



U.S. COURT OF FEDERAL CLAIMS BAR ASSOCIATION



E-Newsletter

Summer Edition | August 2020

Dear Member,

We hope you enjoy our E-Newsletter. If you have any questions or comments or would like to submit an article for the newsletter, please email newsletter@cfcbbar.org.

Need to join or renew your membership in the bar association? [Click here](#).

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Letter from the Chief Judge



*Chief Judge
Margaret M. Sweeney*

Greetings, members of the United States Court of Federal Claims Bar Association.

I hope that you, your family, and your loved ones remain in good health and good spirits as you navigate this extraordinary year. I am happy to report that neither the COVID-19 pandemic nor the recent protest activity near the Howard T. Markey National Courts Building and Annex has prevented the court from conducting its business of adjudicating the cases brought or defended by your clients.

In my last message to you three months ago, I described the steps the court had taken to maintain its operations in the midst of the pandemic. We were able to quickly implement policies and procedures that enabled us to continue our work with minimal interruption even though public access to the courthouse was restricted and most court employees shifted to teleworking full-time. As a result, court operations were mostly unaffected when protests rendered the courthouse inaccessible for several days in June, and the court has remained almost fully operational since that time. Unfortunately, health and safety concerns related to the pandemic-arising from the situation in the Washington, DC area and from the fact that the court's litigants come from around the country-necessitated a continuation of the courthouse access restrictions through August 14, and may require an extension beyond that date. Furthermore, conditions around the country have limited the court's ability to hold in-person proceedings

outside of Washington, DC. Consequently, the ability to conduct proceedings remotely is crucial to the prompt resolution of the cases before the court.

To accommodate the new status quo and provide additional flexibility for remote proceedings, the court fast-tracked the adoption of additional video and audio conferencing tools. We are now able to conduct proceedings using AT&T teleconference services, the court's existing video conferencing system, Skype for Business, Microsoft Teams, and WebEx. (Pursuant to guidance from the Administrative Office of the United States Courts, Zoom cannot be used on court networks or court-issued laptops and devices.) The court's judges and special masters have successfully used these tools to hear arguments, conduct hearings, and facilitate alternative dispute resolution. Moreover, as I write this message, the court's very first fully remote trial is being conducted. I am extremely grateful for the flexibility, creativity, and patience shown by the bench and bar-and all of those supporting the bench and bar-in adopting (and adapting to) these new methods of conducting proceedings. And while there are bound to be glitches-technical and otherwise-as we get used to these virtual courtrooms, I am confident that we can work together to ensure that justice is administered fully and fairly.

In other video conferencing news, I am pleased to report that the co-chairs of the court's Advisory Council-the Honorable Nancy B. Firestone and Nancie G. Marzulla-are working on a series of ninety-minute lunchtime webinars covering the topics that would have been presented at the now-cancelled October 5 judicial conference. Look for these webinars in October!

Although we may not have the opportunity to gather in person this year, I am hopeful that we can resume our regular schedule of events in 2021. In the meantime, stay safe!

Kind regards,
Margaret M. Sweeney
Chief Judge

President's Message



James Boland

Dear Members,

In the months following our spring newsletter, it became increasingly clear that we would not be able to proceed with the 31st Annual Judicial Conference on October 5 as originally planned or, for what matter, any other in-person events in 2020. We missed seeing our colleagues at the Law Day luncheon in May, the Bar Association member reception that was planned for July, and now the Judicial Conference this fall. However, we are looking forward to an online Judicial Conference in

October, to be comprised of a series of webinars organizing by Judge Firestone and Nancie G. Marzulla. Please keep an eye out for more details from the Court and Bar Association in September.

The Court of Federal Claims Bar Association is a unique bar association comprised of private practitioners and attorneys of the Department of Justice. In addition to continuing legal education, we share a common interest in developing professional relationships with each other, the Court's judges, and Court staff. While COVID-related cancellations this year have been challenging, we want to encourage you to contact the Bar Association if you are interested in increasing your involvement including organizing or participating in webinars.

We had a very successful vaccine "brown bag" webinar in July, and look forward to a bid protest webinar in September and a best practices webinar in November. As we eagerly look forward to the return of in-person events, there are plenty of opportunities to remain

active and work with your colleagues. We encourage you to contact the Bar Association to find out ways you can be more involved.

Best regards,

James Boland
President, Court of Federal Claims Bar Association

Retirement of Circuit Court Librarian John Moore

In the United States Court of Federal Claims

ORDER

Whereas John Moore joined the staff of the library of the United States Court of Appeals for the Federal Circuit in May 1987 as a Library Technician, was hired as Assistant Librarian in 1990, and became the Librarian in January 2015; and

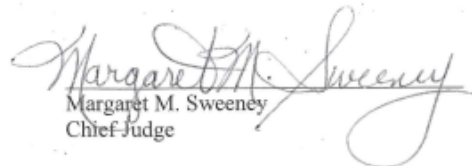
Whereas John Moore has served the Federal Circuit Library with distinction for over thirty years and provided an exceptional level of support to the judges and staffs of the Federal Circuit and the United States Court of Federal Claims, as well as to the members of bar and the general public who patronize the library, by performing legal research, locating and acquiring sources and material, maintaining the library's impressive print and electronic collections, expanding the availability of digital resources, gathering and disseminating news and information about the two courts, creating and maintaining the Federal Circuit's website from 1996 to 2010, and developing and maintaining the library's intranet site; and

Whereas John Moore had dedicated himself to public service for over thirty-five years, working after college at the Library of Congress as a Clerk-Messenger in the Congressional Research Service for almost five years, and during college for three summers at the National Park Service; and

Whereas John Moore has a remarkable record of public service in furtherance of legal scholarship and education that any law librarian would be well-advised to emulate; and

Whereas John Moore is retiring from federal government service on July 31, 2020;

It Is Ordered that the court commends John Moore on his service and accomplishments, and wishes him a joyous and fulfilling retirement.


Margaret M. Sweeney
Chief Judge

Dated: July 27, 2020

Vaccine Practice in the Age of COVID-19

On Tuesday, July 14, 2020, the bar association coordinated in its first educational webinar using WebEx technology. The substantively timely program was entitled "Vaccine Practice in the Age of Covid-19," and it was a success with approximately 60 participants in attendance. We would like to thank Chief Special Master Brian Corcoran, Renée Gentry, Altom Maglio, and Catharine Reeves for their participation in the program. Given the in-person limitations that we are facing and will likely continue to face for some period in the future, it is our hope that the WebEx webinars will serve as a mechanism to reach our members and provide an educational platform that will benefit the Court of Federal Claims legal community.

Ask the Judge!

We hope you enjoy the latest in our series, "Ask the Judge," which we hope will provide interesting insights from Court of Federal Claims judges on a variety of topics. Thank you to Judge Eleni Roumel for serving as the latest participant in this series!

1. This month's newsletter is about technology and the law in times of crisis. You've had a legal career that's touched many aspects of the law, from Deputy Counsel to the Vice President, to Assistant General Counsel in the US House of Representatives, to private practice at several major law firms to adjunct professor at The Charleston School of Law. You came of age as a lawyer during a time of dramatic changes in technology, including the advent of video conferencing, social media and technology-enhanced courtrooms and classrooms. How has that informed your view of the ability of the technology to be a useful tool in every day practice as well as a force of stability in the law during a national crisis such as COVID-19?

ANSWER:

I have always viewed technology as an asset to the practice of law and to case management, partially because I am part of a generation of lawyers who had to quickly adapt to rapidly changing technology and e-discovery standards, beginning in the early 2000s. For example, when I began my law career in New York, I did not have a Blackberry (iPhones did not exist) and we had one "internet station" per floor. In just a few years, associates went from collecting physical files in warehouses to managing e-document collections and reviews. Technological advances have made law practice significantly more efficient.

The recent pandemic has highlighted that our profession can be effective working from nearly anywhere in the world. At our court, which has nationwide jurisdiction and a geographically diverse Bar, technology has allowed us to better serve the public during this challenging time. Our judges continue to maintain and manage active dockets, conduct oral arguments, hold status conferences, preside over Markman hearings, and even conduct trials, all remotely, with counsel appearing from all over the country. Videoconferencing ability has also allowed us to continue ADR efforts, so momentum is not lost.

2. Did your view of the role of technology in the law evolve as you transitioned from private sector to public sector, and now to the Court? If so, how?

ANSWER:

My experiences in both the private and public sectors have made me a proponent of ensuring the best technology is available to all employees. Effective leadership and IT personnel who keep pace with technological advances can have a marked, positive effect on any operation, whether in the private or public sector.

3. You've taught intellectual property law - one of the key jurisdictions of the US Court of Federal Claims. What do you believe that experience will allow you to bring to your role as a judge in the Court?

ANSWER:

Intellectual property is one of my favorite areas of the law. I have always enjoyed it because it is complex, interesting, and usually involves inventors, artists, or other creative

people. Having been an IP practitioner for several years, I appreciate the importance of making sure I take the time as a judge to fully understand the technical aspects of a dispute.

4. What role does the Bar play in the development and use of technology in the law and the courtroom?

ANSWER:

It is essential to keep in close contact with the Bar and get feedback and suggestions regarding the Court's technology so that litigants may present their case most effectively.

5. What is the role of judges in promoting and using technology in the courtroom generally as well as in times of crisis?

ANSWER:

The last few months have demonstrated the critical importance for the court and its judges to stay up to date on the latest technology. The court's ability to continue its operations is far better than it was even ten years ago, primarily because the judges opted to invest in technological upgrades. It is the reason we have been able to keep our courthouse "virtually" open and continue to serve the public.

Rapid Fire Round!

6. Mac or PC?

ANSWER:

Mac

7. Top-three songs on your Spotify/i-tunes playlist?

ANSWER:

- *Suite: Judy Blue Eyes (Woodstock Live Version), Cosby, Stills & Nash*
- *City of Blinding Lights, U2*
- *Baby Shark (my toddler's favorite)*

8. Fells Point or Bourbon Street?

ANSWER:

The music, food, and WWII museum in New Orleans are worth the trip.

9. Terrapins, Pelicans or Demon Deacons?

ANSWER:

Go Deacs!

10. Stay-at-Home Binge: books or television?

ANSWER:

Books

Ask the Special Master!

We hope you enjoy the latest in our series, "Ask the Special Master," which we hope will provide interesting insights from Court of Federal Claims special masters on a variety of topics. Thank you to Special Master Christian Moran for serving as the latest participant in this series!

1. This month's newsletter is about technology and the law in times of crisis. You've spent the bulk of your career in the public sector, from the US Department of Justice to clerking at the US Court of Federal Claims to being a special master since 2006. Your role

as special master started during a time of dramatic changes in technology, including the advent of video conferencing, social media and technology-enhanced courtrooms and classrooms. How has that informed your view of the ability of the technology to be a useful tool in every day practice as well as a force of stability in the law during a national crisis such as COVID-19?

ANSWER:

Through its continuation of operations program ("COOP"), OSM routinely practiced teleworking and these COOP exercises started years before the pandemic. I think this experience made OSM comfortable to carrying out most functions remotely, at least for a few days. No one expected that public health officials would recommend working-at-home for months.

2. Did your view of the role of technology in the law evolve as you transitioned from law clerk to special master? If so, how?

ANSWER:

The big change in technology happened around the time I left the Department of Justice to become a special master. In 2004, the Court of Federal Claims had recently authorized filing materials electronically. At this time, discovery of electronically stored information was starting to increase dramatically. (I consider myself fortunate to have stopped representing agencies of the United States before I was responsible for overseeing searches of emails, laptops, network storage, etc.)

OSM was slower to adopt electronic filing but its use has been a great success. Although some attorneys were reluctant to switch to scanning medical records, everyone now wonders how we ever did cases when everything was in paper only.

Social media is slowly affecting cases at OSM. Postings on social media can support (or undermine) a petitioner's claim about when he or she began to suffer an injury.

3. You had one of the first Skype hearings this year as a result of social distancing requirements due to COVID-19. Can you tell us your experience with that, good and bad?

ANSWER:

Overwhelmingly excellent. Much credit goes to the Court's Information Technology group and to my law clerk. They practiced connections with the attorneys, the witnesses, and the court reporter. On the day of the hearing, it was a smoothly operating, well-oiled machine.

Before the hearing, we anticipated the use of documents. Days before the hearing, the petitioner's attorney delivered a set of documents to the witnesses electronically.

The witnesses benefitted from having two screens. For example, one witness placed the PDF exhibits on one lap top and used a second lap top as the means to connect to the Skype call. Another solution is to have a second monitor.

Although the attorneys through the "share screen" feature could present documents to the witnesses, people seemed more comfortable having their own set of exhibits.

4. What role does the Bar play in the development and use of technology in the law and the courtroom?

ANSWER:

The Bar and the Court should partner. At times, the Bar might take the lead by proposing the use of technology in a hearing because, for example, the attorneys have used a particular type of technology in a district court hearing. The attorneys could suggest that the judge or special master facilitate its use at the Court of Federal Claims. Judges and special masters are likely to learn about the newest courtroom technologies when attorneys bring it to our attention.

At other times, the Court might influence how technology is used. For example, the Court

perceived security risks in using Zoom technology and, therefore, restricted its use. The attorneys may not be aware that some technologies could implicate the security of the Court's network.

5. What is the role of special masters in promoting and using technology in the courtroom generally as well as in times of crisis?

ANSWER:

Technology can make the processing of cases easier. Everyone, I think, agrees that electronic (not paper) medical records are advantageous. PDF versions of medical records can be searched for "seizure," making identifying relevant typed medical records easier.

An area in which I have started to dip my toe is to ask petitioners' attorneys to submit their timesheets via Excel. I have explained to the attorneys that I believe that most time-keeping programs create an Excel file easily. If the attorney or paralegal needs to spend more than 10 minutes producing an Excel spreadsheet, then the attorney should inform me that the request cannot be done easily. Through Excel, I have reviewed timesheets, assessed the reasonableness, and written decisions more quickly.

Rapid Fire Round!

6. Mac or PC?

ANSWER:

PC almost all of the time because the Court provides PCs. However, I have a Mac that I have used to edit home movies.

7. Top-three songs on your Spotify/i-tunes playlist?

ANSWER:

I confess that I do not listen to much music. From the early 80's, I like The Police, the Talking Heads, and Joni Mitchell.

8. Playing basketball or watching March Madness?

ANSWER:

Playing basketball. During the pandemic, I have greatly missed my weekly Sunday-night basketball game. I think other players might describe me as a "sneaky scorer," which is a polite way of saying that any hoops I score are surprises.

9. Favorite Beach?

ANSWER:

Rehoboth.

10. Stay-at-Home Binge: books or television?

ANSWER:

Books. However, I watched and recommend The People vs. O.J. Simpson, on Netflix. I am looking forward to the next season of Stranger Things, although the release will not be for many months.

Ask the Staff!

We hope you enjoy the latest in our series, "Ask the Staff," which we hope will provide interesting insights from Court of Federal Claims staff on a variety of topics. Thank you to Pietro Walker for serving as the latest participant in this series!

1. This month's newsletter is about technology and the law in times of crisis. As the Assistant Director or IT for the US Court of Federal Claims, you are on the front line of how the Court is addressing the ability of technology to be a useful tool in every day practice as

well as a force of stability in the law during a national crisis such as COVID-19. Tell us a little about what you do day to day, and how that has changed with COVID-19?

ANSWER:

My day to day responsibilities include overseeing technical projects in alignment with the court's goals, I work very closely with information engineers to find solutions to manage the court activities and lead efforts to improve IT processes.

Covid -19 has tremendously changed the way we support our users, the most significant change to normal workflows was a new focus on remote access to centralized IT resources and the way we provide end-user support remotely.

2. Where are you from? How long have you worked at the Court? Where did you work before? Did you view of the role of technology change once you joined the Court? If so, how?

ANSWER:

My parents were in the military which required us to frequently move, when my parents retired, they decided to settle in Maryland. After graduating from University of Maryland, I started my IT career with the courts and have been serving the court for over 23 years. The role of technology for the courts over the years have evolved tremendously, from electronic filing, communications, courtroom technology and security.

3. How do you think lawyers compare with other professions in the use of technology? Are there challenges unique to the law that you have experienced?

ANSWER:

Lawyers are definitely more demanding than an average day to day user, they share the same challenges such as streamlining communications between the attorney and client, automating eDiscovery and simplifying case management.

4. What role can the Bar play in assisting you in the development and use of technology in the law and the courtroom?

ANSWER:

General overview training of the available courtroom technology and provides documentation. Feedbacks from participants will also be useful, these will help us identify the areas that we need to improve on.

5. What is the role of the IT department in promoting and using technology in the courtroom generally as well as in times of crisis?

ANSWER:

Our IT department plays an important role with bridging the gaps between courtroom technology and the users, during the pandemic we are now more reliant on utilizing communication tools such as WebEx, Microsoft Teams and Skype to conduct hearings and conferences.

Rapid Fire Round!

6. Mac or PC?

ANSWER:

Mac

7. Top-three songs on your Spotify/i-tunes playlist?

ANSWER:

RITMO (J. Balvin), One Man Band (Old Dominion), You're Somebody Else (Flora Cash)

8. Favorite place to longboard in the area?

ANSWER:
Annapolis or BWI trail.

9. Sail, paddle or power boat?

ANSWER:
Power boat

10. Stay-at-Home Binge: books or television?

ANSWER:
Television - Netflix , Hulu, Disney, Amazon Video etc..

Important Announcements from the Court

Order Requiring Face Coverings in the National Courts Building

On July 13, 2020, the Chief Judges of the United States Court of Appeals for the Federal Circuit and the United States Court of Federal Claims issued a joint administrative order requiring face coverings in the National Courts Building until August 14, 2020. The full order can be found [here](#).

Order Restricting Access to the National Courts Building until August 14, 2020

On June 26, 2020, the Chief Judges of the United States Court of Appeals for the Federal Circuit and the United States Court of Federal Claims issued a joint administrative order restricting access to the National Courts Building until August 14, 2020. The full order can be found [here](#).

Administrative Order re: In-Person Proceedings (Updated June 5, 2020)

On June 5, 2020, Chief Judge Margaret Sweeney amended the previous Order of May 12, 2020, extending the suspension of in-person proceedings until July 6, 2020. You can read the full order [here](#).

Prohibition on the Use of Zoom with Judiciary Resources

In accordance with guidance from the Administrative Office of the United States Courts, no federal judiciary resources - including court networks and court-issued laptops and devices - may be utilized for using Zoom. Information on video conferencing tools available for conducting court proceedings can be provided by the presiding judicial officer. For more information, please see the General Order [here](#).

Vaccine Petitions

Electronic Service on Secretary of Health and Human Services
Due to the COVID-19 public health emergency, petitioners may, until further notice, serve the Department of Health and Human Services with petitions electronically. Contact [Carole Marks](#) at HHS for instructions.

Suspending Paper Filing Requirements in Pro Se Cases

Based on declared public health emergencies impacting Washington, D.C. and the National Capital Region, and ongoing efforts to mitigate community transmission and the impact of COVID-19, there is an immediate need for the United States Court of Federal Claims to take steps to limit the number of court personnel who are required to be available to process filings submitted through the U.S. Mail, by messenger, or in the court's night box. Providing pro se litigants with the ability to submit and be served with filings electronically will reduce the number of court staff required to process paper filings, which will minimize the risk to the health and safety of both court staff and the public conducting business with the court. For more information, please see the [General Order](#).

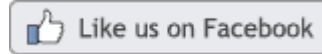
COVID-19 Public Access Restriction

Based on declared public health emergencies impacting Washington, D.C. and the National Capital Region, and ongoing efforts to mitigate community transmission and the impact of COVID-19, there is an immediate need for the United States Court of Federal

Claims to restrict public access to the Howard T. Markey National Courts Building. These restrictions will be in place as a temporary measure in response to the COVID-19 pandemic and to minimize the risk to the health and safety of both court staff and the public conducting business with the court. For more information, please see the [Administrative Order](#).

Find Us On Facebook

The Bar Association has a Facebook page where we will post the latest news, events and other important information. Click on the link below and when you get to our page click "Like" so you can stay informed.



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