BAR ASSOCIATION FOR THE THIRD FEDERAL CIRCUIT

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FOR MORE INFORMATION ABOUT THE THIRD CIRCUIT BAR ASSOCIATION, PLEASE CONTACT US AT:
3cba@thirdcircuitbar.org
OR VISIT US AT:
www.thirdcircuitbar.org

SAVE THE DATES – THIRD CIRCUIT JUDICIAL CONFERENCE

The next Third Circuit Judicial Conference will be open to members of the bar and will be held from Wednesday, May 13 through Friday, May 15, 2020 at the Penn's Landing Hilton in Philadelphia. As at past conferences, the Third Circuit Bar Association will be sponsoring the Wednesday night cocktail reception that precedes the bench-bar dinner and will host a breakfast meeting on Thursday morning. The Court has asked us to organize and present the ethics segment of the CLE offerings, which will be presented on Friday morning. Information about registering will be forthcoming from the Court and we will disseminate that information as soon as we receive it.

Past bench-bar judicial conferences have offered opportunities to learn about judicial administrative issues (at both the trial and appellate level) that are of concern to the courts within the Circuit and to offer feedback about issues that concern attorneys who practice in federal courts. The CLE offerings are first rate and relevant to issues that federal practitioners within the Circuit face. The Third Circuit's judges and their colleagues on the Circuit's district court benches are known for their collegiality and this is a great opportunity to meet them in a less formal setting than from the receiving end of a barrage of questions from a "hot court." One of the popular events is the "district breakfasts," where the practitioners from a district have breakfast with the judges and court staff from that district. It is a fantastic opportunity to get to know the people who make your court run. It is also a great opportunity to meet up with fellow appellate practitioners, as the Third Circuit Bar Association's members typically turn out in force for this conference.

The Court had held bench-bar judicial conferences every other year for the last several years but has returned to its prior practice of opening the conference to the bar only every third year. So pencil the dates in on your calendar now—you will not want to miss out on this opportunity.

We can always use assistance when organizing for an event such as this. We are looking for people to help organize the events we are sponsoring/hosting as well as to assist in developing the CLE program. If you would like to become more involved in the Third Circuit Bar Association, please contact Andy Simpson at asimpson@coralbrief.com.

THIRD CIRCUIT BAR ASSOCIATION WELCOMES JUDGE PAUL B. MATEY AND JUDGE PETER J. PHIPPS TO THE COURT

M. Patrick Yingling
Reed Smith LLP, Chicago, IL

The Third Circuit is now running with its full complement of 14 active judges. In 2019, the Court welcomed Judge Paul B. Matey and Judge Peter J. Phipps, and the Third Circuit Bar Association wholeheartedly welcomes Judge Matey and Judge Phipps as well.

On March 12, 2019, the U.S. Senate confirmed the nomination of Judge Matey to the Court. He fills the vacancy created when Judge Julio M. Fuentes took senior status. Judge Matey joins the Third Circuit from Lowenstein Sandler, where he was partner in the firm's litigation department.

Judge Matey was born in Edison, New Jersey. He received his B.A. from the University of Scranton and his J.D., *summa cum laude*, from the Seton Hall University School of Law. After graduating from law school, Judge Matey served as a law clerk to Judge John C. Lifland of the U.S. District Court for the District of New Jersey and to Judge Robert Cowen of the U.S. Court of Appeals for the Third Circuit. Following his clerkships, Judge Matey practiced law as a litigation associate at the Washington, D.C., law firm Kellogg, Hansen, Todd, Figel & Frederick.

From 2005 to 2009, Judge Matey worked as an Assistant U.S. Attorney for the District of New Jersey, where he prosecuted matters including complex white-collar crimes and child protection actions, and received the Director's Award for Superior Performance from the U.S. Department of Justice. From 2010 to 2015, he served as senior counsel and then as deputy chief counsel to Governor of New Jersey Chris Christie. From 2015 to 2018, before joining Lowenstein Sandler, Judge Matey was senior vice president, general counsel, and secretary of University Hospital in Newark.

Judge Matey's investiture ceremony was held in Newark on September 12, 2019 where the Oath of Office was administered by Justice Samuel A. Alito, Jr. Speakers included Chief Judge D. Brooks Smith, Governor Chris Christie, Craig Carpenito, United States Attorney for the District of New Jersey, Chris Porrino, former Attorney General of New Jersey and current Chair of Litigation at Lowenstein Sandler, Donald F. McGahn II, former Counsel to the President of the United States, Father Nicholas S. Gengaro, Chaplain, Seton Hall University School of Law, and Robert Luther, III, former Associate Counsel to the President.

On joining the Court, Judge Matey stated, "I am deeply honored by the privilege to serve the nation through our enduring commitment to the rule of law."

Judge Matey's chambers are located in the Martin Luther King, Jr. Federal Building and U.S. Courthouse in Newark, New Jersey. The Third Circuit Bar Association congratulates Judge Matey and welcomes him to the Court!

On July 16, 2019, the U.S. Senate confirmed the nomination of Judge Phipps to the Court. He fills the vacancy created when Judge Thomas I. Vanaskie took senior status. Judge Phipps joins the Third Circuit from the U.S. District Court for the Western District of Pennsylvania, where he served as a District Judge.

Judge Phipps was born at Dyess Air Force Base in Abilene, Texas. He earned both a B.S. in physics and a B.A. in history from the University of Dayton, *summa cum laude*, and earned his J.D. from Stanford Law School, where he served as the managing editor of the *Stanford Law & Policy Review*. Following law school, he served as a law clerk to Judge R. Guy Cole Jr. of the U.S. Court of Appeals for the Sixth Circuit. Early in his career, Phipps worked as an associate at Jones Day, where his practice focused on civil litigation.

Before ascending to the bench, Judge Phipps served as senior trial counsel in the Federal Programs Branch of the Department of Justice's Civil Division. During his 15-year tenure at the Justice Department, Judge Phipps litigated some of the most significant cases implicating the interests of the United States and received numerous awards and commendations, including the Attorney General's Distinguished Service Award.

Judge Phipps looks forward to serving on the Circuit and his chambers are located in the Joseph F. Weis, Jr. U.S. Courthouse in Pittsburgh, PA. The Third Circuit Bar Association congratulates Judge Phipps and welcomes him to the Court!

THIRD CIRCUIT MAINTAINS LONGSTANDING VIEW THAT PRIVATE CITIZENS LACK JUDICIALLY COGNIZABLE INTEREST IN THE PROSECUTION OF ANOTHER

U.S. ex rel. Jean Charte v. Wegeler, 941 F.3d 665 (3d Cir. 2019)

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Since the Civil War, the False Claims Act ("FCA") has served to curb fraud against the federal government by encouraging private individuals to file civil actions on the government's behalf. Whether the FCA authorizes private individuals to intervene in related criminal proceedings, however, is an issue that has received little attention. The Third Circuit recently addressed that issue in *United States ex rel. Jean Charte v. Wegeler*, 941 F.3d 665 (3d Cir. 2019), and found that no such intervention is permitted under the statute.

The FCA Action

In *Wegeler*, relator Jean Charte commenced an action under the FCA against her employer, American Tutor, Inc., and the company's owners and officers, including James Wegeler. Charte's *qui tam* complaint alleged that during her employment she noticed questionable billing practices, including billing for absent students and services not provided, and that defendants submitted false claims for reimbursement to the United States Department of Education. Charte provided information and assisted investigators during the government's inquiry to determine if it would intervene in the FCA litigation.

While the FCA suit remained unresolved, the United States brought criminal charges against Wegeler for tax fraud and evasion. The information Charte provided "led directly" to the investigation of Wegeler, who entered a plea agreement that required him to pay $1.5 million dollars in restitution. Subsequently, the government declined to intervene in the original FCA action.

Charte moved to intervene in the criminal proceeding against Wegeler, alleging that she had a right to a portion of the restitution as her relator's award. In *qui tam* litigation, a relator has a right to a portion of the proceeds or settlement of an action, and may receive between 10% and 25% of the monies depending on the extent to which the information provided by the relator substantially contributed to the prosecution of the FCA action. Charte argued that a portion of the restitution funds were due to her and that the criminal prosecution amounted to an "alternative proceeding" under 31 U.S.C. § 3730(c)(5). Section § 3730(c)(5) provides the relator the same rights as she would have under the original FCA action when the government decides to pursue an "alternative remedy," such as administrative proceedings. The district court, however, denied Charte's motion to intervene.

Third Circuit Review

The Third Circuit affirmed. The Court first explained that, under the FCA, when the government pursues an alternative remedy, the relator merely retains the right to continue as a party to the action. The Court found that allowing a relator to intervene in a criminal case on this basis would amount to providing the relator, a private citizen, an interest in the criminal prosecution of another, which the Court found to be improper and at odds with longstanding American jurisprudence. Thus, regardless of whether the FCA's language might seem to provide a right in this manner, Charte lacked an interest sufficient to give her standing in the criminal case.

Charte argued that she was not attempting to intervene in the criminal proceedings to affect or have any say in the manner in which Wegener was prosecuted, but rather to simply protect her interest in the restitution monies secured. Charte pointed to a "similar" situation—the right of a relator to intervene in a criminal forfeiture case under 21 U.S.C. § 853—to advance her position. The Court rejected this argument, however, because Charte was "less like" the relator looking to protect a property interest in the § 853 context than she was like a victim with a right to restitution. A victim may have an interest in restitution, but nevertheless has no right to intervene to assert it. Thus, the Court determined that Charte, as a relator, lacked standing to intervene in the criminal prosecution of another, and even if she had standing to intervene only as to her alleged interest in a share of the proceeds collected by the government, the sole remedy that the FCA provides is to commence or continue her FCA action. Given this ruling, the Court had no need to—and did not—consider whether a criminal proceeding is an alternative remedy under the FCA.

Conclusion

The Court's decision is consistent with decades-long jurisprudence which makes clear that a private individual has no legally cognizable right in another's prosecution. If the Court had allowed Charte to intervene in the criminal case, this new precedent would have potentially opened the door to other third parties attempting to involve themselves in criminal proceedings for their own private interests. Criminal proceedings are premised upon the notion that the pursuit of justice is the motivating force. Prosecutors and criminal defendants must rely on the notion that each party is equally committed to seeking a just result, where society at large is the benefitting party. Allowing intervention by private individuals could potentially derail the vital pursuit of justice at work in all criminal proceedings.

The lesson for relators is that continuing or maintaining the FCA suit remains the best approach to secure their financial share of the proceeds. In Charte's case, hope remains. The Third Circuit recently revived Charte's federal *qui tam* action after the district court granted summary judgment to the defendants. Additionally, the government represented to the Third Circuit that it allows a qualified relator to receive a share of the full amount of restitution previously paid.

FLEEING THE CAVE OF POLYPHEMUS AND JOURNEYING BETWEEN SCYLLA AND CHARYBDIS

The Third Circuit embarks on an odyssey to set the record straight on final orders and appellate jurisdiction

Weber v. McGrogan, 939 F.3d 232 (3d Cir. 2019)

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In one of his first published opinions, Judge Matey takes readers on an epic journey, structuring an explanatory course on appellate jurisdiction around different themes of a Greek odyssey. The opinion in *Weber v. McGrogan* addresses a quintessential appellate issue—what constitutes a final order for purposes of appeal?— and presents a cautionary tale of a litigant who, in the court's own words, experienced "the hazards of confusion or misunderstanding as to the time for appeal" and "finished her odyssey like the fabled hero: back where she began" with a "live action still pending before the District Court."

In November 2014, Plaintiff Amy Weber filed a *pro se* lawsuit in the U.S. District Court in New Jersey, alleging that she experienced harm relating to a child custody matter pending in state court. The district court dismissed her case without prejudice on abstention grounds, citing her ongoing state court litigation. Weber filed a notice of appeal, and the Clerk of the Third Circuit notified Weber that because her lawsuit was dismissed without prejudice, her appeal would "be submitted to a panel of this Court for possible dismissal due to a jurisdictional defect" and "may not be reviewable at this time by a court of appeals." In response, Weber asked the district court to enter a final order, but the district court never responded. Weber then voluntarily dismissed her appeal.

A few months later, the defendants asked the district court to dismiss Weber's action with prejudice. The district court made an entry on the docket stating "Civil Case Terminated" with a note referring to the court's earlier order dismissing the complaint without prejudice. Weber then appealed again, arguing that she should be heard on the merits because (1) the docket entry terminating the case qualified as a final judgment, or (2) the initial dismissal without prejudice matured into a final judgment.

In a precedential opinion authored by Judge Matey and joined by Judge Jordan and Judge Bibas, the Court rejected both arguments. First, the Court noted that the docket entry terminating the case was not a final order because it was a "utility event," an ECF designation that records an event or action in the life of a case." The Court distinguished a "utility event" from a "text order," which "as its name suggests, is an order of the court, with specific text granting, denying, or otherwise resolving a motion or, ultimately, a case." Text orders are the most significant of the ECF filings because they "contain an electronic signature of a judge." In contrast to text orders, utility events "are not orders of the district court nor are they signed by a judge" and thus "they cannot serve as the foundation for an appeal." Because the district court's utility event was not a final order, the Court did not have appellate jurisdiction and could not hear the merits of Weber's case.

Second, the Court noted that Weber did not take proper action to decline the right to amend and thus "stand on her complaint," which would have allowed her to appeal an order dismissing her complaint without prejudice. The Court further noted that Weber was not helped by the wording of the district court's order, which not only dismissed the case without prejudice but also was not "self-effectuating." A self-effectuating order is one that gives a party a defined period to amend a pleading and provides that the dismissal will be final absent an amendment.

As the Court in *Weber* recognizes, some district court orders can leave litigants feeling that they are "Between Scylla and Charybdis" or lost in "the Cave of Polyphemus" when it comes to their appellate rights. Under *Weber*, it is now clear that when a district court dismisses a complaint without prejudice, a litigant must expressly "stand on its complaint" to take an immediate appeal. Litigants should be especially mindful in cases involving abstention, where ongoing state court proceedings may require a district court to dismiss a federal case without prejudice. *Weber* also clarifies that a utility event cannot transform an otherwise non-final order into a final one, and the Third Circuit must dismiss for lack of appellate jurisdiction if there is no final order, because "an epic poem of problems often follows when charting any other course."

U.S. SUPREME COURT AFFIRMS THIRD CIRCUIT'S *EN BANC* RULING REGARDING FDCPA'S STATUTE OF LIMITATIONS

Rotkiske v. Klemm, No. 18-328 (U.S. Dec. 10, 2019)

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In May 2018, the Third Circuit, sitting *en banc*, issued a unanimous opinion that clarified the court's approach to federal statutes of limitations. In *Rotkiske v. Klemm*, 890 F.3d 422 (3d Cir. 2018), the court diverged from the approach taken by the Fourth and Ninth Circuits and held that the Fair Debt Collection Practices Act's (FDCPA) one-year statute of limitations is an "occurrence based" provision that does not incorporate a discovery rule but instead runs from the date of the violation. However, the court left open the possibility that the FDCPA's statute of limitations is subject to equitable tolling in appropriate cases.

The Supreme Court granted *certiorari* to resolve the circuit split and recently affirmed the Third Circuit's judgment, deciding in an 8-1 opinion that the FDCPA's statute of limitations does not incorporate a discovery rule. *Rotkiske v. Klemm*, No. 18-328 (U.S. Dec. 10, 2019). The Court also determined that the petitioner had failed to preserve arguments about equitable tolling based on the alleged fraudulent conduct of the respondent.

Justice Ginsburg dissented, contending that the alleged fraud should have prevented the statute of limitations from beginning to run until the petitioner knew or should have known of the respondent's FDCPA violation.

Background

Rotkiske accumulated credit card debt between 2003 and 2005. His bank referred the debt to Klemm & Associates ("Klemm") for collection. After serving process at an old address where, unbeknownst to Rotkiske, someone accepted service on his behalf, Klemm sued and obtained a default judgment for about $1,500. Rotkiske discovered the judgment when he applied for a mortgage and brought suit against Klemm and others alleging the debt collection practices violated the FDCPA. Klemm and other defendants moved to dismiss the FDCPA claim as untimely. The district court agreed, rejecting Rotkiske's argument that the FDCPA's statute of limitations incorporates a discovery rule. The district court also rejected Rotkiske's request for equitable tolling, explaining that it was duplicative of his discovery-rule argument.

After argument, but prior to issuing an opinion, the Third Circuit *sua sponte* ordered rehearing *en banc*. In its unanimous opinion following rehearing, the court began its analysis with the statutory text. The FDCPA's statute of limitations states:

> An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court . . . within one year from the date on which the violation occurs.

15 U.S.C. § 1692k(d). The court found this language to be clear. The court explained that there are two basic models for statutes of limitations—an "occurrence rule" in which the statute runs from the date when the injury actually occurred, and a "discovery rule" in which the limitations period runs from the date the aggrieved party knew or should have known of the injury.

The court rejected Rotkiske's arguments and determined that the plain text of the FDCPA establishes an occurrence rule. The Third Circuit distanced itself from the earlier practice of inferring a discovery rule in federal statutes of limitations, and it expressly rejected the Ninth Circuit's approach, announced in *Mangum v. Action Collection Service, Inc.*, 575 F.3d 935 (9th Cir. 2009), of broadly applying a discovery rule to statutes of limitations in federal litigation, including to the FDCPA limitations provision.

The Supreme Court's Decision

The Supreme Court affirmed the Third Circuit. Starting with the text of the FDCPA's limitations provision, the Court opined that Congress unambiguously set the "date of the violation as the event that starts the one-year limitations period." Rotkiske argued that the Court should read a general discovery rule into the FDCPA's limitations provision. However, the Court responded that judicial supplementation of statutory text is particularly inappropriate when Congress has stated its intent in clear language and where Congress knew how to implement a discovery rule, as it had done in other statutes.

The Court also addressed Rotkiske's argument that an equitable, fraud-specific discovery rule should apply to his claim. Because Rotkiske had not preserved the issue before the Third Circuit and had not raised the issue in his petition for *certiorari*, the Court declined to reach the merits of that argument, noting that it was not deciding whether the text of the FDCPA's limitations provision permits the application of equitable doctrines or whether the claim Rotkiske alleged (*i.e.*, that Klemm had knowingly served process at a known bad address to prevent Rotkiske from discovering the lawsuit) fell within the scope of cases applying equity-based doctrines to statutes of limitations.

As Justice Sotomayor explained in her concurring opinion, the "only daylight between the majority and dissenting opinions is whether petitioner Rotkiske forfeited reliance on an 'equitable, fraud-specific discovery rule' that forgives otherwise untimely filings." Justice Ginsburg would have found that Rotkiske did not waive the fraud-specific discovery rule issue and would have remanded for further proceedings.

Conclusion

After *Rotkiske*, FDCPA claims must be brought within one year of the violation. But the Supreme Court left open the possibility that equitable doctrines may affect the FDCPA statute of limitations, particularly where fraud is involved.

From a practitioner's perspective, this decision is a reminder that it is crucial to preserve alternative arguments made below on appeal expressly. Had Rotkiske raised his equitable estoppel argument on appeal, or had he framed the issue in his petition for *certiorari*, there is a chance the matter would have been remanded for further proceedings, as Justice Ginsburg was inclined to do, rather than being dismissed outright.

THIRD CIRCUIT FORMS WORKPLACE CONDUCT COMMITTEE AND ANNOUNCES APPOINTMENT OF FIRST DIRECTOR OF WORKPLACE RELATIONS

Matthew Stiegler
Law Office of Matthew Stielger, Philadelphia, PA

This fall, the Third Circuit appointed Julie Procopiow Todd to be its first Director of Workplace Relations. In that role, Ms. Todd's mission is to strengthen workplaces throughout the circuit in two main ways: (1) by helping to resolve workplace conflicts as they arise and, (2) by training circuit personnel so that fewer conflicts develop in the first place.

Ms. Todd is a Maryland native and graduate of the University of Baltimore School of Law. She comes to the Third Circuit after 26 years of service as an Administrative Judge for the United States Equal Employment Opportunity Commission. While there, she also led the EEOC's award-winning settlement initiative and presented extensively at workplace training programs.

She brings that expertise to bear in her current role working to strengthen Third Circuit workplaces. "I see my role as a circuit peacemaker," she explained. When disputes arise involving accusations of discrimination, harassment, or abusive or retaliatory conduct, employees can turn to Ms. Todd for help in resolving them. Depending on the case, she can give informal advice, undertake investigation, discuss conflicts with supervisors, and work to resolve the conflict. Before disputes degenerate into toxic workplaces and disciplinary proceedings, Ms. Todd will work to resolve the conflict proactively. "I look forward to earning the trust of all employees within the Third Circuit to feel comfortable reaching out to me as a confidential, neutral resource in assisting them with any workplace issues and conflicts they may encounter," she said.

In addition to resolving conflicts, Ms. Todd's other primary duty will be organizing trainings for employees and supervisors circuit-wide. The goal of the trainings is "really to be preventative, to provide tools for individuals … to nip issues in the bud, to provide ways to resolve matters," she said. These trainings will run the gamut from substantive legal education such as discrimination and harassment standards to practical skill-building such as when and how to apologize.

The scope of Ms. Todd's work isn't limited to permanent circuit staff members. The circuit's new workplace procedures cover judges, current and former employees (including all law clerks; chambers employees; interns, externs, and volunteers; federal public defender employees; and probation and pretrial services employees), and applicants for employment.

"I am committed to doing my part to ensure that the Third Circuit is truly a model for a workplace of respect, civility fairness, tolerance and dignity," she said, "free of discrimination and harassment."

The Third Circuit joins four other circuits—the First, Fourth, Fifth, and Ninth Circuits—that also established workplace-relations director positions this year. The creation of these positions comes in the wake of a broader workplace-misconduct review initiated by Chief Justice John Roberts in 2018.

The Third Circuit's appointment of a workplace-relations director is a critical step, according to Jaime Santos, an appellate attorney at Goodwin Procter who has played a leading role in advocating for reform. "It ensures continued development and evolution of these programs. Without someone dedicated to these issues on a full-time basis, it's easy for harassment-prevention initiatives to be a one-time thing."

In her role as director, Ms. Todd will work with the newly formed Third Circuit Workplace Conduct Committee, led by Third Circuit Chief Judge D. Brooks Smith and also including Judge Colm Connolly (D. Del.), Magistrate Judge Maureen Kelly (W.D. Pa.), Magistrate Judge Karoline Mehalchick (M.D. Pa.), Judge Gerald Pappert (E.D. Pa.), Judge Patty Shwartz (3d Cir.), Judge Susan Wigenton (D.N.J.), and Circuit Executive Margaret Wiegand. The committee will set circuit workplace-misconduct policy and advise the Judicial Council on how to process misconduct complaints.

In a statement issued by the Third Circuit, Chief Judge Smith said, "Ms. Todd's background in EEOC matters is an invaluable asset, and one that will redound to the great benefit of the entire Third Circuit as we continue our efforts to provide a safe, hospitable, and efficient workplace for all."

PRESIDENT'S NOTE

Andrew C. Simpson
Andrew C. Simpson P.C., U.S. Virgin Islands

As the holidays wind down and we look forward to the new year and a new decade, it is human nature to anticipate what the future holds. As recounted elsewhere in this issue, the Third Circuit's future includes new faces on the bench, increased representation of the Third Circuit within Judicial Conference leadership, and the creation of a Circuit-wide Workplace Conduct Committee to review policies relating to the prevention of workplace misconduct within the judiciary.

The 3CBA's future includes assisting the Circuit with the joint Bench-Bar Third Circuit Judicial Conference starting on May 13, in Philadelphia. The theme of the conference is judicial independence. The Association will be offering two CLE sessions during the Conference. The first will be an ethics CLE that keeps with the conference theme and addresses the intersection of the ethics rules that govern a lawyer's role as an advocate and the lawyer's duties to the judiciary and the profession. The second session will deal with substance abuse issues, particularly opioid and alcohol issues, that affect the profession. I am determined that the Association's future will include the launch of a new website. It's a slow process, but we are going to get there! And look for the official release of our newest edition of the Association's Third Circuit Handbook at the Judicial Conference as well.

If you've never been to a bench-bar judicial conference, I encourage you to take advantage of the opportunity. The conferences are opened to attorneys every third year. In addition to CLE, the conference offers an opportunity to learn about, and give feedback on, issues that affect the practice of law in the federal courts around the Circuit. And the "district breakfasts" are attended by the judges of each respective district within the Circuit along with district staff and fellow lawyers who practice in the district. The breakfasts present a fantastic opportunity to get to know the people who make the court in your district run. Of course, the conference offers many opportunities to socialize with other lawyers who practice in the federal courts. The first such opportunity is at the conference's opening reception, which is sponsored by the Association. I hope to see you there.

One final thought for the future. Earlier this month, you should have received an email reminding you to renew your membership for 2020. We depend upon those modest membership dues to support the Association's activities, from putting on CLEs, to publishing the Handbook, to assisting with opportunities to increase the interaction between bar and bench—all as part of our goal to enhance all aspects of appellate practice in the Circuit. So please, make a contribution to your future by renewing your membership today.

CHIEF JUSTICE NAMES CONFERENCE COMMITTEE CHAIRS, INCLUDING FOUR FROM THE THIRD CIRCUIT

On October 1, 2019, the Judicial Conference of the United States announced Chief Justice Roberts's committee chair appointments for this year. The twelve chairs named this year include four Third Circuit judges:

- Judge Fisher is the new chair of the Committee on Federal-State Jurisdiction;
- Judge Chagares continues as chair of the appellate rules advisory committee;
- Judge Hardiman continues as chair of the information-technology committee; and
- Judge Scirica continues as chair of the Committee on Judicial Conduct and Disability.

Chairs serve initial terms of three years subject to one reappointment.

The 26-member Judicial Conference is the policy-making body for the federal court system. By statute, the Chief Justice of the United States serves as its presiding officer and its members are the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The Conference meets twice a year to consider administrative and policy issues affecting the court system, and to make recommendations to Congress concerning legislation involving the Judicial Branch.

JUDGE CHERYL ANN KRAUSE AND JANE CHONG, ESQ. AWARDED 2019 AMERICAN INNS OF COURT WARREN E. BURGER PRIZE

Judge Cheryl Ann Krause and Jane Chong, Esq. are the 2019 winners of the Warren E. Burger Prize, a writing competition that promotes scholarship in the areas of professionalism, ethics, civility, and excellence. The competition's first joint winners were recognized for their essay Lawyer Wellbeing as a Crisis of the Profession. The prize was presented at the American Inns of Court's Celebration of Excellence at the Supreme Court of the United States in Washington, DC, on October 26, 2019. Associate Justice Neil Gorsuch hosted the celebration.

The winning essay, which will be published in the South Carolina Law Review, describes the legal profession's current mental health crisis. The authors describe high rates of lawyer depression, anxiety, accidental overdose, and suicide and urge comprehensive examination of the conditions that contribute to lawyer distress. "[T]he suffering lawyer can be understood as a canary in the coalmine of the legal profession," the authors write.

Going beyond poor mental health's effect on individual lawyers and their ability to represent clients effectively, the essay instead focuses on the way in which modern legal practices impair lawyer wellbeing and degrade the profession's ideals. These practices include long hours, diminished training opportunities for young lawyers, the increasing commercialization of practice, and the deterioration of civility and decorum. Striking at the core of professional identity, these practices have led to decreased autonomy, diminished connectedness to others, and debilitating self-doubt.

Calling for the profession to put its ideals into practice, the essay concludes with suggestions for reform. Recommendations include expanding opportunities to develop competence, rewarding public service as well as billable hours, and raising standards of conduct outside as well as inside the courtroom.

Judge Krause was unanimously confirmed to the Third Circuit in 2014. She served previously as a partner at a multinational law firm in Philadelphia, specializing in white collar criminal defense and securities litigation; a lecturer at Stanford, Columbia, and the University of Pennsylvania law schools; and an assistant U.S. attorney in the U.S. attorney's office for the Southern District of New York. She is a former law clerk for retired Associate Justice Anthony M. Kennedy of the Supreme Court of the United States and a member of the University of Pennsylvania Law School American Inn of Court.

A former law clerk for Krause, Jane Chong is an associate at Williams & Connolly LLP in Washington, D.C. She earned her law degree from Yale Law School.

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This newsletter is compiled by the 3CBA's publicity/newsletter committee; please address suggestions to the committee's chair, Colin Wrabley (cwrabley@reedsmith.com).