



FBA newsletter

Federal Bar Association - Eastern District of Michigan Chapter - 65 years of service to our Federal Bench and Bar

Bush Seyferth Secures Favorable Settlement for Michigan Inmate Denied Adequate Medical Care

By Lena Gonzalez

Bush Seyferth attorneys Lena Gonzalez and William McDonald, III successfully represented a Michigan inmate pro bono in a lawsuit alleging that his constitutional rights were violated by a prison medical provider. Their client, Mr. W., brought a claim under 42 U.S.C. § 1983 against the defendant, a prison nurse, asserting violations of his Eighth Amendment right to be free from cruel and unusual punishment due to deliberate indifference to his serious medical needs.

After undergoing more than thirty rounds of targeted radiation for laryngeal cancer, Mr. W. faced severe oral health complications, ultimately requiring invasive surgery to remove two lower molars. The procedure presented serious risks, as Mr. W.'s throat was compromised from radiation treatment, and doctors were concerned about administering anesthesia. To mitigate these risks, Mr. W. underwent the surgery with only a local anesthetic and remained conscious throughout. His surgeons prescribed narcotic pain medication to manage the anticipated post-operative pain.

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President's Column

Andrew Lievens

The Chapter year is in full swing. We already have had several successful events, including a record turnout for the State of the Court Luncheon. Among other things at that luncheon, Chief Judge Sean F. Cox shared his views on the need to increase in-person work, events and Court appearances. Chief Judge Cox, Supreme Court Justices Richard H. Bernstein and David F. Viviano, and Wayne County Chief Judge Patricia P. Fresard subsequently published an op-ed in The Detroit News on the subject, which is available online and worth reading since all of us are interested in ways to improve our profession.

We also have several events on the calendar for the coming months. Between the eBlast and Chapter Calendar on the website, I hope you are aware of these future events and are making plans to attend.

But while we focus our work as Officers, Board Members, and Committee Chairs on continuing to provide great programs and value to our members going forward, I would like to take a moment to look backward.

My involvement in the Chapter came through the Newsletter Committee, where I eventually became Co-Editor of the newsletter for several years, alongside Christina Farinola. We spent many tedious hours writing and editing the newsletter, but working alongside Christina meant I had a great companion.

On the surface, the Chapter Newsletter informs its readers about recent events that have happened and what events are coming up. It has included articles on substantive areas of the law. For many years it included a Supreme Court preview and review. In two issues the Newsletter included crossword puzzles I created using our Detroit-based federal judges as answers.

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President's Column *(from page 1)*

There has also been a long line of Newsletter editors, including Michigan Court of Appeals Judge Michael J. Riordan, former U.S. Attorney Barbara L. McQuade, and Magistrate Judge Kimberly G. Altman, to name a few.

We now have two different editors, Jessica Lefort and Zainab Sabbagh, who are doing a fantastic job publishing the Newsletter even though we live in a world where traditional newsletters are no longer where people get their news.

Beyond reporting the news, however, the Chapter Newsletter serves another even more important (in my view) purpose: It documents our Chapter history.

The first available issue of the newsletter in the Chapter's more than 60 year history is from January 1983. It was two pages long and advertised the Edward Rakow Scholarship Luncheon, an appellate advocacy program, and a court rule about filing exhibits larger than 8.5 by 11 inches.

By January 1991, the Newsletter totaled 6 pages and it documented that the first recipients of the Wade H. McCree, Jr. Award for the Advancement of Social Justice in December 1990 were Congressman George Crockett, Jr. and Michigan Supreme Court Justice Dennis W. Archer. The speaker at the event was Dr. Jeffrey Sachs, then the Galen Stone Professor of Economics at Harvard who was working in Europe as an adviser on transition to a market economy in Poland.

Fast forward a few years, the Summer 1999 issue tells us that former Eastern District of Michigan U.S. Attorney (among other titles) and then-Assistant Attorney General for the Criminal Division at the Department of Justice James K. Robinson was the keynote speaker for the Gilman Luncheon that year. The Gilman Award winner was Nancy Diehl.

Most issues include a President's Column, in which past Chapter Presidents comment on the Chapter, the state of legal practice, and the important contributions of the hundreds of people who have contributed to the Chapter since its founding in the 1950s.

Most notably, I encourage everyone to read the 50th Anniversary Edition of the Newsletter, published in the Winter 2007 issue. It contains an amazing 32-page overview of the Chapter's first 50 years, including pictures, going decade by decade since the Chapter's founding in 1957 as the "Detroit Chapter" of the FBA. Reading this issue really shows how the Chapter and the practice of law have changed.

You can learn about our Chapter history in the newsletters here: <https://fbamich.org/newsletters/>

I urge you to do so.

And if you want to go back and do the crossword puzzles, check out the Spring 2011 and Fall 2011 issues!

Medical Care *(from page 1)*

Hours after surgery, Mr. W. experienced excruciating pain. Despite his repeated complaints, the prison intake nurse neglected to fill his prescribed medication. For four days, Mr. W. endured intense pain without relief, unable to sleep or eat. When he finally saw a nurse—who later became the defendant—he was again denied treatment, with the defendant reportedly even preventing a colleague from offering him over-the-counter pain relief.

Mr. W. initially litigated the case pro se, managing all pleadings, motions, and discovery independently from prison. His persistence kept the case alive through several dispositive motions. When Bush Seyferth joined the case as it was months away from trial, they secured crucial additional discovery, deposing the defendant and identifying and deposing the only other witness to the incident. Just before the trial, the team reached a favorable settlement on behalf of Mr. W.

"Pro bono work provides invaluable opportunities for our trial attorneys to develop their skills while advocating for those who lack access to justice," said Gonzalez. "It's an essential part of our commitment to the legal community."

Gonzalez, a member of the Federal Bar Association of the Eastern District of Michigan's Mentorship Committee, noted the growing interest among young lawyers in gaining courtroom experience, which pro bono cases provide.

Judge Nancy G. Edmunds, who presided over the case, understood the importance of courtroom experience. Although the case settled before trial, Judge Edmunds graciously offered the trial team the opportunity to conduct a mock opening and cross examination after the settlement.

"Participation in pro bono activities provides a benefit to all parties. The court gets a more organized and efficient presentation of the case, the litigant gets a more knowledgeable and persuasive presentation as well, and the attorney gets the invaluable experience of actually trying a case in federal court," said Judge Edmunds. "My colleagues and I are very appreciative of the hard work done by pro bono attorneys, including the work by the attorneys of Bush Seyferth in this case."



Clerk of the Court Kinikia Essix

The Court celebrated Judge Paul D. Borman with his portrait dedication ceremony on October 16, 2024. He was joined by his colleagues on the bench, family, friends, and court staff. Judge Borman's portrait will be hung in Judge Denise Page Hood's courtroom. Both judges joined the court in 1994 and celebrated 30 years on the bench this year.

Construction Updates: The cement has now been poured for the wheelchair ramps on the Lafayette side of the building. The contractors still need to install the granite walls along the ramps. We expect the ramps to be finalized around the end of December and work to begin on the sidewalks in early January 2025. The new Lafayette entryway is estimated to be completed late February or early March.

Remember, if you have any questions, suggestions or comments please contact me at: kinikia_essix@mied.uscourts.gov.

State of the Court Luncheon Kicks Off Annual Luncheon Series

Chief Judge Sean F. Cox and new Chapter President Andrew Lievens launched a new year of the Chapter's signature Luncheon Series with the State of the Court Luncheon on September 25, 2024 at the Atheneum Suite Hotel in Detroit.

The Luncheon commenced with welcoming remarks from Lievens, who recognized the judicial officers in attendance and the Chapter officers who make the Chapter what it is through their hard work and support. He next addressed Chapter business, including highlighting recent events since the prior luncheon and upcoming events. He also acknowledged and explained the transition that is occurring as the Chapter partners with the new bar association, the Eastern District of Michigan Bar Association, over the coming year.

Lievens then introduced Chief Judge Sean F. Cox, who gave the State of the Court address.

In his remarks, Chief Judge Cox recognized the important roles of the Court's senior staff, including Court Administrator Kinikia Essex, Chief Deputy of Administration Mike Kreager, and others. He also noted that the new members of the bench in recent years, including most recently Judges Susan K. DeClercq, Brandy

R. McMillion, and Robert J. White, have transformed the Court, as long time stalwarts of the bench have retired or passed away.

Chief Judge Cox next addressed budget and case filings, which combine to mean that the Court has to function more leanly and efficiently, particularly in the Clerk's office. He highlighted the efforts of many at the Court who make that happen.

Chief Judge Cox focused his most substantive remarks on his views on the practice of law, particularly post-pandemic with the rise of virtual court hearings. He expressed concerns about how the increased use of Zoom proceedings has impacted the development of young lawyers, access to courts, transparency, and the public's perception of the justice system. Chief Judge Cox recounted his experiences growing up in the legal system and challenged attendees to do more in person, rather than via Zoom, for the betterment of the profession.

Chief Judge Cox then took questions from the audience.

The Court's annual report is available on its website: https://www.mied.uscourts.gov/PDFFiles/2024_Annual_Report_Combined.pdf

Lievens concluded the Luncheon with a few closing comments, after which attendees enjoyed each other's company.

Many thanks once again to Chief Judge Cox for his insight, comments, and support.

Second Annual Joint EDM/WDMI Event Draws Many Judges and Practitioners

By Nolan Moody

On Thursday, October 10, 2024, nearly 80 members of the Eastern District of Michigan and Western District of Michigan Bar Associations gathered at Michigan State University College of Law in East Lansing for the Second Annual EDM/WDMI Joint Event to meet with fellow practitioners and judges across both of Michigan's federal bar associations.

This year's event focused on pro bono efforts state-wide. A panel consisting of District Judge Susan K. DeClercq from the Eastern District, Magistrate Judge Ray Kent from the Western District, and Professor Kate Fort from MSU College of Law spoke for approximately 45 minutes across a wide range of topics related to pro bono representation. Judge DeClercq informed the group about numerous opportunities to engage in pro bono representation -- from taking a case all the way through trial to utilizing EDM Local Rule 83.25 to assist

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EDMI/WDMI (from page 3)

an unrepresented litigant in a civil matter for a limited purpose (such as taking a deposition, drafting a motion or handling a hearing). Magistrate Judge Kent espoused the virtues of learning to how try a case and offered insight into the impact pro bono representation can make on an otherwise unrepresented client's life. Professor Fort shared some of her incredible pro bono successes litigating issues involving the Indian Child Welfare Act for her Native American clients, including a recent victory at the Supreme Court of the United States.

In addition to the panel's presentation, Chief Judge Sean F. Cox of the Eastern District and Chief Judge Hala Y. Jarbou of the Western District also spoke at the event. Chief Judge Jarbou and Chief Judge Cox announced that the Joint Event would become an annual tradition. A reception followed with remarks from MSU College of Law Dean Michael Sant'Ambrogio, where it was announced that MSU College of Law was removing the interim designation from Dean Sant'Ambrogio, and that he would become MSU College of Law's official dean.

Law Clerk Committee's Social Hour for Federal Law Clerks

By Sarah Resnick Cohen

Former law clerks universally agree that a federal clerkship is one of the most rewarding and valuable ways to begin a career in law. The Chapter's Law Clerk Committee, comprised of former federal law clerks, schedules various events and workshops every year to support the federal law clerks during their time at the courthouse. Our traditional first event in the fall is a social hour downtown. On September 10, 2024, the Law Clerk Committee sponsored its annual law clerk social hour following the orientation at the Theodore Levin Courthouse for incoming district court clerks. This year, the Committee hosted the social hour at a new downtown venue: Cibo in the Cambria Hotel. Thanks to our Chapter's Board, the Committee provided free food and drinks to all of the clerks who attended as they socialized after their day-long orientation. If you have any questions about the Law Clerk Committee, please contact Co-Chairs Sarah Resnick Cohen (Sarah.Cohen@usdoj.gov) or Jeff Crapko (jeffrey.crapko@usdoj.gov).

Sixth Circuit Appeals: Tips from the Clerk's Office

By Andrew Goetz

On September 12, 2024, this Chapter's Appellate Practice Committee hosted an insightful Zoom presentation featuring Kelly Stephens, Clerk of the United States Court of Appeals for the Sixth Circuit. In a conversation with Andrew Goetz, currently an appellate practitioner with Miller Johnson and formerly the Appellate Chief at the United States Attorney's Office, Ms. Stephens delved into the intricacies of Sixth Circuit practice, providing valuable insights for practitioners.

Ms. Stephens began by outlining her day-to-day responsibilities and the general role of the clerk's office. She highlighted the differences between her current role and her previous position at the Kentucky Supreme Court, as well as the distinct responsibilities of the Clerk and the Circuit Executive.

The conversation then moved to the logistics of case filing and day-to-day practice. Ms. Stephens discussed the ins and outs of appellate motions practice and the Sixth Circuit's process for reviewing and deciding those motions. Ms. Stephens also offered practical advice on seeking expedited relief, common mistakes in briefing, and the Sixth Circuit's practice with respect to panel assignments and oral arguments.

This presentation provided a comprehensive overview of Sixth Circuit practice, offering valuable guidance for attorneys navigating the appellate process.

IP Committee Hosts a Webinar on "Copyright Trolls and an Update on the Copyright Claims Board"

By Christopher Darrow

You might have heard or read about "Patent Trolls," a pejorative name for people who buy patents for purposes of asserting the patents in litigation, not to manufacture and sell a product covered by the patent. These lawsuits are frequently weak on the merits but can be costly for companies to defend. Because of the high cost to defend such lawsuits, patent trolls, also called non-practicing entities, can frequently extract a financial settlement from defendants.

In recent years, some commentators and litigators have said there has been a rise in "Copyright Trolls," especially in the photography industry.

Like a patent troll, a copyright troll is a pejorative name for a person or company that enforces copyrights



Professor Eckhause presents at "Copyright Trolls and an Update on the Copyright Claims Board."

Photo provided by the University of Detroit Mercy School of Law

to make money through litigation. A copyright troll often uses computer software to search the internet for instances where unsophisticated companies or people have used a photograph or other copyrighted work without a license on social media or on a business website. An attorney for the copyright troll, usually for a contingency fee, will then typically send a demand letter or file a lawsuit to

extract a settlement. The copyright troll will threaten or educate the defendant on the U.S. copyright law's statutory damages provision, which allows a court to award up to \$30,000 in damages per infringed copyrighted work, or \$150,000 if the infringement was willful.

On June 19th, the Chapter's IP Committee hosted a webinar presentation by Assistant Professor of Law at the University of Detroit Mercy School of Law Melissa Eckhause entitled "Copyright Trolls and an Update on the Copyright Claims Board." Over 30 attendees attended the webinar.

In her presentation, Professor Eckhause discussed whether there has been a rise in copyright infringement lawsuits being filed by photographers and artists. Some people have labeled photographers and artists who threaten large statutory damages as copyright trolls because typically there is no significant market demand for the photographs or art. The photographers counter that they are just combatting image piracy. The photographers note that 2.5 billion images per day are infringed on the internet. In an upcoming law review article, Professor Eckhause analyzed 1,026 image lawsuits filed in federal courts between 2020 and 2021 to determine whether there is a copyright troll problem for photographs. Professor Eckhause shared the results of her analysis in the FBA's webinar.

Professor Eckhause also discussed strategies for combatting copyright trolls. Professor Eckhause gave the following advice to companies: (1) Create a written copyright policy; (2) educate employees on the basics of copyright law and instruct them not to use images from the internet without a license; (3) if sued, explore making an offer of judgment under FRCP 68; and (4) if the plaintiff's case is dubious, move for a cost bond.

Professor Eckhause also gave an update on the operation of a new small claims court within the U.S. Copyright Office named the "Copyright Claims Board." The Copyright Claims Board can hear cases where the total monetary recovery sought does not exceed \$30,000. Litigants do not need an attorney to litigate a copyright infringement claim before the Copyright Claims Board. The proceeding is done online and no travel is required. Either the plaintiff or defendant can opt out of the Copyright Claims Board and have the lawsuit in federal court.

The Chapter's IP Committee thanks Professor Eckhause for presenting at this informative webinar and looks forward to hosting more events in the future.

2024 Rakow Rom and Historical Society Luncheon

By David Mellem

This year, the Chapter hosted the annual Edward H. Rakow and Barbara J. Rom Awards Luncheon in conjunction with the annual meeting of the Historical Society for the U.S. District Court for the Eastern District of Michigan (EDMIBAR) on November 13, 2024, at the Atheneum Hotel. President Elect Charissa Potts welcomed the attendees to the event, which included District Judges Terrence G. Berg, Paul D. Borman, Shalina D. Kumar, Brandi R. McMillion, Gershwin A. Drain, Jonathan J. C. Grey, and Robert J. White, as well as Bankruptcy Judges Lisa S. Gretchko and Paul R. Hage, and Magistrate Judges Kimberly G. Altman, Curtis Ivy Jr., and Anthony P. Patti, all from the Eastern District of Michigan, the award recipients and their guests, other Chapter members, and keynote speaker the Honorable Victoria A. Roberts.

The presentation of the Barbara J. Rom Award for Bankruptcy Excellence was kicked off by the Honorable Paul R. Hage, U.S. Bankruptcy Judge for the Eastern District of Michigan. Judge Hage's introduction was followed by the introduction of the awardee by Elliott Crowder of Stevenson and Bullock. This year's award recipient was attorney Karen Evangelista. Ms. Evangelista began her legal career as a law clerk for two bankruptcy judges before joining Shermeta, Adams & Von Allmen, P.C. (now Shermeta Law Group) as a bankruptcy attorney and later partner at the firm. In 1998, Ms. Evangelista started her own practice, representing individuals seeking to file for bankruptcy. She is also a member of the Consumer Bankruptcy Association, where she served as President from 1999 to 2007. She was named the Consumer Bankruptcy Association's Member of the Year in 2012.

Ms. Evangelista spoke of the importance of the support she received from her family and from the local bankruptcy law community in achieving what can only be called a very successful career in the field.

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Rakow/Rom Luncheon

Photo by John Meiu, courtesy of Detroit Legal News.

Rakow/Rom (from page 5)

Following her remarks, Trustee of the EDMI Federal Bar Foundation (and past President of this Chapter) Fred Herrmann presented the Edward Rakow Grant by the Federal Bar Association of Detroit to the Historical Society for the Eastern District of Michigan. The Historical Society was formed to preserve the history of the United States District Court for the Eastern District of Michigan and the women and men associated with it. Reference was made to the Historical Society's recently released documentary, "A Light for Justice," a film celebrating the history of the Detroit courthouse and showcasing its restoration and future. The film contains insightful interviews with judges, attorneys, and officials alike, and airs on Detroit PBS from time to time.

Matthew Lund, a partner at Troutman Pepper and the president of the Court Historical Society, then presented the Court Historical Society's "Honorable Avern Cohn Award." The award is given for excellence in the collection, preservation, and interpretation of Michigan Legal History. This year's awardee was Carrie Sharlow, assistant executive director of the Michigan Supreme Court Historical Society. Ms. Sharlow was honored in part for her contributions to the Michigan Bar Journal in its "Michigan Lawyers in History" series, where she writes about a number of the Michigan legal community's most distinguished and groundbreaking members. Ms. Sharlow thanked the Court Historical Society for the honor, and vowed to continue her good work of promoting the study of Michigan legal history and increasing public awareness of the state's legal heritage.

The keynote speech was delivered by the Honorable Victoria A. Roberts, retired U.S. District Judge for the

Eastern District of Michigan and current neutral mediator and arbitrator for JAMS (formerly Judicial Arbitration and Mediation Services). Judge Roberts began her speech by noting that she first sought to be a journalist, but experienced race-based discrimination during an interview for a local paper. This experience led her to pursue a career in the law, which would allow her to fight against similar injustices. Her legal career was inspired by the work of Thurgood Marshall and Constance Baker Motley for the NAACP Legal Defense Fund, two trailblazing attorneys who later became federal judges: Motley becoming the first African-American woman to become a federal judge, and Marshall being the Supreme Court's first African-American Justice.

With Motley's assistance, Marshall argued the case of *Brown v. Board of Education of Topeka*, the unanimous decision that struck down the doctrine of "separate but equal" in 1954. But, as Judge Roberts expressed, seventy years later we are still in pursuit of equality in education and all other spheres of life in this country. Judge Roberts called for the legal community to be cognizant of the world's current and ongoing moral dilemmas, such as genocide, civil rights violations, mass shootings, pandemics, and attacks on reproductive rights. She emphasized that history repeats itself and it is therefore of the utmost importance that we be aware of the past, act as "engineers of social change," and work to break the cycle and create a new history. The text of her full speech can be found at: <https://edmibar.org/wp-content/uploads/2024/11/WHAT-BROUGHT-YOU-TO-THE-LAW.pdf>.

The Chapter is grateful to Judge Roberts for sharing the lessons she has learned throughout her illustrious career.

Cherished Event is a Double-Eagle Success!

By Mindy Herrmann

The camaraderie of the Eastern District of Michigan Bar Association (EDMIBAR) was on full display at the annual bench-bar golf outing held on August 8, 2024, at the Northville Hills Golf Club. Nearly 90 members of our bar, including many members of our bench, attended this cherished annual event. The weather was perfect and the day kicked off with an hour of live music performed by a talented bagpiper in full Scottish regalia. We are extremely grateful to District Court Judges Robert H. Cleland, David M. Lawson, Stephen J. Murphy III, and Robert J. White, Bankruptcy Judge Mark A. Randon, and Magistrate Judge Anthony P. Patti for taking time out of their busy schedules to play golf with many of our partner firms' foursomes. Chief Judge Sean F. Cox and fellow District Court Judges Susan K. DeClercq and Shalina D. Kumar also came for the day to support the golfers and the event. As the new EDMIBAR navigates its first year, we are also especially grateful to our generous sponsors, without whom the day could not have happened:

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Some other highlights of the day included tremendous raffle prizes, a phenomenal course, and a golf bazooka.

To orchestrate an event of this magnitude is a huge undertaking and would not have been possible without the herculean efforts of the 2024 Golf Committee (Nina Gavrilovic, Meriam Choulagh, and Mindy Herrmann). Nina and Meriam have served our bar in this capacity for several years and are ready for a well-earned break.



Meriam Choulagh, Mindy Herrmann, Hon. Robert Cleland, Hon. Shalina Kumar, Hon. Robert White, Hon. Mark Randon, Hon. Susan DeClercq and Nina Gavrilovic.

Photo by Melinda Herrmann

Thankfully, we have a new team ready to pick up where Nina and Meriam left off, and the Committee welcomes its newest members: Katelyn Young (Honigman), Brian King (Bush Seyferth), and Mike Hale (Hale and Hirn).

In addition to the fabulous raffle prizes (including a YETI cooler, a precision range finder, foursome passes, and many others), the big winners of the day were Don Carney, Sandro DiMerurio, Anthony McHugh, and Keaton Frohn. These attorneys from Berry Moorman won the best foursome competition and went home with (literally) "all the marbles," a component of our rotating event Trophy (think the Stanley Cup). Competition for the championship trophy was extremely stiff - as many foursomes competed (B. Riley Advisory Services, Barnes ADR, Brooks Kushman, Bush Seyferth, Butzel Long, Brooks Wilkins Sharkey and Turco, Dykema, Flood Law, Gordon Rees Scully Mansukhani, Hickey Hauck Bishoff Jeffers & Seabolt, Howard & Howard, JAMS, Kerr Russell, Miller Canfield, Pitt McGehee, and Varnum). All of our participating firms brought their A-games and each put forth extremely strong teams!

We are excited to invite each of our firms and sponsors to our next golf outing scheduled for **Wednesday, August 6, 2025** at the Northville Hills Golf Club. Please check our twice monthly eBlast for information on the event, or email mindy@edmibar.org.

Trial Skills Program Day 2 Highlights Trial Practice

By Mike Turco and Andrew Lievens

On November 19, 2024, lawyers of varied experiences and backgrounds once again filled the Detroit Room and a courtroom at the Levin Courthouse for a full day of trial
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Trial Skills *(from page 7)*

practice training. Following up on the successful pretrial program in July, Day Two of the Advanced Trial Skills Program provided a unique and important opportunity for lawyers to learn from some of the district's most experienced and accomplished practitioners about how to navigate the pressures of trial.

The program was sponsored by the Chapter, the American College of Trial Lawyers, and the Eastern District of Michigan Bar Association.

After coffee, breakfast, and welcoming comments by Lena Gonzalez of Bush Seyferth PLLC in the Detroit Room, attendees moved to the courtroom where they engaged with the presenters.

Kicking it off was Martha Olijnyk of Miller Law, who discussed trial preparation and how to manage the substantive, procedural, and logistical challenges of trial.

Next up was Powell Miller, also of Miller Law, who lectured on the opportunities and potential traps of opening statements.

During lunch in the Detroit Room, Mike Turco of Brooks, Wilkins, Sharkey, and Turco PLLC provided a passionate presentation on the importance of preserving and protecting the judiciary and the trial process. Many thanks to the several judges, including Chief Judge Sean F. Cox, and Judges Stephen J. Murphy III, Gershwin A. Drain, Terrence G. Berg, Robert J. White, and Magistrate Judge Anthony P. Patti, who joined the lunch session and mingled with the participants.

The afternoon began with Linda Watson of Clark Hill PLC leading a discussion on best practices for direct and cross examination.

William Horton of Giarmarco, Mullins and Horton, P.C. then provided his expertise on navigating in-trial motion practice, including Batson, directed verdict, and other issues that come up during trial. Michael Pitt of Pitt, McGehee, Palmer, Bonanni, and Rivers P.C. finished up the substantive part of the program by discussing his experiences engaging the jury during closing arguments.

At that point, the attendees returned to the Detroit Room for closing comments, a reception, and camaraderie.

Special thanks to BSP Law for its support of the training series.

Intellectual Property Committee Hosts Webinar on "A Lawyer's Guide to Artificial Intelligence"

By Christopher Darrow

On June 5, 2024, the Intellectual Property Committee hosted a webinar presentation on using artificial intelligence ("AI") in the practice of law. The webinar was entitled "A Lawyer's Guide to Artificial Intelligence." The speaker was Rebecca Rich, the Assistant Dean for the Law Library and Technology Services and Assistant Teaching Professor of Law at Drexel University Thomas R. Kline School of Law.

The program addressed topics such as (1) what is artificial intelligence; (2) ways AI can assist attorneys; (3) ethical issues for lawyers in using AI; (4) how to write queries for AI projects; and (5) best practices in using AI.

Professor Rich discussed and demonstrated practical ways that attorneys can use AI. As an example, she instructed the computer to draft a curriculum for a college or high school class. In another example, she instructed the computer to create a list of

action items from an attorney's notes. She also instructed the computer to create a promotional flyer for a Law Day event at the courthouse. In another instance, she instructed the computer to draft a motion, and the AI tool was able to draft a mediocre first draft of the motion. In a final example, she asked the computer to draft a simple legal memorandum on a topic of interest.

Professor Rich also discussed how AI can be used to edit and suggest changes to an attorney's work product. For example, if you wrote an angry email, you could use AI to change the tone of the email to be more polite. You could also use AI to offer improvements to your writing in areas such as grammar, spelling, and style including changing the use of passive voice to active voice. Using AI as an editor was impressive.

Professor Rich also discussed how AI can be used to help you with decision making, such as by analyzing data, spotting anomalies in data, creating a pro and con list to help you decide on a course of action, and generating a plan to help a person make decisions.

AI technology is developing quickly. As AI technology improves, attorneys will be able to use AI tools to perform tasks faster and with higher quality.

The IP Committee thanks Professor Rich for the informative and engaging presentation.



Rebecca Rich, Assistant Dean for the Law Library and Technology Services and Assistant Teaching Professor of Law at Drexel University Thomas R. Kline School of Law.

Making Detroit a Competent and Desired Location for Patent Litigation

By Christopher Darrow and Christopher Roelofs

On November 7, 2024, the Eastern District of Michigan Bar Association held a Joint November Luncheon with the Michigan Intellectual Property Law Association. At the event, Christopher Darrow, Co-Chair of the Intellectual Property Committee, gave a presentation on "Making Detroit a Competent and Desired Location for Patent Litigation." In his presentation, Mr. Darrow discussed topics related to attracting patent litigation to Detroit, including an updated Model Scheduling Order that reduces the time to trial in the typical patent case to approximately 20.5 months.

For a brief history of patent litigation trends, data from Lex Machina shows that the number of patent cases filed nationwide remained steady in the 2000s, increased in the first half of the 2010s, and decreased over the last 10 years. Although filings dropped from peak levels over the last 10 years, in the long run, filings remain up from 2000s levels.

On the other hand, in the Eastern District of Michigan, patent litigation has steadily declined over the last 25 years.

Compared to 64.6 filings per year during the 2000-2004 period, 19.8 patent cases were filed per year in the Eastern District of Michigan during the most recent 2020-2024 period. Put in terms of the share of total filings, the percentage of patent cases filed in the Eastern District of Michigan dropped from 2.52% to 0.54%.

As most patent litigation attorneys are aware, the decline in the Eastern District of Michigan coincides with the rise in forum shopping. Over the last 15 years, plaintiffs have filed more and more patent cases in the Eastern District of Texas, the District of Delaware, and the Western District of Texas. Among other notable statistics, the share of total filings peaked to 43% in the Eastern District of Texas in 2015, peaked to 28% in the District of Delaware in 2019, and peaked to 24% in the Western District of Texas in 2021.

In short, plaintiffs have options on where to file patent cases. The good news is, the Eastern District of Michigan is in a good place to attract patent litigation to Detroit. To begin with, despite its general economic decline, Detroit is the hub of the domestic automotive industry. And if one thing is certain, the decline in patent litigation is not for lack of a quality patent bar. Metro Detroit has many top law firms whose patent litigation attorneys are among the best in the country. Moreover, Judges in the Eastern District of Michigan have the capacity to handle more patent cases. As Chief Judge Cox presented at the State of the Court

Luncheon on September 25, 2024, statistics from the 2024 Annual Report show lower caseloads and backlogs compared to nationwide averages.

In his presentation, Mr. Darrow additionally highlighted two tools that Judges in the Eastern District of Michigan use to effectively manage patent cases. First, many Judges use a Model Scheduling Order specifically designed for patent cases. Second, Judges regularly appoint a Special Master with an engineering and patent law background to assist the Judge. These tools serve two basic requirements for attracting patent litigation to Detroit: (1) timeliness and (2) competency.

The Model Scheduling Order, which was originally developed in the 2008-2009 timeframe under an informal committee formed by Judge Cleland, has been adopted in some form by many Judges in the Eastern District of Michigan.

Similar to local patent rules promulgated by some district courts, the Model Scheduling Order sets the sequence, timing, and procedures for additional events compared to standard commercial cases, such as claim construction proceedings. However, unlike district-wide local patent rules, the Model Scheduling Order gives Judges and parties freedom to tailor the deadlines to the particular case.

Where appropriate, a Special Master can serve in the law clerk format, where the Judge makes all decisions and issues all opinions, and the Special Master acts as a confidential advisor or judicial law clerk. Generally, the Special Master can help the Judge understand the patent and decide more nuanced patent law issues, which benefits the parties by leading to higher quality and faster opinions. This is distinguishable from serving in the magistrate judge format, where the Special Master issues reports and



Christopher Darrow, Co-Chair of the Intellectual Property Committee, shown with Omar Shajrah (left).

Photo by Robert Luljguraj.

Patent Litigation *(from page 9)*

recommendations, and the District Judge, after receiving objections from the parties, rules on the objections and adopts or rejects the recommendations.

With respect to timeliness, Mr. Darrow, who served as the primary drafter of the original version, recently undertook an effort to update the Model Scheduling Order to include a faster timeline. The key update is reducing the time to trial in the typical patent case from approximately 24 months to approximately 20.5 months. However, the Model can be modified for more complex cases to allow more time for the parties to conduct discovery.

Mr. Darrow has received positive feedback on the faster timeline from numerous Judges and attorneys, including in-house attorneys for automotive companies, who are typically defendants in patent cases. He expects that Judges will adopt the updated Model Scheduling Order into their Practice Guidelines in the coming months. The positive feedback reflects the shared interest among all stakeholders in attracting patent litigation to Detroit. The faster timeline, coupled with the use of a Special Master, and particularly one serving in the law clerk format in appropriate cases, will promote timeliness and competency and hopefully help reverse the decline in patent litigation.

Annual Holiday Party

By Elisa Angeli-Palizzi

The Eastern District of Michigan Bar Association threw its annual Holiday Party for our District on December 11, 2024, at the Westin Book Cadillac hotel. Almost 100 guests enjoyed hors d'oeuvres, spirits, and camaraderie in this magnificent setting. Many members of the bench and bar came out for the party. Judicial attendees included U.S. District Chief Judge Sean F. Cox, U.S. District Judges Paul D. Borman, Susan K. DeClercq, Gershwin A. Drain, Mark A. Goldsmith, Shalina D. Kumar, David M. Lawson, and Robert J. White, U.S. Bankruptcy Judge Lisa S. Gretchko, and U.S. Magistrate Judges Kimberly G. Altman and Anthony P. Patti. Retired U.S. District Judge Victoria A. Roberts also joined the festivities.

Dozens of pictures of the event are available on EDMIBAR's Facebook page: <https://www.facebook.com/edmibar/>

On behalf of all those who attended the event, we would like to thank the people and firms who helped make this year's event possible. The event was sponsored by Miller Law; Darrow Mustafa PC; Hickey Hauck Bishoff Jeffers & Sebolt; Howard & Howard; Honigman; Kienbaum Hardy Viviano Pelton Forrest; Miller Canfield; Pitt • McGehee•Palmer•Bonnani•Rivers; Hoyer Law Group; Deborah Gordon Law; Rosati Schultz Joppich &

Amtsbuechler; Warner; Altior Law; Bowman and Brooke; Brooks Kushman; Bush Seyferth; Nyman Turkish; Dennis M. Barnes ADR; Certified Service Professionals; and David Haron. Thank you, especially, to the planners for this successful event, our extraordinary Executive Director Mindy Herrmann, and committee co-chairs Tom Cranmer and Elisa Angeli Palizzi.

Scenes from the Annual Holiday Party



Calendar of Events

January

January 22

Women's Series

Warner Norcross + Judd

2715 Woodward Ave suite 300, Detroit, MI 48201

4:30 pm - 7:30 pm

February

February 6

State of the Bankruptcy Court

Zehnders

730 S. Main St, Frankenmuth

Time TBD

February 19

2025 Wade H. McCree, Jr. Luncheon

Detroit Athletic Club

241 Madison St.

12:00 pm - 1:00 pm

Local updates and further developments at www.edmibar.org and national chapter updates at www.fbamich.org Log-in with your user name and password FIRST in order to save time and obtain Member pricing

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