



The Orator

Newsletter of the Indianapolis Chapter of the Federal Bar Association

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CONGRATULATIONS TO JUDGE MAGNUS-STINSON, JUDGE WALTON PRATT AND MARK J. DINSMORE

The Indianapolis Chapter of the Federal Bar Association would like to congratulate Judge Jane Magnus-Stinson, Judge Tanya Walton Pratt and Mark J. Dinsmore on their recent achievements. On June 14, 2010, Judge Magnus-Stinson was sworn in as an Article III Judge for the Indianapolis Division of the Southern District of Indiana. Shortly thereafter, on June 25, 2010, Judge Tanya Walton Pratt took the oath to become an Article III Judge for the Indianapolis Division of the Southern District of Indiana. On August 27, 2010, the U.S. District Court for the Southern District of Indiana announced the selection of Mark J. Dinsmore for the position of Magistrate Judge. Upon his official appointment, Mr. Dinsmore will assume the position vacated by Judge Magnus-Stinson upon her appointment to District Judge.

We welcome each of you in your new positions and wish you continued success!

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A Message From Our President

By Shelese Woods, Esq.

President of the Indianapolis Chapter of the Federal Bar Association

Fall is all about change, and we are certainly undergoing some major changes here in the Southern District of Indiana. Since our last newsletter, two new federal district court judges have taken the bench - the Honorable Jane Magnus-Stinson and the Honorable Tanya Walton Pratt. With Judge Magnus-Stinson's elevation came a vacancy for a new federal Magistrate Judge, a position that was recently filled by Mark J. Dinsmore, who is a Partner at Barnes & Thornburg. Congratulations to all of our new federal judges and magistrate judges.

The Indianapolis FBA Chapter also presented several continuing legal education seminars during the Spring and Fall. In May, we were thrilled to have Chief Judge Richard Young present a seminar on advanced trial practice. We were even more excited when the Chief Judge invited along Judges Magnus-Stinson and Walton Pratt to the presentation. Their remarks were extremely insightful and we received very positive feedback from the attendees. Many thanks to these judges for giving their valuable time to the FBA.

In August, the Chapter presented another CLE seminar entitled "Health Care Fraud and Abuse: Lessons Learned from Representing the Government and the Industry," which was co-sponsored by Hall, Render, Killian, Heath & Lyman. The discussion was lively, and the attendees expressed appreciation to the FBA for hosting a CLE focused on this unique federal practice area.

This Fall, please be on the lookout for several other exciting CLE opportunities. We are pleased to announce that on **October 29, 2010**, we will be presenting an Introduction to the Federal Courts for new (and even not-so-new!) federal practitioners. We have a wonderful line-up of presenters including Judge William Lawrence, Magistrate Judge Debra McVicker Lynch, and Amy Holtz, Courtroom Deputy to Magistrate Judge Tim Baker. This CLE event is always informative and well-attended. Be sure you reserve your space now using the enclosed registration form.

Last, but not least, on **December 3, 2010**, the Chapter will be co-sponsoring a CLE on Advanced Legal Writing, along with the United States District Court for the Southern District of Indiana. The presenters are still being finalized, but expect some talented speakers from the bench and private practice.

Please mark your calendar and spread the word about these CLE opportunities. And, as always, please feel free to contact me or another member of the Executive Board if you have any questions or suggestions for making our Chapter more valuable to you.

Recent Developments to the "Relation Back" Doctrine

By Koryn M. McHone, Esq.

Civil practitioners should be aware of recent developments regarding Federal Rule of Civil Procedure 15(c)'s "relation back" doctrine.

Federal Rule of Civil Procedure 15(c) governs relation back for purposes of the statute of limitations of an amendment to a pleading that adds a new party. Specifically, Rule 15(c) provides that an amendment to a pleading relates back to the date of the original pleading when:

- (A) the law that provides the applicable statute of limitations allows relation back;
- (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out--or attempted to be set out--in the original pleading; or
- (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
 - (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
 - (ii) knew or should have known that the action would have been brought against it, but for a

mistake concerning the proper party's identity.

On June 7, 2010, the United States Supreme Court issued a unanimous decision in *Krupski v. Costa Crociere S.p.A.*, 130 S. Ct. 2485 (2010) (authored by Justice Sotomayor), holding that "relation back under Rule 15(c)(1)(C) depends on what the party to be added knew or should have known, not on the amending party's knowledge or its timeliness in seeking to amend the pleading." 130 S. Ct. at 2490. In *Krupski*, the plaintiff was injured when she tripped on a cable on a cruise ship. She sued Costa Cruise Lines, N.V. within the applicable limitations period; however, Costa Cruise Lines was only the sales and marketing agent for the cruise ship's true owner, which was Costa Crociere, S.p.A. Krupski eventually amended her complaint to name the true owner, but the amended complaint was filed outside of the statute of limitations period.

Costa Crociere successfully moved to dismiss the complaint in district court on the basis that there was no "relation back" under Rule 15. Krupski appealed, and the Eleventh Circuit affirmed on the grounds that the plaintiff either knew or should have known of the proper party's identity. 330 Fed. Appx. 892 (2009). Specifically, the Eleventh Circuit noted that Krupski's passenger ticket, which she had provided to her counsel well before the end of the limitations period, clearly identified Costa Crociere as the carrier. Therefore, the court found that Krupski had made a deliberate choice, not a "mistake" in not naming Costa Crociere as a party in the original complaint.

The case went to the Supreme Court, which disagreed. The Court stated in relevant part:

By focusing on Krupski's knowledge, the Court of Appeals chose the wrong starting point. The question under Rule 15(c)(1)(C)(ii) is not whether Krupski knew or should have known the identity of Costa Crociere as the proper defendant, but whether Costa Crociere knew or should have known that it would have been named as a defendant but for an error. Rule 15(c)(1)(C)(ii) asks what the prospective *defendant* knew or should have known ... not what the *plaintiff* knew or should have known at the time of filing her original complaint.

Applying these principles to the facts of this

case, we think it clear that the courts below erred in denying relation back under Rule 15(c)(1)(C)(ii)... Because the complaint made clear that Krupski meant to sue the company that "owned, operated, managed, supervised and controlled" the ship on which she was injured, and also indicated (mistakenly) that Costa Cruise performed those roles, Costa Crociere should have known, ... that it was not named as a defendant in that complaint only because of Krupski's misunderstanding about which "Costa" entity was in charge of the ship clearly a "mistake concerning the proper party's identity."

Krupski, 130 S.Ct. at 2493 94, 2497.

The Seventh Circuit Court of Appeals has not had occasion to address *Krupski*, which is still making its way through the district courts. In *Smetzer v. Newton*, 2010 WL 3219135 (Aug. 13, 2010), Magistrate Judge Cosbey of the Northern District of Indiana did not squarely apply, but discussed *Krupski* in a case in which the plaintiff, an inmate in a county jail, claimed that he received negligent dental care. Smetzer sued "unknown police officers," and the County moved to dismiss the claims on the basis that the statute of limitations had run and any attempt to add them would be futile because the proposed amendment would be time-barred and would not relate back to the date of the original complaint. The court noted:

As the Defendants correctly point out, in this Circuit, as in some others, John Doe defendants described in a complaint do not generally count for purposes of Rule 15, because the word "mistake" does not equate with "lack of knowledge." This governance may have changed, however, after the Defendants' motion was filed. In *Krupski v. Costa Crociere S.P.A.*, --- U.S. ---, --- - ---, 130 S.Ct. 2485, 294-95, ---L.Ed.2d ---, --- - --- (2010), the Supreme Court addressed a situation where a plaintiff knew of two parties and sued the wrong one. The Court held that a plaintiff's knowledge of the proper party's existence did not preclude the plaintiff from making a "mistake" under Rule 15(c)(1)(C)(ii). The Court explained that a "deliberate but mistaken choice" to sue one party instead of another, "does not foreclose a finding that Rule 15(c)(1)(C)(ii)

has been satisfied.”

Although *Krupski* did not deal with a case such as this one, where Doe defendants have been named, the Court’s decision refocuses the question away from “whether [the plaintiff] knew or should have known the identity of [the newly named defendant] as the proper defendant,” to “whether [the newly named defendant] knew or should have known [during the Rule 4(m) period] that it would have been named as a defendant but for an error.”

Since the parties make no effort to discuss *Krupski*, or the new analysis it invokes, the Court will not dismiss the Doe Defendants at this point, and thus the Motion will be denied without prejudice in this respect.

Smetzer, 2010 WL 3219135, *10 (citations omitted).

Developments In The Class Action Fairness Act (CAFA)

*Patricia Orloff Erdmann

Overview

In enacting the Class Action Fairness Act of 2005 (“CAFA”)¹ on February 18, 2005, Congress made three primary changes to federal class action procedure: (1) the legislation created a “consumer class action bill of rights”; (2) federal diversity jurisdiction was expanded or eased; and (3) the requirements for removal from state court to federal court were relaxed.²

Impact of CAFA on Federal Courts

The Federal Judicial Center studied CAFA’s impact on the federal courts and found a 72 percent increase in class action activity in the 88 district courts studied.³ Much of the increase was in federal question cases, especially labor and federal consumer protection class actions.⁴ Post-CAFA, the study found a significant increase in the number of diversity class actions filed as original proceedings in the federal courts.⁵ The increase in diversity class actions was due in large part to an increased number of contracts and consumer protection/fraud class actions.⁶

Federal Jurisdiction Under CAFA: Class vs. Mass

In *Cappuccitti v. DirecTV, Inc.*, No. 09-14107, 2010 WL 2803093, at *3 (11th Cir. July 19, 2010), the U.S. Court of Appeals for the Eleventh Circuit held *sua*

sponte that in a CAFA action originally filed in federal court, at least one of the plaintiffs must allege an amount in controversy that satisfies the current congressional requirement for diversity jurisdiction under 28 U.S.C. § 1332(a).⁷

The named plaintiffs, Renato Cappuccitti and David Ward, citizens of Georgia, sued DirecTV in federal court under CAFA seeking recovery on behalf of themselves and similarly situated DirecTV subscribers in Georgia of the fees DirecTV charged subscribers for cancelling their subscriptions prior to expiration. The fees ranged from \$175 to \$480. Cappuccitti sought damages for himself and the class in excess of \$5,000,000.⁸

DirecTV moved to compel plaintiffs to submit to arbitration per the arbitration and class action waiver provisions in the subscriber agreements, and alternatively to dismiss for failure to state a claim. The court denied the motion to compel arbitration but granted the motion to dismiss. DirecTV filed an appeal.⁹

The Eleventh Circuit concluded that subject matter jurisdiction was absent from the moment Cappuccitti brought the case.¹⁰ “If we held that § 1332(a)’s \$75,000 requirement for an individual defendant did not apply to § 1332(d)(2) cases, we would be expanding federal court jurisdiction beyond Congress’s authorization Moreover, the \$75,000 requirement expressly applies in [mass] actions removed under CAFA, 28 U.S.C. § 1332(d)(11)(B)(i).”¹¹ DirecTV filed a petition for panel rehearing or rehearing *en banc* on August 9, 2010.

Subsequently, the U.S. District Court in *Gutierrez v. Wells Fargo Bank, N.A.*, 2010 WL 3155934, at *56 (N.D. Cal. Aug. 10, 2010) declined to follow the recent Eleventh Circuit’s decision in *Cappuccitti*, and concluded that the jurisdictional requirements under CAFA had been met in the case. The court stated:

Nowhere in Section 1332(d) are the jurisdictional requirements of Section 1332(a) cross-referenced, except for the removal of “mass actions” from state court. *See* 28 U.S.C. 1332(d)(11)(B)(i) (defining a “mass action” as any civil action except a class action filed in district court under FRCP 23 in which monetary relief claims of

100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact). The instant action was not removed from state court as a "mass action," but filed originally in district court as a class action under FRCP 23.¹²

Notification to Appropriate Federal and State Officials

CAFA also added requirements under § 1715 mandating notification to appropriate federal and state officials of proposed class action settlements. Within 10 days after a proposed class action settlement is filed in federal court, each defendant must serve notice of the proposed settlement to: (1) the U.S. Attorney General (or for banks and thrifts, the entity with primary regulatory or supervisory responsibility over the defendant); and (2) appropriate State official with primary regulatory, supervisory or licensing authority over defendant or to the State attorney general where a class member resides.¹³

Although the notice provision does not impose any obligations, duties or responsibilities on Federal or State officials,¹⁴ a federal court may not issue an order giving final approval of a proposed settlement earlier than 90 days after the later of the dates on which the appropriate Federal and State officials are served with the required notice.¹⁵ As a result of noncompliance, a class member may choose not to be bound by a settlement agreement or consent decree if the class member demonstrates that the notice requirements were not met.¹⁶

Presence of a Governmental Participant in Approval

In approving the proposed class action settlement, involving breach of contract and bad faith claims, in *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *14 (N.D. Cal. Apr. 22, 2010), the district court noted that after required notices were served on 44 governmental entities, no state or federal official raised any objection or concern regarding the settlement agreement. The court explained that, "[a]lthough CAFA does not create an affirmative duty for either state or federal officials to take any action in response to a class action settlement, CAFA presumes that, once put on notice, state or federal officials will raise any concerns that they may have during the normal course of the class action settlement procedures."¹⁷

In *Radosti v. Envision EMI, LLC*, No. 09-887 (CKK), 2010 WL 2292343 *22 (D.D.C. June 8, 2010),

the court approved a proposed coupon settlement in a consumer class action against the sponsor of educational youth conferences. In their *amicus curiae* brief, Attorneys General contended that CAFA mandated heightened scrutiny of coupon settlements.¹⁸

In *True v. Am. Honda Motor Co.*, No. EDCV 07-0287-VAP (OPx), 2010 WL 707338, at *26 (C.D. Cal. Feb. 26, 2010), the court denied plaintiffs' motion for final approval of settlement in a class action against Honda for alleged false and misleading advertising in part because of general disfavor of coupon settlements. The court received formal objections from class members and the State of Texas. In addition, twenty-five Attorneys General and one state Office of Consumer Affairs filed an *amicus curiae* brief in opposition to the initial proposed settlement.¹⁹

The court noted the parties sent notice to the Attorneys General only ten days prior to the final approval hearing. "A mailing sent only ten days prior to the final approval hearing cannot possibly give adequate notice to the Attorneys General in order to achieve the purposes of 28 U.S.C. § 1715(b). This delay makes it questionable whether the Court even has the authority to issue an order giving final approval to the proposed settlement in light of 28 U.S.C. 1715(d)" ²⁰ The court found the mailing inadequate under any measure of reasonable timing.²¹

*Patricia Orloff Erdmann is Chief Counsel for the Litigation Division of the Indiana Attorney General's Office. A special thanks to Grant Helms, Summer Law Clerk in the Civil Rights & Employment Litigation Section, for his assistance with this article.

¹ Pub.L. No. 109-2, 119 Stat. 4 (codified in scattered sections of title 28). "The Committee believes that the federal courts are the appropriate forum to decide most interstate class actions because these cases usually involve large amounts of money and many plaintiffs, and have significant implications for interstate commerce and national policy. By enabling federal courts to hear more class actions, this bill will help minimize the class action abuses taking place in state courts and ensure that these cases will be litigated in a proper forum." S. REP. No.109-14, at 26-27 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 27, 2005 WL 62797.

² 28 U.S.C. §§ 1332, 1453, 1711-1715; Robin Miller, Annotation, *Construction and Application of Class Action Fairness Act of 2005*, 18 A.L.R. FED. 2d 223 (2007).

³EMERY G. LEE III & THOMAS E. WILLGING, FED. JUDICIAL CTR., THE IMPACT OF THE CLASS ACTION FAIRNESS ACT OF 2005 ON THE FEDERAL COURTS 1 (2008) (comparing the period of January-June 2007 with July-December 2001).

⁴ *Id.*

⁵ Pre-CAFA average of such filings per month was 11.9; post-CAFA average was 34.5 per month. *Id.* at 1-2.

⁶ *Id.* at 1, 12-13.

⁷ 28 U.S.C. § 1332 provides:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

⁸ *Cappucciti*, 2010 WL 2803093, at *1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at *4.

¹² *Id.* at *56.

¹³ 28 U.S.C. § 1715.

¹⁴ 28 U.S.C. § 1715(f).

¹⁵ 28 U.S.C. § 1715(d).

¹⁶ 28 U.S.C. § 1757(e)(1).

¹⁷ *Id.*

¹⁸ 2010WL 2292343, at *12; *see also Synfuel Technologies, Inc. v. DHL Express (USA)*, 463 F.3d 646, 654 (7th Cir.

2006) (“[A]lthough this case is not covered by the Class Action Fairness Act (CAFA) of 2005, we note that in that statute Congress required heightened judicial scrutiny of coupon-based settlements based on its concern that in many cases ‘counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value.’”).

¹⁹ *Id.* at *2.

²⁰ *Id.* at *25.

²¹ *Id.*

May It Please the Court

By Koryn M. McHone, Esq.

The Federal Bar Association recently had the honor of interviewing the newest District Judges for the U.S. District Court, Southern District of Indiana. Judge Jane Magnus-Stinson and Judge Tanya Walton Pratt graciously offered to provide us with an inside look at their rise to Article III District Judge status, the challenges and excitement associated with their new positions, and (of particular use to federal practitioners within the FBA) a few friendly pieces of advice regarding their expectations for those of us appearing before them in the coming years.

The enthusiasm Judge Magnus-Stinson and Judge Pratt have for their new positions was clear throughout our interview, as they discussed their excitement to continue -- or in the case of Judge Magnus-Stinson, to get back to -- trying cases. Notably, though each of these Judges is a dynamic role model and jurist, each of their respective paths to Article III District Judge were shaped by differing experiences and role models. Judge Pratt credits the Honorable Judge Webster Brewer for having first afforded her the opportunity to experience the law from the opposite side of the bench, when he allowed her to assist him at trial a mere five years into her legal career. Indeed, Judge Brewer was the first person who encouraged Judge Pratt to become a judge and set her on the path leading her to her current position. Judge Magnus-Stinson likewise rose to her current position after receiving encouragement from many others with whom she has worked over the years, including former Governor Evan Bayh, within whose Administration she worked for a number of years and where she first gained the opportunity to explore the possibility of becoming a judge. After having worked together for many years

within the Indiana State Courts, Judges Magnus-Stinson and Pratt are reunited once again, this time in the federal forum, where they will continue to serve as role models and look forward to carrying on their long history of collaborating as colleagues and sharing their unique insights.

Significantly, though each of these Judges had previously served as a Judge within Marion County, they shared that their journey to Article III Judge was not something they ever predicted, nor could their attainment of their current positions be planned for over the years -- much less in such a manner that each would achieve District Judge status within months of the other. In fact, the Judges readily agreed that they never imagined they would end up in their current positions, as it was simply impossible to charter a career path that would lead to the position of U.S. District Judge, given the many pieces that must first fall into place. As Judge Pratt best described it, "The stars have to be in line," in order for someone to become a District Judge. For example, the political atmosphere and leadership must facilitate the selection of a candidate, and then the candidate must undergo rigorous scrutiny before Congress prior to being approved. Having successfully navigated those approval processes, the Judges are now adjusting to their new positions and are shaping the Southern District of Indiana's federal practice in their new roles.

Each Judge has faced her own challenges in making this transition, whether relating to the logistics of setting up her new chambers, learning the intricacies within the federal forum, exploring new areas of the law, or adapting from the chaotic pace of a Magistrate Judge to the quieter (but certainly no less active) role of a District Judge. In facing such challenges and settling in, each Judge has found support in her colleagues and Court administration, as well as those within her own chambers who have sought to assist in the transition process. Indeed, Judge Pratt readily praised the additions to her legal staff, including the two law clerks she has selected, whose intelligence and creativity she believes will provide her with assistance and insights that she formerly did not have while serving as a Marion County Judge. Similarly, Judge Magnus-Stinson, having previously worked as a Magistrate Judge, likewise praised her legal staff, indicating that she has chosen a slightly different model for her legal team upon moving into the District Judge position, shifting to having three law clerks to assist her in managing the large case load she has acquired.

In discussing their expectations and goals for their new positions, Judges Magnus-Stinson and Pratt also took the time to share with us their practical insights as to how to make the litigation process from Complaint filing to resolution most efficient and less frustrating for both the parties and the Court. Their first pointer was that it is imperative for us to remember that our specialty is something we have spent significant amounts of time learning, whereas the District Judge before whom we appear simply does not have the benefit of unlimited time and resources to delve into the nuances of each area of the law daily. Therefore, it is our responsibility as federal practitioners to continuously educate the Court and point the Court to the legal authority and arguments most essential to our cases. The Judges welcome (and indeed, invite) such education and are appreciative of any efforts the parties make to simplify the issues and refresh them on particular nuances that they -- unlike us-- may not analyze regularly. For example, if there is a particular term of art in your practice area, define it for the Judge in your briefing or early on at trial, as opposed to simply assuming that the Judge will recall this definition off the top of his or her head. Bear in mind that when the Judge begins considering your case, it is likely that he or she is transitioning his or her focus from an entirely distinct area of the law to the issues you are presenting and has not had the benefit of months or years of analysis of the issues underlying your litigation. As Judge Magnus-Stinson recollected, she once co-presided on a pre-trial with Judge Sarah Evans Barker, and Judge Barker advised the attorneys, "I am ready to be educated. So bear that in mind." In other words, much like you would educate a jury on highly-technical legal issues, be cognizant that the Judge is a generalist and does not deal in these technicalities daily, thus, it is prudent to provide the Judge a refresher as well.

In educating the Court, however, Judges Magnus-Stinson and Pratt cautioned that it is essential for attorneys to *accurately* portray the law, as they and their clerks do not blindly rely on representations of counsel and will independently verify the analyses advanced by each side. Indeed, it goes without saying that honesty is the crux of a lawyer's credibility with the Court. The Judges emphasized that lawyers must demonstrate honesty in their filings and in their everyday practice. For example, if counsel misses a deadline, the Judges stressed that counsel is well-advised to admit his or her mistake to the Court, as opposed to trying to explain away the error. The Judges understand that we are humans, and we all make mistakes. The downfall of counsel, however

arises when there is blame-shifting. Do not blame your assistant. Do not claim not to have received the Court's notices. The expectation is that you will apologize to the Court, own up to the mistake, and strive not to make the same mistake twice. The outcome may not be perfect for you or your client in confessing to a mistake, but in the long run, you will be better off having preserved your credibility with the Court. Similarly, when presenting disputes to the Court via written filings, it is imperative to remember that the Judges are not inclined to adopt extreme positions, but rather look to the law and seek to determine what is a reasonable outcome. Taking an extreme position, except under exceptional circumstances, therefore, is not likely to gain you any credibility before the Court.

Likewise, though Judge Magnus-Stinson and Judge Pratt complemented the professionalism of the attorneys appearing before them, the Judges issued a reminder that you will not enter into the good graces of the Court (or the jury) by lodging a personal attack on your opponent. From the Court's perspective, such personal attacks suggest that the merits of your case are weak, thereby forcing you to focus your attention elsewhere. Within the Court, there is an expectation among the Judges that they will conduct themselves in a friendly and cordial manner and demonstrate congeniality towards one another and all Court staff, in general. That expectation understandably carries over to the lawyers who appear before the Court, and who are expected to behave like professionals, as opposed to children, in advocating for their clients. The best way to gain the Court's trust is to act with respect and candor towards the Court, the jury, and your fellow practitioners at all times.

Given the voluminous docket managed by the U.S. District Court for the Southern District of Indiana, it should come as no surprise that each of the newest Judges have immediately assumed large caseloads. As Judge Pratt recounted, "I got sworn in on June 25 at about 11 a.m. We had our first Judges' meeting that afternoon, and I was given a list of 347 cases." Similarly, upon her transition from Magistrate Judge to District Judge, Judge Magnus-Stinson immediately took the bench, trying a case a mere five days after taking her oath on June 14, 2010, and assuming approximately 372 cases upon her move. The busy schedules of these Judges (as well as all of our Article III Judges and Magistrate Judges) should remind us, therefore, that it is our duty to assist the Court in promoting efficiency and moving cases along in an expedited fashion as possible. Judges Magnus-Stinson and Pratt advised that the Court appreciates counsel's

efforts to diligently pare down their cases to the extent practicable before trial. If there are claims and counter-claims, it is recommended that the parties make every effort to find a way to dispose of any claims that can be resolved prior to trial. Likewise, it is prudent to undertake the necessary preparations to stipulate to everything possible, and to minimize the burden on the Court (or the jury) when your trial date comes. Such efforts certainly will not go unnoticed or unappreciated by the Court.

For example, in discussing the selection of Mark Dinsmore as the next Magistrate Judge and his many positive attributes, Judge Magnus-Stinson credited his ability to efficiently manage his cases, recollecting that when he went to trial, "Everything was presented neatly – they fought over the real issues of the case." As federal practitioners, we should strive to make this approach the norm, as opposed to a "refreshing change in litigation style," as Judge Magnus-Stinson referred to Mr. Dinsmore's efforts. Along these same lines, be forewarned that the Judges frown upon the piece-meal presentation of cases or delay by the parties in moving through the litigation process. As the Court cannot constantly shift its focus back and forth between matters, it is best to simply address all issues at once for the Judge and in as efficient manner as possible (i.e., consolidation of briefing on cross-motions for summary judgment), in order to allow the Judge and his or her clerks to address all issues at once and hone in on the key law and arguments in one sitting, as opposed to having to refresh themselves in addressing piece-meal motions spread out over the course of time. Additionally, the Judges cautioned that deadline extensions should be the exception not the rule, given the Court's active dockets and scheduling difficulties that exist. As such, the Judges request that the parties make every effort to avoid having to seek extensions, particularly those that will impact the trial date and advised that counsel should not just assume that requests for such enlargements will not be automatically granted. Rather, the parties should plan for possible disputes on the front end, and, if disputes are anticipated, the Case Management Plan should be adjusted to account for such disputes, with deadlines being enlarged prior to the finalizing of a trial date and prior to the parties entering into a contentious relationship. The Court would prefer such forward-thinking and consultation with the Magistrate Judge at the onset of a case, in order to ensure a workable litigation schedule exists without the belated need to extend deadlines and upset the carefully orchestrated schedules of the Judges.

In addition to the general practice tips shared by Judge Magnus-Stinson and Pratt, they likewise demonstrated that even the busiest of professionals should strive to find time in their day to spend time with their families and develop every facet of their lives, as opposed to focusing only on their careers. The Judges shed a bit of insight into their own lives, with the Judges discussing the joys their children bring them. Additionally, when not reading for work, the Judges like to relax and unwind with some leisurely reading. Judge Pratt sharing that she recently read the book “Cane” by author Jean Toomer, which she described as being a beautifully written book consisting of poems and prose about the African-American experience during the Harlem Renaissance and which she highly recommends. Judge Magnus-Stinson shared that she participates in a book club, and most recently the members read was the mystery novel, “The Thirteenth Tale,” by Dianne Setterfield. In other words, much like each of us, our newest District Judges appreciate the balance that must be struck between one’s professional and personal lives.

We would like to extend a very special thank you to Judges Magnus-Stinson and Pratt for taking the time out of their very chaotic schedules during this time of transition to share these insights with us. We wish them the best going forward!

CALENDAR OF EVENTS

Please save the dates for these upcoming events:

Introduction to the Federal Courts CLE Program Hosted by the Indianapolis Chapter of the Federal Bar Association

October 29, 2010

2:00 PM

United States District Court, Southern District of Indiana

46 East Ohio Street

Courtroom 202

Indianapolis, Indiana 46204

Please see attached Advertisement and Registration Form. Be sure to reserve your spot today!

Advanced Legal Writing CLE Program Co-Hosted by the Indianapolis Chapter of the Federal Bar Association in Conjunction with the U.S. District Court, Southern District of Indiana

December 3, 2010

Indianapolis, Indiana

The details of this CLE are currently being finalized. Additional information will be e-mailed to Federal Bar Association Members. (To ensure receipt of such communications from the FBA, please make sure your contact information is up-to-date!)

AN INTRODUCTION TO FEDERAL COURTS IN THE SOUTHERN DISTRICT OF INDIANA

Hosted by the Indianapolis Chapter of the Federal Bar Association

October 29, 2010

2:00 P.M.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA



46 East Ohio Street
Courtroom 202
Indianapolis, IN

This CLE will provide an overview of local district court practice and procedure, including practicing before the Magistrate Judges, local rules and updates.

SPEAKERS

The Honorable William Lawrence

- District Court Judge

The Honorable Debra McVicker Lynch

- Magistrate Judge

Amy Holtz

- Courtroom Deputy to Magistrate Judge Tim Baker

Presented by:

COST

- \$35 – FBA Member
- \$50 – Non-FBA Member



Federal Bar Association

The premier bar association serving the federal practitioner and the federal judiciary

Federal Bar Association – Indianapolis Chapter
Introduction to the Federal Courts - Southern District of Indiana

October 29, 2010 at 2:00 p.m.
United States District Court for the Southern District of Indiana
Courtroom 202

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