



THE ROCKET DOCKET NEWS

The Newsletter of the Northern Virginia Chapter of the Federal Bar Association

SEPTEMBER 2006

OFFICERS

President

Michael S. Nachmanoff
Office of the Federal Public Defender
Michael_Nachmanoff@fd.org

President-Elect

John A. Trocki III
Morrison & Foerster LLP
JTrocki@mofo.com

Immediate Past President

Barbara S. Wahl
Arent, Fox, Kintner,
Plotkin & Kahn
wahib@arentfox.com

Vice President

John F. Anderson
Troutman Sanders LLP
John.Anderson@troutmansanders.com

Secretary

John E. Coffey
Reed SmithLLP
JCoffey@ReedSmith.com

Treasurer

Attison Barnes, III
Wiley Rein & Fielding LLP
abarnes@wrf.com

Director

Sean F. Murphy
McGuireWoods LLP
sfmurphy@mcguirewoods.com

Director

Laurie Hand
Morrison & Foerster LLP
LHand@mofo.com

Director

Charles F. B. McAleer, Jr.
Miller & Chevalier Chartered
cmcaleer@milchev.com

National Delegate

Suzanne Little
Office of the Federal
Public Defender
suzanne_little@fd.org



News from the President

It is hard to believe that the summer has ended and autumn has arrived. It is also hard for me to believe that my tenure as President of the Northern Virginia Chapter of the Federal Bar Association ("FBA-NOVA") is coming to a close at the end of this month. It has been a great honor and privilege to serve the FBA-NOVA, and I am delighted to be leaving this position in the capable hands of President-Elect John Trocki.

We have been very fortunate this year to have had the generous participation of so many federal judges and experienced practitioners who graciously devoted their time to this organization and presented fascinating CLE programs on topics as diverse as the new bankruptcy rules, *Daubert* hearings, discovery issues and the False Claims Act. In addition, we held our ninth annual Introduction to the Courthouse Program and had the opportunity to honor long-serving court reporter Don McCoy on his retirement and Betsy Paret, Clerk of the Court, for her service to the Eastern District of Virginia. None of these events would have been possible without the effort of all of the members of the FBA-NOVA's Board of Directors. I cannot adequately express my gratitude to my fellow Board Members for their support and assistance throughout the year. It has been a pleasure to work with them, and I look forward to continuing to assist the organization in the future.

As Fall arrives, the FBA-NOVA is excited to be sponsoring a number of events. On Tuesday, September 26, 2006, the FBA-NOVA will host the annual Torrey Armstrong Memorial Lecture and Judicial Law Clerk Reception at the George Washington Masonic Temple. As in past years, we will offer tours of the Temple, which include a spectacular view of Alexandria and Washington D.C., to be followed by the Torrey Armstrong Memorial Lecture. This year's speaker will be the Honorable Paul Clement, Solicitor General of the United States, who I am sure will give an interesting lecture. In addition, for those who are interested, there will be an open bar at the reception which immediately follows the introduction of the new judicial law clerks. On October 17, 2006, the FBA-NOVA will host its Third Annual Golf Tournament at the Army Navy Country Club in Arlington. This is one the highlights of the FBA-NOVA calendar, and I urge golfers (whether experienced or otherwise) to sign up for this event. Both FBA members and non-members are welcome. It is a lot of fun and a beautiful golf course. Finally, for those of you who may need last-minute ethics credits, Tom Spahn, Esquire, will be giving a one-hour ethics CLE on Tuesday, October 31, 2006, which falls on the final day of the deadline for the Virginia State Bar. Please see details on these events in the newsletter below.

Once again, it has been an honor to serve the FBA-NOVA, and I look forward to seeing you at FBA-NOVA events this Fall.



EDITORS

Charles F. B. McAleer, Jr.
Miller & Chevalier Chartered
cmcaleer@milchev.com
(202) 626-5963

Rebecca L. Saitta
Wiley Rein & Fielding LLP
rsaitta@wrf.com
(703) 905-2831

The Rocket Docket News is a regular publication of the Northern Virginia Chapter of the Federal Bar Association. Any opinions or views published in the Rocket Docket News do not necessarily imply approval by the FBA, the Northern Virginia Chapter or any agency or firm with which the editors or authors are associated. All copyrights are held by the Northern Virginia Chapter of the FBA unless otherwise noted by the author.

Members of the Northern Virginia Chapter are encouraged to submit articles or news information of interest to other members of the Northern Virginia Chapter for possible publication in the Rocket Docket News. Please submit any proposed articles or news information to the Editors at the telephone numbers and e-mail addresses listed above. The Editors reserve the right to decide on publication, and any articles accepted for publication are subject to editing.

© Northern Virginia Chapter of the Federal Bar Association
All rights reserved.

Chapter Holds Annual Meeting

On June 22, 2006, the Northern Virginia Chapter held its Annual Meeting at the Army-Navy Country Club in Arlington, Virginia. The Chapter was honored to have Chuck Rosenberg, the new U.S. Attorney for the Eastern District, address the attendees. Mr. Rosenberg, who was confirmed by the U.S. Senate just days earlier, is no stranger to the Eastern District, having previously served as an Assistant U.S. Attorney in both the Norfolk and Alexandria Divisions. A long-time public servant, Mr. Rosenberg served as the U.S. Attorney for the Southern District of Texas immediately prior to his return to the Eastern District. The Chapter wishes Mr. Rosenberg much success in his new position.

At the Annual Meeting, the Chapter also elected its officers and directors for the 2006-07 term. The slate of candidates proposed by the Nominating Committee were unanimously elected to the following positions: John Trocki (Morrison & Forester) (President), John Anderson (Troutman Sanders) (President-Elect), Jack Coffey (Reed Smith) (Vice President), Attison Barnes (Wiley, Rein & Fielding) (Secretary), Chas McAleer (Miller & Chevalier) (Treasurer), Suzanne Little (Federal Public Defender's Office) (FBA National Delegate), Laurie Hand (Morrison & Forester) (Director), Sean Murphy (McGuire Woods) (Director), Scott Caulkins (LeClair Ryan) (Director).

Magistrate Judge O'Grady Nominated to District Court Position

On August 2, 2006, the White House announced that it had sent to the U.S. Senate, for confirmation, the nomination of Magistrate Judge Liam O'Grady to serve as U.S. District Judge for the Eastern District of Virginia. The same day, U.S. Senator George Allen issued a press release stating that "[a]fter interviewing several candidates and evaluating their credentials, Senator Warner and I were confident in our recommendation of Liam O'Grady to serve on the Eastern District Court. Liam will bring nearly three decades of legal experience to the bench. I have great faith in this nominee and, as my colleagues examine his record, I am sure they will join me in supporting his nomination to the federal bench." A graduate of the George Mason University Law School, Magistrate Judge O'Grady's career has included six years as a federal prosecutor, four years as an assistant commonwealth's attorney and ten years in private practice with a Washington, D.C. intellectual property firm. The Chapter congratulates Magistrate Judge O'Grady on his nomination and wishes him a speedy confirmation.



New Richmond Bankruptcy Judge Appointed

Kevin R. Huennkens has been appointed the second judge in the Richmond Division of the U.S. Bankruptcy Court for the Eastern District of Virginia. The appointment was made by Chief Circuit Judge William W. Wilkins of the U.S. Court of Appeals for the Fourth Circuit, effective September 11, 2006. Judge Huennkens was sworn in on the same day. The oath of office was administered by Court of Appeals Judge Roger L. Gregory at the Lewis F. Powell, Jr. United States Courthouse at Richmond, Virginia. Judge Huennkens fills a new bankruptcy judgeship which was created by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Immediately prior to his appointment, Judge Huennkens was a partner in the Richmond office of Kutak Rock.

CLE Program on the False Claims Act

In conjunction with the June 22, 2006 Annual Meeting, the Chapter sponsored a CLE program entitled "Hot Topics in False Claims Act and *Qui Tam* Litigation." The speakers were Richard W. Sponseller, Assistant U.S. Attorney in the Eastern District, and Robert K. Huffman of Miller & Chevalier. The program was moderated by Chas McAleer of Miller & Chevalier. The attendees learned about the origin and development of the False Claims Act. They also received valuable statistical information regarding False Claims Act and *qui tam* litigation in the Eastern District, as well as an overview of frequently-litigated issues in that area. Special thanks to Richard Sponseller and Bob Huffman for contributing their time and expertise to the program.

Sept. 26, 2006 Torrey Armstrong Memorial Lecture & Law Clerk Reception

On Tuesday, September 26, 2006, the Chapter will convene at the George Washington Masonic Temple in Alexandria, Virginia for the annual Lecture in memory of Torrey Armstrong, who was a dedicated member of the bar and a former Chapter president. The Chapter is very honored to have the U.S. Solicitor General, Paul D. Clement, as the speaker for this year's Lecture. The Chapter is also pleased once again to hold the Lecture in conjunction with the Chapter's annual reception for the law clerks of the federal judiciary.

The George Washington Masonic Temple is located at 101 Callahan Drive, and there is substantial on-site parking. A tour of the Masonic Temple will be offered from 5:00-5:30 p.m., and the Lecture will start at 5:30 p.m. The reception will take place from 6:00-7:30 p.m., and it will include heavy hors d'oeuvres and an open bar. The Chapter welcomes members and non-members to this great event. Please RSVP to the Chapter's new president, John Trocki, at jtrocki@mofo.com. Please plan to attend and honor the very best of Torrey Armstrong through the Lecture and collegiality with fellow members of the bar.

The Federal Bar Association's
Mission Statement:

"The mission of the Association is to advance the science of jurisprudence and to promote the welfare, interests, education, and professional growth and development of the members of the Federal legal profession."

For more information regarding the Federal Bar Association and its activities, please contact the Federal Bar Association at its national offices:

The Federal Bar Association,
2215 M Street, N.W.
Washington, D.C. 20037

Telephone: 202-785-1614
Facsimile: 202-785-1568
E-mail: fga@fedbar.org



Other Upcoming Events

On Wednesday, October 11, 2006, at 2:30 p.m., a ceremony will be held at the Alexandria federal courthouse to unveil a portrait of the Honorable Claude M. Hilton, who recently took senior status on the Court. A reception will be held after the unveiling. Chapter members are encouraged to attend and to celebrate Judge Hilton's many contributions to the Court.

On Tuesday, October 17, 2006, the Chapter will hold its annual Golf Tournament at Army-Navy Country Club in Arlington, Virginia. FBA members and non-members are welcome. Golf talent, while helpful to anyone who actually cares about winning, is absolutely not required. Lunch will follow the tournament, and prizes will be awarded. The tee-time is 8:30 a.m. The cost is \$100.00 per golfer, and payment must be received by October 1, 2006. Space is limited. Please RSVP by e-mail to the Chapter's new Secretary, Attison Barnes, at abarnes@wrf.com. Checks should be made payable to the Federal Bar Association, Northern Virginia Chapter and sent to Attison Barnes at Wiley, Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006 (facsimile: 202/719-7049).

Need ethics credits before the October 31, 2006 deadline? No problem. The Chapter is privileged to have renowned ethics lecturer, Tom Spahn of McGuire Woods LLP, return for a CLE ethics program on Tuesday, October 31, 2006 from 12:00-2:00 p.m. at Army-Navy Country Club in Arlington, Virginia. Please monitor your e-mails for registration information and instructions.

Recently Reported Opinions

In this and subsequent issues, *Rocket Docket News* will highlight recently-reported decisions from the Alexandria Division of the Eastern District of Virginia. If you know of recent court decisions, whether reported or not, that might be of interest or use to fellow Chapter members, please send copies of the decisions (or summaries) to the Editors at cmcaleer@milchev.com or rsaitta@wrf.com.

Guiragoss v. Khoury, 2006 U.S. Dist. LEXIS 56446 (E.D. Va. August 10, 2006) (Alex. Div.) (court denies defendant's motion for summary judgment in case involving ERISA and common law breach of contract and fraud claims; court considers whether plaintiff's state law claims are preempted and whether the plan at issue is a "top hat" plan under ERISA); *Sheet Metal Workers' National Pension Fund v. Courtad Construction System, Inc.*, 2006 U.S. Dist. LEXIS 50735 (E.D. Va. July 18, 2006) (Alex. Div.) (court grants summary judgment in favor of plan trustee on claims against employer for interim plan payments).

Bank of America, N.A. v. US Airways, Inc., 2006 U.S. Dist. LEXIS 49026 (E.D. Va. July 19, 2006) (Alex. Div.) (court reviews decision by bankruptcy court regarding breach of contract claims on agreement between bank and airline); *BNY, Capital Funding LLC v. US Airways, Inc.*, 2006 U.S. Dist. LEXIS 49157 (E.D. Va. July 7, 2006) (Alex. Div.) (court upholds bankruptcy court ruling finding letter of intent was not an executory contract and remained an asset of the debtor).



MEMBER
SPOTLIGHT

Kevin G. Mosley



Kevin G. Mosley is an associate with Miller & Chevalier Chartered in Washington, D.C. He is admitted to practice in the Eastern District of Virginia and has been

counsel in various matters in the Court. He has also attended several Chapter events, including last year's IP and Rocket Docket CLE program and this year's Annual Meeting and False Claims Act CLE program.

Kevin joined Miller & Chevalier after graduating from the Georgetown University Law Center in May 2003. At Georgetown, Kevin was the Notes & Comments Editor for *The Tax Lawyer*. He received a B.A. in Psychology from Occidental College in 1995.

Kevin's practice focuses on complex civil litigation and white-collar criminal defense, including conducting internal investigations. He also maintains an active pro bono practice.

Between undergraduate and law school, Kevin spent time working as a legislative aide in the U.S. House of Representatives, and he counts politics as one of his continuing passions.

Recently Reported Opinions (cont'd)

Tucker v. Beneficial Mortgage Co., 2006 U.S. Dist. LEXIS 48757 (E.D. Va. July 7, 2006) (Alex. Div.) (court grants defendant mortgage company's motion for summary judgment on claims by homeowners for rescission of a loan agreement and statutory damages for mortgage company's alleged violations of the Truth in Lending Act).

Callahan v. Cho, 2006 U.S. Dist. LEXIS 45817 (E.D. Va. July 6, 2006) (Alex. Div.) (court finds that state medical malpractice law applies to medical malpractice claim under the Federal Tort Claims Act and that the case did not warrant application of *res ipsa loquitor*).

Synthon IP, Inc. v. Pfizer, Inc., 2006 U.S. Dist. LEXIS 45814 (E.D. Va. July 6, 2006) (Alex. Div.) (court issues opinion summarizing post-*Markman* claim construction rulings in dispute over whether the commercial process used by Pfizer, Inc. to make a compound which is the active ingredient in a well-known hypertension drug infringes two patents owned by plaintiff).

In re The Mills Corp. Sec. Litigation, 2006 U.S. Dist. LEXIS 50485 (E.D. Va. May 30, 2006) (Alex. Div.) (court decides motion for appointment of lead plaintiff in securities class action and for approval of lead plaintiff's selection of counsel); *Iron Workers Local 16 Pension Fund v. Hilb, Rogal & Hobbs Co.*, 2006 U.S. Dist. LEXIS 29460 (E.D. Va. April 24, 2006) (Alex. Div.) (court dismisses plaintiff's securities fraud and control person liability claims).

Capital One Financial Corp. v. Drive Financial Services, LP, 2006 U.S. Dist. LEXIS 37270 (E.D. Va. May 12, 2006) (Alex. Div.) (court denies motion to dismiss trademark infringement action under Lanham Act regarding program used in marketing automobiles); *U.S. Conference of Catholic Bishops v. Media Research Center*, 2006 U.S. Dist. LEXIS 38099 (E.D. Va. May 12, 2006) (Alex. Div.) (court dismisses trademark infringement claim because plaintiff's mark is merely descriptive and thus not protected under the Lanham Act without evidence of secondary meaning, and plaintiff cannot show a likelihood of confusion between plaintiff's and defendant's marks).

Bennett v. Fairfax County, 2006 U.S. Dist. LEXIS 29458 (E.D. Va. April 25, 2006) (Alex. Div.) (in employment discrimination action, court grants plaintiff's motion for an award of equitable relief including attorneys' fees).