



Federal Bar
Association

Advocate

Summer Edition

New Orleans Chapter

Vol. 12, No. 7

EDITORIAL BOARD JAMES M. GARNER AND VIRGINIA LAUGHLIN SCHLUETER

MESSAGE FROM THE PRESIDENT

BY DON K. HAYCRAFT



Why do you belong to the Federal Bar Association? The FBA is the sole bar association that is devoted exclusively to the federal judiciary and to the federal practitioner, whether a civil, criminal, governmental, or private practice attorney. The New Orleans Chapter provides its members with small-group lunch sessions with district judges, magistrate judges and Fifth Circuit judges. Annually, we host the Malcolm Monroe Federal Practice

Seminar, introducing new lawyers to the federal courts in our state. Also annually, we provide the Judge Alvin Rubin Symposium on topics of professionalism in federal court practice. We recognize the federal judges at our Judges Reception held each Fall. We assist new federal judges in defraying the expenses of investiture. Less well-known are our efforts to support other local community-oriented endeavors, such as financial support for the Justice for All Ball and the Down with Delinquency Program, support for Teach for America, the bench-bar Habitat for Humanity homebuilding project and Judge Berrigan's program to provide at-risk youth with legal-education opportunities. The Chapter's Rules Committee reviews and comments on proposed federal local rule changes. Judges and lawyers alike find useful the conference rooms and other comfortable facilities at the Michaelle Pitard Wynne Attorney Conference Center located at the federal courthouse. In short, the New Orleans Chapter gives us the opportunity to serve our profession and community and provides us with ample opportunity to broaden our range of professional contacts.

Nationally, your Federal Bar Association pushes a legislative agenda and lobbies for increased pay for federal lawyers, fair judicial compensation, improved judicial confirmation procedure, increased bankruptcy judgeships and improvement of the Social Security adjudicatory process, among other important issues now pending before the Congress. The Federal Bar Association to which you belong stands as a strong advocate for the interests of the federal practitioner and the federal judiciary.

I have been proud to serve as President of the New Orleans FBA Chapter these twelve months. Following the example of recent Chapter presidents Andy Lee, Mike Ellis, Ashley Belleau, Gerald Meunier, Jim Irvin, and Mimi Koch, I hope that I have left the Chapter at least as strong as when I picked up the gavel. On July 17, I will turn over the gavel to Greg Grimsal and wish him well.

USAGE OF THE INTERNET IN THE EASTERN DISTRICT

*Eldon E. Fallon, U.S. District Judge,
Eastern District of Louisiana*

In 2000, the Panel for Multi-district Litigation designated my Court as the transferee court for MDL-1355, *In re Propulsid Products Liability Litigation*. For those not familiar with multi-district litigation, a brief explanation is in order. Congress created the Judicial Panel on Multi-district Litigation to oversee pretrial proceedings of federal district court cases having common issues of fact. The panel is comprised of seven judges appointed by the Chief Justice. Cases filed in various district courts involving common issues of fact are eligible for multi-district designation either on the motion of a court or on the panel's own motion. After a hearing, the panel designates one district court as the transferee court. That court is then charged with overseeing and managing pretrial discovery. When the transferee court determines that discovery is complete, the court then remands the case back to the district from which it was transferred.

Propulsid litigation concerns the manufacture and use of Propulsid, a drug used to treat heartburn. The case currently consists of a number of class actions, as well as numerous individual lawsuits from across the country. To date, such discovery has produced more than 7 million pages of documents. This has led the Court to set up various

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WHAT TO DO WHEN YOU HAVE ORAL ARGUMENT

Kurt D. Engelhardt, U.S. District Judge, Eastern District of Louisiana

Making an oral presentation before the judge on a particular motion presents vast opportunities for success. Unfortunately, most of the guidance offered to lawyers explains what **not** to do at oral argument. I believe it might be beneficial to highlight what a good lawyer **should** do when contemplating an oral argument. The following considerations are offered with regard to oral argument in federal court, recognizing that each case is different and that each judge may have individual preferences.

1. When To Request It, And When To Waive It?

The threshold consideration for counsel is whether to have oral argument. In tackling this strategic decision, counsel must ask themselves several hard questions: Are the legal issues raised in this motion so unsettled, complex, or novel that oral argument will assist the court in determining them? Must the court consider a departure from existing jurisprudence? Is a constitutional issue involved? What about an evidentiary hearing? Are the facts of this case so byzantine or subtle that an oral presentation will greatly enhance the written brief from a factual standpoint? And, of course, the most fundamental question: after oral argument, will I have advanced my client's cause with the court, or will I have lost ground?

Purely legal issues may not need oral argument. For example, where other courts have disagreed on an issue of statutory interpretation, written briefs provide a superior vehicle for urging a favored interpretation. Likewise, basic motions for summary judgment, wherein all of the Rule 56 materials have been submitted to the court, do not lend themselves readily to oral argument; the materials either present a genuine issue of material fact or they do not. You should ask yourself: "What additional information can I impart to the court at oral argument that has not been clearly set forth in my motion and memorandum?" If you have nothing

further to offer the court, perhaps oral argument is not necessary.

Finally, it is important to seek input from your client in deciding whether to request or waive oral argument. Your time is not cheap. If you are working on an hourly basis, you should review with your client the cost of your preparing for oral argument, traveling to and from court, waiting for your case to be called, actually appearing before the Court, and the expense of demonstrative evidence to make the argument effective. You should ask not only whether your client will pay for this time, but also whether your client would like to attend. Always invite your client to attend oral argument. After all, it is your client's case you will be presenting to the Court.

2. Who Should Argue Before The Court?

Once you and your client have determined that oral argument is desirable and the presiding Judge has set it for hearing, you must then decide which counsel of record will handle the oral argument. If you are handling the case alone, the answer is simple. In many cases, however, counsel of record may consist of two, three, or even four lawyers, or perhaps local and out-of-state counsel, or even separate counsel for multiple parties advancing the same issue on a particular motion. Hence, an inquiry should be made amongst counsel as to who is best suited to handle the issues before the Court.

Before accepting the laboring oar, ask yourself some important questions. For example, how well versed are you in the memoranda? How well versed are you in the jurisprudence cited in the memoranda? If the Court asks a factual question, or a question about a case cited in the memoranda, will you be able to answer promptly and completely, or will you be looking to the associate who conducted the research and prepared the briefs? If the associate or partner who wrote your client's memoranda knows the evidence and case law well, perhaps

he or she should handle the oral argument in furtherance of the client's best interests.

You might also consider breaking the oral argument up into sections to be handled by different attorneys. This plan, however, should be reserved for complex matters with issues that can be separated clearly. It is indeed not desirable to have multiple attorneys popping up and down in response to various questions, and thus you should be cognizant of making a streamlined presentation, even if more than one attorney participates in your argument.

3. Know Your Judge.

As you well know, various judges have different styles. You should know from past experience (or inquiries directed to a partner/associate or other attorney friend) what tendencies or preferences your judge might have. Does the judge ask a lot of questions during oral argument? Is the judge quite likely to take the matter under submission, or will he or she often rule from the bench at the close of oral argument? Is the judge known for poring over the memoranda and doing independent research? Also consider whether the judge has expressed himself/herself at status conferences, hearings, or other events held during the course of the particular case in which you are involved. Has the judge indicated a favorable or unfavorable opinion with regard to a particular witness, on a particular issue, or regarding a strategy being employed in the case? You should be aware if the judge has previously rendered an opinion in another case on the same or a similar issue. Just as important is the judge's prior expertise as an attorney, *i.e.*, his or her area of expertise before joining the bench. As you want your argument to be favorably received, knowing the "audience" for your presentation is very important.

4. Prepare And Organize Your Argument.

Like most everything else, the saying that "failing to prepare is preparing to

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Kurt D. Engelhardt, U.S. District Judge, Eastern District of Louisiana

fail” is true of oral argument. Like brief writing, oral argument is an exercise in communication —communicating not only established facts and controlling law, but also your client’s position and a desired result.

First, always assume that the judge has read the memoranda and is familiar with the material contained in them. When organizing, ask yourself, “What is important that is **not** in my memorandum?”

Second, isolate your strongest argument and flesh it out orally. You might consider advancing your strongest or best argument first, in order to ensure its presentation to the Court orally prior to a potential barrage of questions, or the expiration of time, which might derail a build-up to your best argument. Understand that not every point made in a brief merits further discussion orally beyond what has already been written. Quite often, issues have been exhaustively briefed and the Court needs no further exposure to those issues.

Third, stick to the rule or statute at issue. If you are moving under Rule 12, argue under Rule 12. Far too often attorneys find a familiar tangent and lose focus by immersing themselves into irrelevant details, future issues not part of the subject motion, ongoing controversies with opposing counsel that do not bear on the subject motion, or an entirely different motion that he or she either plans to file in the future or (worse yet) is already subject to a court ruling. That brings us to the fourth point in organizing, which is to **stay focused**. Make your point succinctly and move on to the next. Try to avoid a “stream of consciousness” approach that will require the Court to decipher later what exactly it was that you were trying to communicate.

Lastly, tell the Court what relief you desire for your client. While this is sometimes obvious, there are often occasions in which several forms of relief might be available. An obvious example: if you are moving under Rule 12(b)(6),

should the plaintiff be allowed to amend? If so, how much time do you believe is fair under the circumstances? If not, why not? Likewise, if you are defending a Rule 12(b)(6) motion at oral argument, don’t forget that you might lose the motion, but still have an opportunity to amend. Thus, you should certainly advise the court of your desire to do so in the event you are unsuccessful. Another example: if you seek injunctive relief, how should the injunction be fashioned? What about the bond? These are just a few examples of the types of considerations you should make when attempting to organize for an oral presentation to the court.

The best way to check your preparation and organization is to practice with another attorney, either in your office or with another firm. This suggestion does **not** mean to prepare a speech and recite it to another. This recommendation merely involves exposing the other attorney to the issues and then asking what questions he or she might have if he or she were the judge. It is often amazing to see attorneys either overlook the obvious issue or blindly hammer away with argument that is of no moment or that is predicated on a threshold determination that counsel is completely unprepared to discuss. By practicing with another attorney you might be surprised at how quickly that attorney can pinpoint factual inquiries, legal issues, and other matters in which most assuredly the court will also be interested.

5. Demeanor And Attitude Count.

These traits are a function of professionalism. Some lawyers come to court expecting to “blow the doors off” the courtroom or literally run their opponents out of the courtroom. From the time they stand up to make a presentation, they appear angry, unduly aggressive, and terribly arrogant. Oral argument is an opportunity to **communicate**, not one-up your opponent with an invective. Sometimes, during

the course of oral argument, tempers escalate and accusations fly before the argument is finished. This behavior is unacceptable and counter-productive. I have often found that bad attitude and demeanor sometime betray weakness in the client’s position, either factually or legally. Thus, as a tactic, overly-aggressive or obnoxious behavior does not intimidate anyone (surely not the judge) and might even create suspicion that your position is unsound. Likewise, I have seen the lawyers distract the court with such tactics from what is otherwise a firm and correct position.

Oral argument, in a nutshell, affords you the opportunity to explain to the Court, quite simply, why your client should prevail at this juncture. It is not an invitation to continue a grudge match from a deposition meeting or to tattletale to the court about opposing counsel’s conduct (unless that conduct is the subject of the motion). Be respectful of your opponent’s time and don’t interrupt your opponent. And, of course, it should go without saying (but unfortunately needs to be said): Do **not** for any reason interrupt the judge while he/she is asking a question or making a statement. Never be disagreeable just because you disagree.

6. Give The Court A Brief Overview Of Your Outline At The Outset, But Be Flexible!

This suggestion is perhaps the trickiest part of oral argument. Having prepared to make your points before the court, you might be faced with a direction from the bench that the judge wants to hear about issue D, when you had planned to talk about A, B, C and D. Or you may find that the judge starts propounding questions at the outset of your argument in an order that differs from what you have prepared. Therefore, I believe it best that you tell the Court in the first few seconds what you intend to cover in oral argument: “Your Honor, in addition to the information contained in my brief, I would like to present to the Court argument on the issues of A, B, C and D.”

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The judge is aware then that you intend to discuss issue D. Of course, this statement will not always prevent her or him from getting straight to D, but at least you have put the Court on notice that those are the issues you intend to cover at oral argument.

It could well be that the judge does not want to hear about A, B, C or D, but rather is concerned about issues X, Y and Z. Hence, you should be flexible. Your preparations should be all-encompassing, but should also include the entirety of the motion before the court. During the course of my research, I have sometimes become very interested in an issue that received little attention in the memoranda. Often times, the motion may turn on points that you believed were insignificant at the time you wrote your memorandum. To analogize, you must be able to turn to any page in the sheet music and play the tune on that page. You may want to return to your outline in some fashion or another, but it is obviously better if you can establish a logical flow between the court's inquiry and your pre-determined presentation. Far too often, the court wants to hear about D, but the attorney wants to talk about B, so the attorney continues to talk about B. Such lack of flexibility can give the impression that the party's position on D is weak or otherwise unfavorable. So use your outline, but be flexible.

7. Read The Pertinent Cases.

While not every case cited in a memorandum is controlling and dispositive of the issues before the Court, you should be completely familiar with cases that are cited – not only by you, but also (and perhaps more importantly) by your opponent. You should be at least generally familiar with the facts, the rationale, and the holding of each cited case. If you are going to distinguish your opponent's cited cases, you must know the facts of those cases in order to do so. Although this may sometimes require a significant amount of time spent preparing for oral argument, it can often

make the difference in court.

Moreover, it is embarrassing to the attorney, and speaks volumes to the court, when the attorney is unable to discuss with any specificity a case cited in his or her own memorandum. Likewise, if you are not fluent in your opponent's cited cases, the Court may assume that your entire position, including the written submission, has not been adequately researched to be dependable. In that sense, oral argument requires the additional commitment to learn with great familiarity the cases you cite in your written material, such that you can address questions about those cases without having to pull them out and review them on the spot.

8. Know The Case Record.

When was the last time you checked the record at the courthouse or on the net? Has anything been filed recently that either supports or undermines your motion? You can rest assured that the judge and his or her staff are quite familiar with the contents of the record and have spent some time reviewing, at a minimum, the case history (*i.e.*, when the suit was filed, what allegations were made, what relief was requested, what affirmative defenses have been lodged, what motions have been filed as well as rulings on such motions, and what future events have been placed on the court's calendar, such as the trial date, pretrial conference date, and other deadlines). You should, therefore, be completely familiar with the record yourself and also be cognizant of future deadlines and how they will be impacted by the issues you are arguing before the court. Will this motion, if granted, impact expert reports and deadlines for expert reports? Will this motion impact the trial date or the existing discovery deadline? The judge may well be concerned about such effects.

9. Use Demonstrative Aids, If Appropriate.

Consider whether the motion involves complex facts or critical

documents. Would an oral presentation be enhanced with a blow-up of a key document? Is there a schematic involving the relationships between corporate entities that might be illustrative? What about a time line or a graph? If you are making an argument based upon prescription or peremption, perhaps you should establish a time line of events to illustrate why prescription or peremption has or has not run. On the other hand, be careful that your demonstrative aid does not become a distraction or otherwise hinder your communication skills. While every motion does not lend itself to this technique, you should always remember that oral argument is about communication, and an aid to communication is certainly fair game.

10. Listen To Your Opponent.

Perhaps the most overlooked item of a good oral argument has nothing to do with speaking: what you can gain from your opponent at oral argument. You will, of course, have to counter your opponent's arguments, but what else is opposing counsel saying? If an allusion is made to certain "facts," is it possible that a witness exists who might testify as to such facts? Is counsel talking about a witness whom you have not deposed? Does she know about a bank of documents that you have not yet requested? Is opposing counsel tipping his hand on trial strategy? Quite often attorneys concentrate on their own presentation to the court and lose the opportunity to find out more about their opponent's case. Don't simply plan to reply to your opponent's arguments; listen in detail for what existing evidence might support your opponent's belief that his or her arguments are good ones.

11. Deal With Precedent.

In the Eastern District, the judges are concerned first and foremost with Fifth Circuit jurisprudence, and you should begin your review of cases there. If you can find a case which is dispositive of the motion and has precisely the same facts as your case, feel free to argue as

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much. However, be prepared for questions which, if answered candidly, might create distinctions between your case and the existing jurisprudence. If the judge does not ask these questions, a well-prepared opponent surely will highlight such distinctions.

If you find yourself on the unfavorable side of precedent, your goal will be to distinguish your case. Are there particular facts which make your case different? Do you have a new theory of law which might govern the factual circumstances? Obviously, if controlling jurisprudence is on all fours and adverse to your position, you have no choice but to try to distinguish your case. The Court may have more latitude if it considers your case factually unique.

12. Be Prepared To Reply.

Review your opponent's memorandum carefully. The court might ask you questions about points raised by your opponent. Also, there is a good chance that the arguments your opponent will offer will be contained in his or her pleadings. Knowing your opponent's memorandum will help you prepare rebuttal points. But again, be flexible, as your opponent might have a novel approach to oral argument that you will have to counter. Your opponent's witnesses, documents, arguments, and cited cases won't go away, so be prepared to parry each thrust.

13. Candor To The Court And Your Opponent.

We are all familiar with the attorney's duty of candor to the Court. This duty particularly comes into play at oral argument. When reviewing your opponent's brief, discern which facts you might concede if pressed by the court. You will be expected to answer the judge's questions succinctly and to the point. Thus, if the judge asks, "isn't it true that . . .," you will be called upon to admit or deny that fact. "Dancing" around such a question might suggest to the judge that the fact is both true and detrimental to

your argument. A better tactic might be to candidly concede facts established by your opponent and then explain why such facts should not result in an adverse ruling in your case. So you should also review your opponent's pleadings and supporting materials and determine which facts or points of law you can concede if asked directly by the judge. As to legal authority, never misquote a case or misrepresent the holding of a case. You should maintain your credibility with the court by acknowledging case law contrary to your position; you can always distinguish your case from such jurisprudence in good faith, assuming such grounds for distinction exist.

Earning a good reputation with the Court and the bar may take years, but getting a bad reputation only takes a day. Being overly contentious about clearly-incontrovertible facts, or attempting to have the court overlook unfavorable but clearly applicable case law, are the types of things the judge and his or her staff will remember. Candor to the court in such matters will never be mistaken for weakness or lack of zeal in advancing your client's interests.

14. Use Your Time Wisely And Efficiently.

There is an old maxim that queries why the person with the least to say usually takes the longest to say it. Maybe this truism is not necessarily so with oral argument before the Court, but to quote legendary basketball coach John Wooden, "Do not mistake activity for achievement." If you are given twenty minutes to argue your client's position, ask yourself whether you really need the full twenty minutes to be effective. If your position is firmly established, well thought out, and well-briefed, perhaps you should only use half that time and then advise the Court that you will rely on the strength of the written material submitted on your client's behalf. Such an approach conveys two points: (1) you are confident your brief is well written

and complete, and (2) you are prepared to answer the court's questions about any point contained in the brief or raised at oral argument. You should always leave at least a few minutes to entertain questions from the court. Some judges will ask questions throughout oral argument, some will wait until the end, and sometimes, there will be no questions at all. Nonetheless, seeking out the court's inquiries indicates you have complete command over the subject matter and are fully prepared. Just because the court does not ask questions of you does not mean that you will prevail on the motion, but rather indicates that you have indeed prevailed in establishing the court's understanding of your position. Likewise, a plethora of questions does not necessarily portend bad news for your position. Rather, you should welcome questions as an opportunity to demonstrate the firmness of your arguments and your excellent preparation for oral argument.

Conclusion: I have often felt that lawyering, to a large degree, is communicating. Whether in writing or verbally, you must be able to express not only your client's predicament, but also the outcome you desire for your client and reasons why such an outcome is legally proper. In that sense, oral argument is so much more than simply "face time" with the judge or rehashing what you have already communicated to the court in your memorandum. Well prepared and presented oral argument can often times move the court from a belief formulated after reviewing the memoranda and conducting its own research. Accordingly, it should be undertaken seriously and with great deliberation. A seamless and flawless oral argument is indeed a thing of beauty, if not a common occurrence. Such a successful oral presentation communicates the logic supporting the result you desire for your client and the reasons why such result is ultimately correct.

ELEVENTH ANNUAL JUDGE ALVIN B. RUBIN SYMPOSIUM

On Thursday, May 8, 2003, the Eleventh Annual Judge Alvin B. Rubin Symposium was held at the U.S. District Court for the Eastern District of Louisiana. The symposium is a living memorial to Judge Rubin's contribution to the federal jurisprudence and legal scholarship and concentrates on ethical and professionalism concerns. This year's featured topic, "Leave it Outside – Professionalism and Ethics in Practice," examined various salient issues, including deposition conduct, reduction of attorneys' fees recovery and prosecutorial conduct, and stoked animated discussion in response to several hypothetical sce-

narios. This year's panelists were District Judge Sarah Vance and Magistrate Judge Daniel Knowles of the U.S. District Court for the Eastern District of Louisiana, Shaun Clarke of Liskow & Lewis and A. Remy Fransen, Jr. of Fransen & Hardin. Magistrate Judge Sally Shushan of the U.S. District Court for the Eastern District of Louisiana served as moderator with the assistance of James M. Garner of Sher Garner Cahill Richter Klein McAlister & Hilbert. As in all years past, this year's symposium was a notable success.



Mike Rubin, Mrs. Alvin B. Rubin, Judge Carl Barbier



Judge Sarah Vance, A. Remy Fransen, Jr., Magistrate Judge Sally Shushan, Shaun Clarke, Magistrate Judge Daniel Knowles



Judge Ginger Berrigan, Mrs. Alvin B. Rubin, Mike Rubin



AT RISK STUDENTS IN COURT

Did Angel strike Cookie in self-defense? This was the issue to be decided by the jury in Section C. Students from the Alternative High School in Algiers participated in a mock trial in federal court. From the judge to the attorneys and to the defendant, the students played all the roles and captured the essence of a criminal trial. Chief Judge Ginger Berrigan offered her courtroom and her support to the young jurists.

The drama class, under the direction of Ms. Linda Cook, prepared for weeks for the day of judgment. Attorneys from the prosecution and the defense bar assisted the students in preparation of the direct and cross examinations of the witnesses. Two future stars of the Louisiana Bar emerged: Brittany Register for the defense and Blake Whalen-Enclarde for the prosecution.

But more importantly, Ms. Cook proudly noticed that her students were focused on their roles and upon doing their very best. From the teacher's viewpoint, the remarkable result of the

trial was the intensity exhibited by these at-risk students. Once too shy to introduce himself, the young man who played Jimmy the Bouncer testified with assurance, standing-up under a rigorous cross-examination.

After heated, albeit limited, deliberation, the foreperson of the 14-member jury announced: "Majority rules," and Angel was found guilty of simple battery.

Our chapter used some of the \$2500 grant it received from the Federal Bar Association, to sponsor this program to assist students attending the Alternative High School in lieu of regular high school. Special recognition should be given to Assistant Federal Public Defender Roma Ajubita Kent and Criminal Justice Panel Member Sandra Jenkins who volunteered to assist the students in preparing a defense and Assistant United States Attorneys Lynda Van Davis and Michael Simpson who helped the students prosecuting the case.

ELECTION OF OFFICERS AND DIRECTORS AT ANNUAL MEETING JULY 17, 2003

In accordance with the Chapter's By-Laws, A. Gregory Grimsal, our current President Elect, will automatically succeed Don K. Haycraft as President of our Chapter. Election of the remaining officers and directors will take place at the Annual Meeting on Thursday, July 17, 2003, at Arnaud's. The Nominating Committee has nominated the following persons:

CHAPTER OFFICERS

First Vice-President and President-Elect:

Thomas M. Flanagan

Treasurer:

Patrick E. O'Keefe

Recording Secretary:

Matthew B. Moreland

National Council Delegate:

Matthew B. Moreland

Membership Chair:

Virginia L. Schlueter

Immediate Past President:

Don K. Haycraft

CHAPTER BOARD OF DIRECTORS

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Nan Roberts Eitel

James M. Garner

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Don Paul Landry

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James Letten

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Deborah Pearce Reggio

Deborah B. Rouen

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Kent B. Ryan

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Valerie Schexnayder

Hon. Sally Shushan

Hon. Sarah S. Vance

Richard W. Westling

Hon. Loretta G. Whyte

Gerald Durr Woods

Hon. Jay C. Zainey

In addition, pursuant to Article 5, Section 1 of the Chapter's By-Laws, the chair of the Young Lawyers Division, Eric R. Nowak, is automatically an officer and member of the Board of Directors.

SOLACE

U.S. District Court Judge Jay Zainey and Mark Surprenant of Adams and Reese, in connection with the LSBA Community Action Committee, have started a new program called Support of Lawyers/Legal Personnel-All Concern Encouraged, or SOLACE. The sole purpose of the program is to provide a mechanism for the legal community to reach out in a small, but meaningful and compassionate, way to those judges, lawyers, court personnel, paralegals, legal secretaries and

their families who have experienced a death or some catastrophic illness or injury.

The workings of the program are quite simple, but the effects can be significant. Upon learning of some tragedy in your local legal community, simply notify Judge Zainey (504-589-7590) or Mark Surprenant (504-585-0213). Working with you and the close friends of the family, SOLACE then determines what

would be the most appropriate expression of support and concern, ranging from simply sending a card signed by recognized local and state leaders to providing meals and assisting with grocery shopping, child care, transportation, or whatever else the situation might warrant.

For more information, or if you would like to help with this program, please call Judge Zainey or Mark Surprenant.

WESTERN DISTRICT SEEKS INPUT IN NEW CASE MANAGEMENT AND ELECTRONIC CASE FILES SYSTEM

The U.S. District Court for the Western District of Louisiana is considering adopting a new system of electronic filing. If put in place, the new system would allow attorneys to file and view pleadings from their office, home, or anywhere they have access to the Internet, 24 hours a day, 7 days a week. It would also include features such as automatic email notice of case activity and the ability to download and print documents directly from the court system. Attorneys would still be able to

use paper filing and could use the new electronic system as they choose to.

The Court has appointed Pam Mitchell, Staff Attorney, as Project Manager of the new system, and Pam would like your input. Would you use electronic filing if it were available? Would you like email notices of important case activity? Please direct your comments to Pam at (318) 676-4273 or visit the court's website (www.lawd.uscourts.gov) for more information.

HABITAT BENCH-BAR HOUSE UNDERWAY



On Law Day, May 1, 2003, members of the local bar and state and federal court judges raised the walls on the New Orleans Habitat for Humanity Bench-Bar House at 1709 Mandeville Street, in the St. Roch area of the City. The House is a joint effort of local law firms and attorneys, and members of the judiciary, including nearly all of the members of the Eastern District bench. The Law Day kickoff event featured several federal jurists, including Chief Judge Ginger Berrigan, Magistrate Judge Karen Wells Roby, and state judges Madeleine Landrieu and Camille Buras. The local bar included ABA representative Judy Perry Martinez, LSBA president-elect Wayne J. Lee, and

former FBA (and New Orleans Habitat) president Andy Lee. Partner family member Toni Dixon also spoke graciously and movingly about realizing her "dream" of owning her own home. The house build continues and will be completed

by early July at a total cost of \$55,000. The house will then be sold to the Dixon family - who is helping to build the house - at no interest and with no profit. Volunteers and contributions are needed! FBA members who are interested in volunteering or contributing to the cost of the Bench-Bar House should contact the Habitat office at 861-2077, or genevam@habitat-nola.org.



NEW ORLEANS CHAPTER OF THE FEDERAL BAR ASSOCIATION PRESENTS BANKRUPTCY FOR BEGINNERS - FOUR PROSPECTIVES

OCTOBER 7, 2003, 1:00 p.m. - 5:00 p.m.

Court Room 705, 501 Magazine Street, New Orleans, Louisiana

4 Credit Hours - \$60.00 FBA Members \$90.00 Non-FBA Members

TOPIC: A course designed for new lawyers and not-so-new lawyers who want to learn the basics of bankruptcy practice.

FROM THE BENCH'S PERSPECTIVE: The Honorable Jerry A. Brown, Judge United States Bankruptcy Court, Eastern District of LA

FROM THE DEBTOR'S PERSPECTIVE: Jamie Cangelosi, debtor's counsel, Heller, Draper, Hayden, Patrick & Horn, L.L.C.

FROM THE CREDITOR'S PERSPECTIVE: Philip K. Jones, creditor's counsel, Liskow & Lewis

FROM THE TRUSTEE'S PERSPECTIVE: Claude C. Lightfoot Jr., trustee, Claude C. Lightfoot Jr. P.C

BANKRUPTCY FOR BEGINNERS REGISTRATION FORM



Name: _____

Firm/Employer: _____

Address: _____

Phone: _____ Fax: _____ E-Mail: _____

of places _____ (FBA Members \$60 each) _____ (Non-Members \$90 each)

Please return this form and remittance to: INGE HAMIDJAJA, ATTORNEY CONFERENCE CENTER
ROOM 364, 501 MAGAZINE STREET
NEW ORLEANS, LA 70130
PHONE (504)589-7990





MAGISTRATE JUDGE DANIEL E. KNOWLES, III

The investiture of Daniel E. Knowles, III as United States Magistrate Judge for the Eastern District of Louisiana was held on Wednesday, February 5, 2003. Judge Knowles received his Juris Doctorate degree from Louisiana State University in 1978. He served as law clerk for Honorable John C. Boutall, Louisiana Fourth Circuit Court of Appeal from 1978-1979 and for United States District Judge Patrick E. Carr from 1979 to 1981. From 1981 until 2002, Judge Knowles was a member of the New Orleans law firm of Burke & Mayer and handled general civil litigation, with a specialty in admiralty and maritime law.

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USAGE OF THE INTERNET IN THE EASTERN DISTRICT

Eldon E. Fallon, U.S. District Judge, Eastern District of Louisiana

scheduling and pretrial orders to govern discovery, which after nearly three years is nearing an end. Recently, this Court presided over the first trial of this MDL case, hearing a matter that was originally filed in this district. Following an eight-day trial, the jury returned a verdict in favor of the defendants.

With so many plaintiffs and attorneys involved in this case and other MDLs throughout the country, one of the most common complaints of counsel about an MDL is the so-called "black hole effect." This means that, except for those few on the inside of the litigation, most attorneys who represent plaintiffs involved in the MDL have little awareness of the proceedings and find information hard to obtain. This Court has been most mindful of these complaints and has taken many steps to prevent this from happening. For example, the Court holds monthly status conferences with all attorneys in the case to provide constant updates on the course of discovery and to bring before the Court any matters requiring immediate attention. Also, as part of the Court's effort to manage such nation-wide and expansive litigation, the Court, with the help of the Eastern District's Clerk of Court's office, created a website to keep the public and other attorneys informed of developments. The website is found at www.laed.uscourts.gov/propulsid.

The website is composed of a series of pages designed to give attorneys, as well as researchers, a current history of the litigation's progress. The first page provides an updated list of previous court appearances and occurrences, such as the monthly status conferences with counsel or any pretrial hearings. This page also announces any major decisions of the Court and rulings on various motions. The next page contains an updated calendar of upcoming events, including hearings, mediation schedules and

trials. These two pages are updated often, particularly after the monthly status conferences with counsel. These pages also include links to the Court's orders and minute entries. The minutes and orders themselves are listed on another page, with links permitting the viewer to see and print the document.

Other pages list contact information for the Court's staff as well as the attorneys in charge of managing discovery. Potential plaintiffs and their attorneys can also find the forms necessary to initiate proceedings in this Court. Finally, the transcripts of the monthly status conferences are available on-line as well as an updated view of the docket sheet for the case.

The website also contains a link to one of the most useful features this Court has utilized to assist attorneys in the course of discovery: Internet depositions. The Propulsid website contains a link to I-Dep (www.i-dep.com), a litigation technology company that specializes in providing Internet depositions. This feature allows an attorney to sit in his office and watch a deposition as it happens live, sometimes on the other side of the world. In addition to real-time audio and video, the person watching the deposition also sees a scrolling transcript of the deposition and can participate in a "chat room" function that allows communications between attorneys or experts. The feedback from the attorneys involved in this case has been positive and its use has greatly facilitated discovery in the Propulsid litigation.

In conclusion, the Propulsid website has proved a valuable tool for the many litigants and attorneys involved in this case. Further, the Court hopes that the site will assist researchers in understanding the history of this case as well as future MDL transferee courts in structuring the progress of their litigation.

JUDICIAL PAY LEGISLATION INTRODUCED

The Republican and Democratic leadership of the Senate Judiciary Committee recently introduced legislation, S-1023, to increase judicial salaries by 16.5%. The purpose of this bill is to restore the lost cost-of-living adjustments denied in the past decade due to linkage between judicial and congressional pay. A companion bill is also being introduced in the House of Representatives. The support of the Federal Bar Association was cited by Senator Hatch as he introduced the bill. The FBA, along with the American Bar Association, the Federal Judges Association, the Judicial Conference, and the Administrative Office of the United States Courts are all working to seek legislative support for this bill.

Federal Bar Association New Orleans Chapter

c/o Don Haycraft
Chapter President
501 Magazine St., Room 364
New Orleans, LA 70130

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NEW ORLEANS CHAPTER OF THE FEDERAL BAR ASSOCIATION'S ANNUAL MEETING AND LUNCHEON

This year's Annual Meeting and Luncheon will be held at Arnaud's Restaurant on July 17, 2003. Lunch will be served at 12:00 p.m. and will be preceded by a cash bar beginning at 11:30 a.m. The cost of the Annual Luncheon is \$45.00 per person. All Federal Judicial Clerks and Government Lawyers are entitled to a special rate of \$35.00.

Our keynote speaker is Rear Admiral Stephen W. Rochon, Acting Assistant Commandant for Intelligence and Investigations, United States Coast Guard, and former Director of Intelligence and Security, United States Department of Transportation.

Below is a reservation form for the Annual Luncheon. Please complete and return your reservation with a check to Inge Hamidjaja at the Attorney Conference Center. Please make your reservations on or before July 12th so that Arnaud's can have a count of attendees. We look forward to seeing you at this year's Annual Meeting and Luncheon.

ANNUAL LUNCHEON RESERVATION FORM

Name: _____ # attending: _____

Firm: _____

Address: _____

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