program, please email Caroline Johnson Levine at levine.levinelaw@gmail.com, or the mentoring co-chair Richard Martin at richard.martin@akerman.com. Mentoring applications are also available on the FBA website.

Mark Your Calendars

Visit www.federalbartampa.org for more details.

June 10 – Brown Bag Lunch with Michael Allen, Associate Dean for Academic Affairs at Stetson University College of Law. Dean Allen will discuss the marriage equality issues currently before the U.S. Supreme Court in *Obergefell v. Hodges*. 12:00 P.M. at the Jury Assembly Room (3rd Floor) of Sam M. Gibbons U.S. Courthouse.

June 11 – FBA Investiture Reception for U.S. Attorney Lee Bentley. 5:30 P.M. – 7:30 P.M.., Tampa Club. RSVP to pmiller@suarezlawfirm.com.

June 16 – Minority and Veteran's Event hosted by Tampa Hispanic Bar Association and George Edgecomb Bar Association. This event will honor the African-American and Latino-American veterans who served during the World War II-Korean War-Vietnam War eras. 11:30 A.M. – 1:00 P.M. at the Sam M. Gibbons U.S. Courthouse. See the FBA website for more details.

July 17 – Federal Judicial Clerkship Panel presented by the YLD and Brown Bag Committee. Bring your own lunch to hear the panel speak about federal clerkships. 12:00 P.M. at Jury Assembly Room (3rd Floor) of Sam M. Gibbons U.S. Courthouse.

July 17 – 2015 Federal Court Practice Seminar. This seminar is a great opportunity to learn the in's and out's of federal court practice. A reception will follow. 1:00 P.M. at Jury Assembly Room (3rd Floor) of Sam M. Gibbons U.S. Courthouse.

July 22 – Swearing in ceremony for new admittees to the federal court. Sam. M. Gibbons United States Courthouse.

October 29 – Annual Civil Seminar, featuring roundtables with the judges of the Middle District of Florida, Tampa Division.

December – Annual Luncheon, featuring the State of the District presentation by the chief judge, reports from the Bankruptcy Court, United States Attorney, and Public Defender, and the presentation of George C. Carr Award recognizing outstanding contributions to the federal bar.

Welcome New Members!

Maria Babajanian
Jeremy Bailie
Steffanie Brown
Thomas Burgess
Gus Centrone
Thania Clevenger
Maria Chapa-Lopez
Cynthia Christie
Mandi Clay
Christopher Covell
Ashby Davis
Kasey Feltner
Giselle Girones
Alison Hale
Ryan Hedstrom
Andrea Holder
Todd Hoover
Theresa Jean-Pierre Coy
Adam Labonte
Steven Lehner
David Little
Kevin Lonzo
Ellen Lyons
Daniel McAuliffe
Jason Miller
Paul McDermott
Sasha Pandolfo
Andrew Peluso
Jeremy Rill
Anastasia Rios
Paul Rozelle
Joseph Swanson
Angela Tormey
Jessica Vander Velde
Eric Watson
Matthew Weidner
Stan West
Sierra Whitaker-Davis
Macaulay Williams
Edward Willner
David Wright

** Special thanks to Daniel McAuliffe and Ellen Lyons, our chapter's newest Sustaining Members. To learn more about becoming a Sustaining Member, please visit www.fedbar.org **

Major Changes Coming To Federal Rules of Civil Procedure

By Jordan D. Maglich, Esq.

A sweeping set of changes to the Federal Rules of Civil Procedure is scheduled to take effect later this year that could dramatically change current discovery practices. The amendments to Rules 1, 4, 6, 16, 26, 30, 31, 33, 34, 37, and 55 of the Federal Rules of Civil Procedure, as well as the abrogation of Rule 84 (the "**Amendments**"), are the culmination of efforts beginning in 2010 to examine the state of civil litigation in federal courts and ensure consistency with Rule 1's goal of achieving a "just, speedy, and inexpensive determination of every action." The Amendments were recently approved by a judicial committee, are currently under review by the U.S. Supreme Court, and if ultimately approved by Congress, will become effective December 1, 2015.

A well-attended May 2010 Conference on Civil Litigation at Duke University Law School ultimately concluded that, while the federal civil litigation process was not in need of a top-down reconfiguration, significant changes could be made to facilitate the disposition of civil actions, foster communication and cooperation between parties, and enable more efficient judicial case-management. A report to Chief Justice John G. Roberts concluded that "What is needed can be described in two words – cooperation and proportionality – and one phrase – sustained, active, hands-on judicial case management."

Five years later, the Amendments await approval by the Supreme Court and Congress before they are scheduled to take effect on December 1, 2015. As discussed below, these revisions will likely have a profound impact on a large cross-section of practitioners.

Rule 1

The Committee sought to amend Rule 1 to clarify that the Rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding. While not creating any new set of sanctions, Rule 1 added specific language that the Rules were to be employed by the court and the parties.

Rule 4

Currently, Rule 4(m) requires that the summons and complaint in an action must be served within 120 days. The Committee initially proposed to amend Rule 4 by halving this time period from 120 days to 60 days, but was eventually persuaded by the subsequent public comments to curb the decrease from 120 days to 90 days. Among these comments were concerns that compliance with Rule 4(m) could be difficult with defendants that were difficult to locate or serve, as well as the potential for difficulties should a defendant refuse a waiver of service and force service in the resulting shortened period.

Rule 16

The first significant changes to the Federal Rules of Civil Procedure come in the form of amendments to Rule 16. The first change deals with encouraging direct communications at initial case management conferences by deleting reference to a conference occurring "by telephone, mail or other means" in Rule 16(b)(1)(B). While Rule 16(b)(1)(A) will continue to allow courts to craft the scheduling order based on the parties Rule 26(f) report, the amendment will also encourage direct communications where warranted between judges and parties.

The second and third amendments to Rule 16 attempt to speed up the issuance of the scheduling order as well as expand the list of topics that can be addressed. Rule 16(b)(2) reduces the time for issuance of the scheduling order from 120 days to 90 days after a defendant has been served, or from 90 days to 60 days after any defendant has appeared. Rule 16(b)(3)(B)(iii) and (iv) specifies that a court may address the preservation of electronically-stored information ("**ESI**"), as well as agreements reached under Rule 502 of the Federal Rules of Evidence pertaining to disclosure of attorney-client privilege or work-product protection.

The final amendment reflects the consensus favoring a discovery conference with the court before the filing of any discovery motion. Rule 16(b)(3)(B)(v) was created to specify that a scheduling order may "direct that before moving for an order relating to discovery, the movant must request a conference with the court."

Rule 26

The Committee recommended significant changes to Rule 26. One of the primary amendments relates to the scope of discovery under Rule 26(b)(1) by replacing the requirement that discovery be "relevant to any party's claims or defense" with a "proportionality" factor that incorporates the five factors currently set forth in Rule 26(b)(2)(C): the importance of the issues at stake, the amount in controversy, the parties' relative access to information, the parties' resources, the importance of the discovery in resolving the issue, and whether the burden or expense of the proposed discovery outweighs its likely benefit. The "amount in controversy" factor follows the "importance of the issues at stake" factor to emphasize that the amount in controversy was <u>not</u> the most important concern.

The Committee also recommended the deletion of the final sentence of Rule 26(b)(1), which provided that "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." The Committee noted that the scope of discovery was never meant to encapsulate a "reasonably calculated" standard, and instead proposed new language that would reiterate the principle that inadmissibility was not a ground to oppose discovery of relevant information. The Committee recommended replacing that sentence with this language: "Information within this scope of discovery need not be admissible in evidence to be discoverable."

Currently, Rule 26(c)(1) allows the issuance of protective orders to protect a party or person from whom discovery is sought.

However, the Committee proposed that Rule 26(c)(1) be amended to expressly acknowledge a court's authority to allocate the expenses of discovery to the requesting party. Given that this authority has been recognized by the Supreme Court for several decades, the Committee recommended the amendment of Rule 26(c)(1)(B) to provide that a protective order may specify "the terms, including time and place <u>or the allocation of expenses</u>, for

the disclosure of discovery." (emphasis added).

Finally, the Committee proposed adding Rule 26(d)(2) to allow a party to serve a Rule 34 document production request before the Rule 26(f) meeting. While the requesting party is free to serve the Rule 34 request prior to the Rule 26(f) meeting, the date of service would be calculated as the date of the first 26(f) meeting.

Rules 30, 31, and 33

Rules 30, 31, and 33 received minor parallel amendments to reflect the new proportionality factor in Rule 26(b)(1).

Rule 34

Rule 34, which governs the production of documents, ESI, and tangible things, received several significant amendments designed to avoid common issues arising in discovery, including the use of boilerplate objections, whether or not documents are being withheld on the basis of objections, and the timing of production of responsive documents. The first amendment clarifies that any Rule 34 requests served prior to the parties' first Rule 26(f) conference are due within 30 days after that first 26(f) conference.

The second amendment addresses the use of boilerplate objections by proposing to amend Rule 34(b)(2)(B) to require that objections to Rule 34 document production requests be stated with specificity. Such broad and boilerplate objections have recently become commonplace in discovery disputes. Indeed, the Committee Note to Rule 34(b)(2)(B) indicates that while an objection may be raised to the broad nature of a request, the objection should state the scope that is not overbroad if a portion of the request is appropriate. Additional language is also proposed in Rule 34(b)(2)(B) to allow a responding party to state that it will produce copies of documents or ESI in lieu of permitting inspection, and requiring that the production must be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

Finally, the Committee also addresses the issue of withholding documents based on an asserted objection. Rule 34(b)(2)(C) currently provides that an objection to a request must specify the part and allow inspection of the remainder. The amendment proposes to add language to Rule 34(b)(2)(C) to require that an objection "must state whether any responsive materials are being withheld on the basis of that objection." In short, the proposed amendments to Rule 34 may have a significant (and encouraging) impact on minimizing discovery disputes.

Rule 37

The Committee proposed significant amendments to Rule 37, and sought to rewrite the current rule with respect to preserving electronically stored information. Adopted in 2006, the current form of Rule 37 only cautioned the court against imposing sanctions for properly preserving ESI. Reflecting on the nearly ten years that have passed since Rule 37's passage, the Committee decided that a detailed revamping of the rule was in order. Driving these concerns were widely-held feelings that many individuals and entities went above and beyond the necessary preservation out of fear that anything less could result in a showing of negligence or even an adverse inference in jury instructions. The Committee also noted a circuit split among the requisite showing before an adverse inference could be included in jury instructions.

These concerns ultimately yielded a revised Rule 37 that, rather than attempt to delineate the precise circumstances triggering a preservation obligation, sought to provide an array of remedies a court may take when it determines that certain information that should have been preserved is lost. In other words, the amended Rule 37 does not create a duty to preserve; rather, the rule yields to the duty imposed by case law that a preservation obligation is created when litigation is reasonably anticipated.

The Committee's amendments essentially replace Rule 37(e)(1) and provide the court with a non-exhaustive list of "curative measures" and "sanctions" in the event that a party "failed to preserve discoverable information that should have been preserved in the anticipation or conduct of litigation." These "curative" factors include allowing additional discovery and ordering the offending party to pay reasonable expenses caused by the failure. While the court is also permitted to sanction the offending party, Rule 37(e)(1)(B) allows the imposition of limited sanctions provided in Rule 37(b)(2)(A) only where the party's actions either (i) caused substantial prejudice and were willful or in bad faith, or (ii) irreparably deprived a part of a meaningful opportunity to present or defend against the claims made in the litigation.

Rules 55 and 84

Rule 55(c) was amended to clarify that a court may set aside a final default judgment under Rule 60(b). Given the relationship between Rules 54(b), 55(c), and 60(b), the Committee felt that specifying that Rule 60(b)'s heightened standards were applicable only when seeking relief from a final judgment.

Last but not least, the Committee addressed the Appendix of Forms provided for by Rule 84. Recognizing that Rule 84 was originally adopted in 1938 when the Civil Rules were established, the Committee observed that many of the forms were out of date, amendment of the forms would be time-consuming, and multiple alternative sources existed for forms. As the Committee characterized it, it was time to "get out of the forms business."

In Closing

In connection with Rule 1's goal of the "just, speedy, and inexpensive determination of every action and proceeding," the Amendments proposed by the Committee contain a series of significant steps that seek to expedite early pre-trial stages, bring clarity to many facets of discovery, and redefine a party's ESI obligations. If approved by the Supreme Court and subsequently Congress, the Amendments are scheduled to take effect December 1, 2015. Practitioners are recommended to proactively research how these changes may affect their practice areas.

Federal Bar Association Application for Membership

The Federal Bar Association offers an unmatched array of opportunities and services to enhance your connections to the judiciary, the legal profession, and your peers within the legal community. Our mission is to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary, and the public they serve.

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Expand your connections, advance your career

THREE WAYS TO APPLY TODAY: Join online at www.fedbar.org; Fax application to (571) 481-9090; or Mail application to FBA, PO Box 79395, Baltimore, MD 21279-0395. For more information, contact the FBA membership department at (571) 481-9100 or membership@fedbar.org.

Applicant Information

First Name M.I. Last Name Suffix (e.g. Jr.) Title (e.g. Attorney At Law, Partner, Assistant U.S. Attorney)

❍ Male ❍ Female Have you been an FBA member in the past? ❍ yes ❍ no Which do you prefer as your primary address? ❍ business ❍ home

Business

Firm/Company/Agency Number of Attorneys

Address Suite/Floor

City State Zip Country

( )

Phone Email Address

Home

Address Apt. #

City State Zip Country

( ) / /

Phone Date of Birth

Email Address

Bar Admission and Law School Information (required)

U.S.
Court of Record: _____
State/District: _____ Original Admission: / /

Foreign
Court/Tribunal of Record: _____
Country: _____ Original Admission: / /

Tribal
Court of Record: _____
State: _____ Original Admission: / /

Students
Law School: _____
State/District: _____ Expected Graduation: / /

Authorization Statement

By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application or the immediate termination of my membership. I also understand that by providing my fax number and e-mail address, I hereby consent to receive faxes and e-mail messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.

Signature of Applicant ***Date***

(Signature must be included for membership to be activated)

*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5 percent which is used for congressional lobbying and is not deductible. Your FBA dues include $14 for a yearly subscription to the FBA's professional magazine.

Federal Bar Association

Application continued on the back

Membership Categories and Optional Section, Division, and Chapter Affiliations

Membership Levels

Sustaining Membership

Members of the association distinguish themselves when becoming sustaining members of the FBA. Sixty dollars of the sustaining dues are used to support educational programs and publications of the FBA. Sustaining members receive a 5 percent discount on the registration fees for all national meetings and national CLE events.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years	❍ $165	❍ $145
Member Admitted to Practice 6-10 Years	❍ $230	❍ $205
Member Admitted to Practice 11+ Years	❍ $275	❍ $235
Retired (Fully Retired from the Practice of Law)	❍ $165	❍ $165

Active Membership

Open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years	❍ $105	❍ $80
Member Admitted to Practice 6-10 Years	❍ $165	❍ $140
Member Admitted to Practice 11+ Years	❍ $210	❍ $170
Retired (Fully Retired from the Practice of Law)	❍ $105	❍ $105

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Admitted to practice law outside the U.S. ..... ❍ $210

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First year student (includes four years of membership) $50
Second year student (includes three years of membership) $30
Third year student (includes two years of membership) $20
One year only option $20

All first, second and third year student memberships include an additional free year of membership starting from your date of graduation.

Dues Total: _____

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- ❍ Alternative Dispute Resolution .. $15
- ❍ Antitrust and Trade Regulation ... $15
- ❍ Banking Law $20
- ❍ Bankruptcy Law $15
- ❍ Civil Rights Law $10
- ❍ Criminal Law $10
- ❍ Environment, Energy, and Natural Resources $15
- ❍ Federal Litigation $10
- ❍ Government Contracts $20
- ❍ Health Law $15
- ❍ Immigration Law $10
- ❍ Indian Law $15
- ❍ Intellectual Property Law $10
- ❍ International Law $10
- ❍ Labor and Employment Law $15
- ❍ Securities Law Section $0
- ❍ Social Security $10
- ❍ State and Local Government Relations $15
- ❍ Taxation $15
- ❍ Transportation and Transportation Security Law $20
- ❍ Veterans and Military Law $20

Career Divisions

- ❍ Corporate & Association Counsel (in-house counsel and/or corporate law practice) $20
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- ❍ Judiciary (past/present member or staff of a judiciary) ..... N/C
- ❍ Senior Lawyers* (age 55 or over) $10
- ❍ Younger Lawyers* (age 36 or younger or admitted less than 3 years) ..... N/C
- ❍ Law Student Division ..... N/C

****For eligibility, date of birth must be provided.***

Sections and Divisions Total: _____

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Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location. *No chapter currently located in this state or location.

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- ❍ Birmingham
- ❍ Montgomery
- ❍ North Alabama

Alaska
- ❍ Alaska

Arizona
- ❍ Phoenix
- ❍ William D. Browning/ Tucson–$10

Arkansas
- ❍ Arkansas

California
- ❍ Inland Empire
- ❍ Los Angeles
- ❍ Northern District of California
- ❍ Orange County
- ❍ Sacramento
- ❍ San Diego
- ❍ San Joaquin Valley

Colorado
- ❍ Colorado

Connecticut
- ❍ District of Connecticut

Delaware
- ❍ Delaware

District of Columbia
- ❍ Capitol Hill
- ❍ D.C.
- ❍ Pentagon

Florida
- ❍ Broward County
- ❍ Jacksonville
- ❍ North Central Florida–$25
- ❍ Orlando
- ❍ Palm Beach County
- ❍ South Florida
- ❍ Southwest Florida
- ❍ Tallahassee
- ❍ Tampa Bay

Georgia
- ❍ Atlanta–$10

Hawaii
- ❍ Hawaii

Idaho
- ❍ Idaho

Illinois
- ❍ Central District of Illinois
- ❍ Chicago
- ❍ Hon. P. Michael Mahoney Western Division of the Northern District of Illinois

Indiana
- ❍ Indianapolis

Iowa
- ❍ Iowa–$10

Kansas
- ❍ Kansas

Kentucky
- ❍ Kentucky

Louisiana
- ❍ Baton Rouge
- ❍ Lafayette/ Acadiana
- ❍ New Orleans
- ❍ North Louisiana

Maine
- ❍ Maine

Maryland
- ❍ Maryland

Massachusetts
- ❍ Massachusetts –$10

Michigan
- ❍ Eastern District of Michigan
- ❍ Western District of Michigan

Minnesota
- ❍ Minnesota

Mississippi
- ❍ Mississippi

Missouri
- ❍ St. Louis

Montana
- ❍ Montana

Nebraska*
- ❍ At Large

Nevada
- ❍ Nevada

New Hampshire
- ❍ New Hampshire

New Jersey
- ❍ New Jersey

New Mexico
- ❍ New Mexico

New York
- ❍ Eastern District of New York
- ❍ Southern District of New York
- ❍ Western District of New York

North Carolina
- ❍ Eastern District of North Carolina
- ❍ Middle District of North Carolina
- ❍ Western District of North Carolina

North Dakota
- ❍ North Dakota

Ohio
- ❍ John W. Peck/ Cincinnati/ Northern Kentucky
- ❍ Columbus
- ❍ Dayton
- ❍ Northern District of Ohio–$10

Oklahoma
- ❍ Oklahoma City
- ❍ Northern/ Eastern Oklahoma

Oregon
- ❍ Oregon

Pennsylvania
- ❍ Eastern District of Pennsylvania
- ❍ Middle District of Pennsylvania
- ❍ Western District of Pennsylvania

Puerto Rico
- ❍ Hon. Raymond L. Acosta/ Puerto Rico–$10

Rhode Island
- ❍ Rhode Island

South Carolina
- ❍ South Carolina

South Dakota*
- ❍ At Large

Tennessee
- ❍ Chattanooga
- ❍ Memphis Mid-South
- ❍ Nashville
- ❍ Northeast Tennessee

Texas
- ❍ Austin
- ❍ Dallas–$10
- ❍ El Paso
- ❍ Fort Worth
- ❍ San Antonio
- ❍ Southern District of Texas–$25
- ❍ Waco

Utah
- ❍ Utah

Vermont*
- ❍ At Large

Virgin Islands
- ❍ Virgin Islands

Virginia
- ❍ Northern Virginia
- ❍ Richmond
- ❍ Roanoke
- ❍ Hampton Roads Chapter

Washington*
- ❍ At Large

West Virginia
- ❍ Northern District of West Virginia

Wisconsin*
- ❍ At Large

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- ❍ Wyoming

Chapter Total: _____

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