

# NORTHERN DISTRICT OF CALIFORNIA



**NORTHERN DISTRICT OF CALIFORNIA LAWYER  
REPRESENTATIVE COMMITTEE REPORT**

**2017-2018**

Submitted by Miriam Kim (Munger, Tolles & Olson LLP) and Elizabeth Pipkin (McManis Faulkner), 2018-2019 Committee Co-Chairs.

- I. Introduction: This report will cover judicial developments in the Northern District since August 2017, our District Conference, and other activities of the Lawyer Representative Committee during that time.
- II. Judicial Appointments and Retirements
  - A. The Northern District continues to enjoy its full complement of active district- court judges. Together with the continued strong contributions of our five senior-status judges and 12 full-time magistrate judges, the District is well prepared to serve the interest of justice in our federal system.
  - B. In August 2017, Chief Judge Emeritus Thelton Henderson took inactive status after serving 37 years on the bench, including his 7-year term as the court’s Chief Judge from 1990 to 1997. The court held a retirement celebration at the San Francisco courthouse, in the Ceremonial Courtroom, which was renamed in his honor as the Thelton E. Henderson Ceremonial Courtroom.
  - C. In June 2017, Bankruptcy Judge Alan Jaroslovsky retired. He served over 30 years on the Bankruptcy Court, including his tenure as Chief Bankruptcy Judge from 2011 to 2014.
  - D. In November 2017, Magistrate Judge Vadas retired after serving in the Eureka Division for 13 years. The court appointed Robert Illman to that magistrate-judge position.
  - E. In June 2018, Magistrate Judge Howard Lloyd will retire after 16 years on the bench in the San Jose Division. The court has selected Virginia K. DeMarchi, formerly a partner at the law firm of Fenwick & West LLP, to join the Northern District bench as a Magistrate Judge upon Judge Lloyd’s retirement.
  - F. In September 2018, Chief Magistrate Judge Emerita Maria-Elena James will retire after 24 years of serving in the court’s San Francisco Division, to be succeeded by Thomas Hixson, who is now a partner at Morgan, Lewis & Bockius LLP.
- III. District Conference
  - A. *The 2018 District Conference:* In the Spring of 2018, the Northern District Judicial Conference was, for the sixth consecutive year, held at the Silverado Resort in Napa. Approximately 250 judges, practitioners, and experts in the areas under discussion gathered at the Silverado Resort from April 20 to 22.
    1. The Conference again marked the continuing efforts of the Court and the LRC to conduct outreach to diverse communities of lawyers and ensure that the full diversity of the District was reflected among Conference attendees and speakers. Conference events were designed to increase the ability of first-time attendees and less experienced practitioners to interact with the members of the Court at the Conference. The LRC also continued its “green effort” with registration and continuing legal education materials

presented entirely on the web.

2. We also noted the importance of the Conference as being the inception point for several of the district's programs and local rules. The court's Ombudsman Program and Guidelines for Professional Conduct were born out of programs, comments, and suggestions raised at the circuit and district conferences. As a result of a panel at last year's Conference concerning Federal Judicial Center employment case protocols, the court launched a pilot program for Initial Disclosures for Employment Cases specifically alleging adverse action.
3. As is typical for our Conference, the Lawyer Representatives prepared an extremely full agenda beginning at 8:30 a.m. on Saturday morning, extending through the entire day, and resuming again on Sunday morning at 8:30 a.m. The conference was opened by Chief Judge Hamilton, who provided a recap of new developments in the District, including the establishment of lactation rooms in each division for litigants and attorneys who are nursing mothers.
4. Following Chief Judge Hamilton's kickoff, the Conference explored the following topics:
  - a. **Nontraditional Forms of Evidence under Federal Rules:** Magistrate Judge Susan van Keulen moderated a panel concerning the use of social media and other new communication methods as evidence. The panelists discussed evidence preservation and spoliation issues arising from these rapidly changing technologies. They also covered best practices on how to admit this new and ever-evolving type of evidence. Panelists included Judge Nathanael Cousins, Kate Dyer, Clarence Dyer & Cohen, John Ellis, Federal Defenders of San Diego, and Annette Hurst, Orrick, Herrington & Sutcliffe.
  - b. **New Federalism in Theory and Practice:** Judge James Donato moderated a panel concerning the evolution of federalism in our country and how it is shaping local and national policy and law. The discussion addressed various facets of federalism including its ability to accommodate widely divergent views and its past use as a tool to resist federal civil rights and related policies. The panelists included Judge William Fletcher, Ninth Circuit Court of Appeals, Jonathon Mitchell, Stanford Law School, Ben Wagner, Gibson Dunn, and Christine Van Aken, San Francisco City Attorney's Office.
  - c. **The Latest in Workplace Sexual Harassment:** Judge William H. Orrick led an important panel discussion concerning the issue of sexual harassment in the workplace that has recently come to light at an ever-increasing rate. The panel, comprised of Danielle Ochs, Olgetree Deakins, Professor Joan Williams, UC Hastings, Jean Hyams, Levy, Vinick, & Hyams and Gina Roccanoca, Meyers Nave, addressed the academic research on sexual harassment, the legal strategies employed by plaintiffs and defendants, and investigation best practices. The panel also touched on the legal ripple effects of sexual harassment claims.
  - d. **Foreign Threats to Our Judicial System:** Elizabeth Rindskopf Parker, Trustee MITRE Corporation moderated a panel exploring the issue of efforts by foreign governments, in particular the Russian government, to undermine our judicial institutions in connection with their larger effort to de-legitimize our democracy. Panelists included Suzanne Spaulding, CSIS, Harvey Rishikof, Crowell & Moring, Jim Dempsey, Berkeley Center for Law & Technology, and the Hon. Jeremy Fogel, Federal Judicial Center.

- e. Our break-out sessions focused on the following topics:
- (i) **Civil: “Class Actions – Cutting Edge Developments in Claim Administration.”** Judge Yvonne Gonzalez Rogers led a discussion among panelists Samuel Isaccharoff, NYU Law School, Shana Scarlett, Hagens Berman Sobol Shapiro, and Angel Garganta, Venable, concerning the impact of information technology on Federal Rule of Civil Procedure 23. In particular, the panel focused on developing a set of best practices in class action claims administration aimed at improving reach of class notice and making it simpler for class members to claim/receive digital or electronic settlement payments.
  - (ii) **Criminal: “The PCAST Report.”** Judge Haywood Gilliam moderated a session, exploring the PCAST report, which identified problems in multiple, common forensic science disciplines as well as recommended actions that should be taken to strengthen those forensic disciplines. Kenneth Melson, George Washington University and Chris Fabricant, Innocence Project, engaged in an Oxford style debate on the question of whether the report’s recommendations should be adopted.
  - (iii) **Bankruptcy: “Spit & Growl” Session.** Judge Roger Efremsky moderated a discussion of bankruptcy bench and bar topics that were anonymously submitted.
- f. **Detecting and Understanding Jury Bias.** The Sunday session started off with an interesting discussion led by Judge Edward Davila on the importance of understanding jury bias. Panelists The Hon. Richard Jones, W.D. of Washington District Court, Candis Mitchell, Office of the Public Defender, Will Rountree, Bonora Rountree, and Missy O’Linn, Manning & Kass, focused on explaining the difference between implicit and explicit biases, recognizing those biases, and determining which types of biases are disqualifying or acceptable for a fair trial. The panel also touched on the potential impact of current public moods or events on a jury.
- g. **Fourth Amendment Implications of Evolving Technology.** Magistrate Judge Laurel Beeler was joined by panelists Linda Lye, ACLU – Northern California, Elvis Chan, Federal Bureau of Investigations (FBI), Michelle Kane, U.S. Attorney’s Office, and Catherine Crump, UC Berkeley Center for Law & Tech in an interesting discussion on issues raised by the government’s use of technologically advanced investigative techniques in criminal cases, specifically as they apply to the Fourth Amendment and other federal law.
- h. This year we moved the traditional closing conference panel, the **“Supreme Court Review,”** back to the Sunday session. Judge Jon Tigar moderated a timely and entertaining discussion with Professor Pamela Karlan of Stanford Law School and Dean Erwin Chemerinsky of UC Berkeley. Professor Karlan and Dean Chemerinsky highlighted the significant cases of the previous term and offered their analysis of anticipated decisions.
5. The entertainment and casual interaction among bench and bar at the Conference also reflected a focus on the Northern District. Attendees enjoyed tasting wines from the Napa wine region during our Saturday reception. The highlight of the Conference’s

Saturday night was the encore of the “Recusals,” who returned to the stage last year, featuring an ensemble of our own Northern District judges, District Court Executive Susan Soong, and Court CSO Vincent Ellison.

#### IV. Other Activities in 2017 - 2018

- A. In keeping with the Northern District tradition of 18 lawyer representatives in three staggered classes, the Court added six new lawyer representatives in October, 2017. The committee hosted a reception welcoming these new members in November, 2017. We are proud that the committee has so well reflected all manner of the diversity of our District, and we are grateful for the service of the six “graduating” lawyer representatives.
- B. Throughout 2017-18, the lawyer representatives worked with the court on a variety of initiatives of interest. These included local-rules projects in several substantive areas.
- C. The practitioners in our District continue to actively support and assist the Court in connection with a variety of projects, including:
  - 1. 27 practitioners who sit on one of our Local Rules Attorney Advisory Committees (Admiralty, Habeas Corpus, Civil, ADR and Patent).
  - 2. 61 practitioners who serve as Criminal Justice Act (CJA) members and provide excellent representation of indigent defendants charged with a crime.
  - 3. 460 practitioners who are on a list of attorneys who have volunteered to provide pro bono representation through our Federal Pro Bono Project.
  - 4. 330 current volunteers have undergone training and were available to serve as neutrals for our court’s ADR programs, with roughly 200 actually assigned to serve over the last year.

The Lawyer Representatives for the Northern District of California look forward to next month’s Ninth Circuit Conference, and to working with the other Circuit representatives in attendance.

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