



2018 AILA FEDERAL COURT CONFERENCE AND WEBCAST: BUSINESS LITIGATION

SEPTEMBER 20, 2018
AILA NATIONAL OFFICE
1331 G STREET NW
WASHINGTON, DC 20005

Your clients are facing the consequences of new restrictive legal standards and policies that represent an unprecedented effort to reduce legal immigration. Litigation is the only effective way to stop this onslaught! This program will provide you with the essential knowledge and practice tips you'll need to litigate business cases successfully in federal court.

Viewing Options: *On Thursday, September 20, 2018, faculty members will present a full day of live sessions. These sessions can be attended in-person at the AILA National Office (space is limited), or via webcast from the convenience of home or the office. Either way, the program is live and interactive! All participants will be given a link to the conference recording, so any sessions missed (particularly helpful for our West Coast participants given the time difference) or in need of review can be revisited back at the office.*

Thursday, September 20

Day Coordinator: Grace Ellen Zaiman, Batavia, NY

10:15 am–6:30 pm **REGISTRATION, INFORMATION, AND EXHIBITS**

10:50 am–11:00 am **WELCOME AND GREETINGS**

Eleanor Pelta, AILA Past President/ Conference Program Committee, Washington, DC

11:00 am–12:00 pm **BUILDING A RECORD FOR LITIGATION: “FULL EFFORT IS FULL VICTORY”**

A strong administrative record can be the key factor in winning when litigating a denial in a business immigration case, particularly where USCIS has based its decision on conclusory observations or failed to follow the preponderance of the evidence standard.

- Identifying Issues or Cases Where a Denial Is Probable, and How to Address Them in the Initial Petition
- Responding to RFEs and NOIDs with Litigation in Mind: Making Your Response into a Brief
- What Is “Preponderance of the Evidence” and How Does It Really Work?
- How to Use Experts and Expert Opinions
- What Weight Do Employer Statements Carry? Best Practices for How to Use Them

(DL) Discussion Leader

** = Invited, not confirmed*

- Sourcing and Using Strong External Evidence
- Using FOIA to Supplement the Record

Faculty:

Eleanor Pelta (DL), AILA Past President, Washington, DC

Tammy Fox-Isicoff, AILA Board of Governors, Miami, FL

Ira J. Kurzban, AILA Author, Kurzban's Immigration Law Sourcebook/ AILA Past President, Miami, FL

Leslie K. Dellon, Staff Attorney (Business Immigration), American Immigration Council, Washington, DC

12:05 pm–1:05 pm

ADVISING CLIENTS OF LITIGATION OPTIONS, APPEALS, AND FEES: “DON’T GET EXHAUSTED”

Before filing a case in federal court, an attorney must advise whether to refile a petition after a denial, file a motion to reopen, appeal to the Administrative Appeals Office (AAO), or proceed directly to federal court. The panelists will explore these options, including how to discuss litigation with clients and options regarding fee arrangements.

- Do You Have a Good Case for Successful Litigation?
- Filing a Motion to Reopen: Good or Bad Idea?
- Should You (and Must You) Appeal to the AAO?
- Discussing Litigation with Your Client: Best Practices
- Designing a Fee Arrangement That Is Acceptable to Your Client
- When Will the Government Be Required to Pay Legal Fees?
- Drafting Engagement Letters for Litigation

Faculty:

H. Ronald Klasko (DL), AILA Past President/ Administrative Litigation Task Force Chair/ Conference Program Chair, Philadelphia, PA

Charles H. Kuck, AILA Past President, Atlanta, GA

Jeffrey A. Devore, Palm Beach Gardens, FL

1:05 pm–1:20 pm

LUNCH (INCLUDED WITH IN-PERSON REGISTRATION)

1:20 pm–2:05 pm

ROUNDTABLE WITH FORMER GOVERNMENT LITIGATORS

The conference program co-chair will lead a discussion with former government litigators that focuses on the internal lifecycle of a litigation case, starting with receipt of complaints, tracking service, the government internal decision-making processes, and management of dockets. In addition, the speakers will address the limited extent of government settlement authority and how to handle typical offers (a dismissal for appeal or motion to reopen).

- Choke Points Within USCIS and How These Can Benefit Plaintiffs
- The Relationship Between USCIS and DOJ Trial Attorneys
 - Differing Motivations: How This Can Work to Your Advantage

Faculty:

H. Ronald Klasko (DL), AILA Past President/ Administrative Litigation Task Force Chair/ Conference Program Chair, Philadelphia, PA

Jonathan D. Wasden, Burke, VA

Bradley B. Baniyas, Charleston, SC

Geoffrey Forney, Senior Trial Attorney, DOL, Philadelphia, PA

2:10 pm–3:10 pm

UNDERSTANDING DECLARATORY JUDGMENT ACTIONS: “WELL, I DO DECLARE!”

Declaratory judgment actions can be an effective way to obtain a judicial finding on a disputed issue of law, such as whether your client qualifies for an immigration benefit. Panelists will discuss initial

(DL) Discussion Leader

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considerations before bringing suit, preparing and filing a complaint, and the types of issues that are appropriate for declaratory judgment.

- Preparing a Complaint for Declaratory Judgment
- Jurisdiction and Venue Considerations
- Naming and Serving the Defendants
- Timeline of Litigation Against an Administrative Agency
- Federal and Local Rules of Procedure
- The Administrative Record and Supplementing the Complaint with Additional Evidence

Faculty:

Rekha Sharma-Crawford (DL), Kansas City, MO

Robert H. Cohen, Columbus, OH

3:10 pm–3:20 pm

NETWORKING BREAK

3:20 pm–4:20 pm

WHAT HAPPENS IN DISTRICT COURT AFTER YOU FILE THE COMPLAINT: “HURRY UP AND WAIT”

The panelists will discuss the logistics, timing, and procedures for district court litigation once the complaint has been filed. The speakers also will discuss practical and strategic considerations for all steps of litigation.

- How to Respond If the Government Files a Motion to Dismiss
- Timing and Substance of the Government’s Answer
- When to File a Motion for Summary Judgment. What Are Its Contents?
- What Are the Standards of Review in Federal Court?
- How to Argue for No (or Less) Deference to the Agency
- When and How to Discuss Settlement with the Government Attorney

Faculty:

*William A. Stock (DL), AILA Past President/Investment Committee Chair,
Philadelphia, PA*

Brian Scott Green, Baltimore, MD

Scott D. Pollock, Chicago, IL

4:25 pm–5:25 pm

STRATEGIC CONSIDERATIONS IN DISTRICT COURT LITIGATION: “KEEP YOUR EYE ON THE BALL”

Panelists will discuss some of the key strategic considerations that a successful district court litigator must keep in mind when making decisions during the course of the litigation. The speakers will explain various strategic options based on personal experience with district court litigation.

- Who Has Standing to Sue?: Beneficiaries as Plaintiffs, Organizational and Associational Plaintiffs, and Ethical Considerations
- Choosing the Most Appropriate Venue for Filing
- Causes of Action Under the Administrative Procedure Act (APA)
- Drafting a Prayer for Relief
- Obtaining Interim Relief Pending Litigation
- Injunctive Relief vs. Declaratory Relief

Faculty:

Jeff Joseph (DL), Denver, CO

John Patrick Pratt, AILA Board of Governors, Miami, FL

Stacey L. Gartland, San Francisco, CA

(DL) Discussion Leader

** = Invited, not confirmed*

5:30 pm–6:30 pm

TIRED OF WAITING? TIME TO FILE A MANDAMUS ACTION!

Panelists will cover effective use of mandamus actions to compel agency action on unreasonably delayed applications. They will discuss when it is appropriate to prepare a mandamus complaint, the elements that must be satisfied and steps to be followed, how to achieve a successful outcome, and how to obtain legal fees if you prevail.

- What Types of Cases Are Appropriate for a Mandamus Action, and When Is It Time to File?
- Elements of a Mandamus Complaint
- Who Are the Parties?
- Jurisdiction and Venue
- Negotiating with the Government
- Anticipating and Responding to Government Defenses
- Requesting Equal Access to Justice Act (EAJA) Fees

Faculty:

Thomas K. Ragland (DL), AILA Administrative Litigation Task Force Vice Chair, Washington, DC

Jeremy L. McKinney, AILA Treasurer, Greensboro, NC

Gregory Romanovsky, Upton, NY

6:30 pm

BUSINESS LITIGATION PROGRAM CONCLUDES

CONFERENCE PROGRAM COMMITTEE

*H. Ronald Klasko, AILA Past President/ Administrative Litigation Task Force Chair/
Conference Program Co-Chair, Philadelphia, PA*

Eleanor Pelta, AILA Past President, Washington, DC

Thomas K. Ragland, AILA Administrative Litigation Task Force Vice Chair, Washington, DC

Jeff Joseph, Conference Program Chair, Denver, CO

Rekha Sharma-Cranford, Kansas City, MO

Jonathan D. Wasden, Burke, VA

JJ Area, AILA Education Programs Manager, Washington, DC

(DL) Discussion Leader

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