2020 AILA FEDERAL COURT CONFERENCE: BUSINESS LITIGATION

APRIL 30, 2020
THE VENETIAN RESORT HOTEL CASINO
3355 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NV  89109

Given the unprecedented delays in adjudications and denials of previously approvable petitions and applications, immigration lawyers must add additional skills to their arsenal in order to provide complete representation to their individual and corporate clients in employment-based immigration matters. To assist in this, AILA presents the 2020 AILA Federal Court Conference: Business Litigation, which follows on the heels of two similar successful programs in 2018 and 2019, and two business litigation webinars attended by over 1,800 members. This new conference is designed to provide a foundation of knowledge for those new to business litigation, and to build on the skill sets of those more experienced AILA members who already have represented clients in mandamus and declaratory judgment actions in federal court. The conference includes designated times for attendees new to litigation to interact with faculty. Before lunch, attendees will be able to ask the program faculty questions in an open forum and before the conclusion of the conference, our expert speakers will answer any remaining questions and workshop any pressing issues attendees are facing. Don’t miss this opportunity to join your colleagues in Las Vegas to exchange ideas and strategize with many of the country’s foremost business immigration litigators!

Note: Due to the nature of this topic, registration for this conference is limited to AILA members only.

7:30 am–5:45 pm  REGISTRATION, INFORMATION, AND EXHIBITS

Day Coordinator:  TBD

7:55 am – 8:00 am  WELCOME AND REMARKS
H. Ronald Klasko, AILA Past President/Administrative Litigation Task Force Chair/Conference Chair, Philadelphia, PA

8:00 am – 8:50 am  DEMYSTIFYING LITIGATION: DISCUSSION WITH FIRST-TIME LITIGATORS

(DL) = discussion leader
* = invited, not confirmed
Hear from transactional business immigration lawyers who have charged into federal court to fight wrongful denials. The panelists will share their experiences and lessons learned.

- Problems Encountered
- “What I Wish I Knew More About When I Started”
- Who Represented the Government?
- Resolution of the Case

Faculty:
*Michael R. Jarecki (DL), AILA Board of Governors/Conference Program Committee, Chicago, IL
Olivia Serene Lee, AILA Diversity and Inclusion Committee Vice Chair, San Francisco, CA
*Diana C. Bauerle, AILA CSC Liaison Committee Chair, Arlington, VA
Lauren McClure, Chicago, IL

8:55 am – 9:55 am  **MANDAMUS: WHEN ALL ELSE FAILS**
When adjudication of your petition or application is delayed, you have two choices: do nothing, or file a mandamus action. The panelists will discuss what you need to know to get action through a mandamus complaint in federal court.

- Venue, Who to Sue/Serve
- Mandamus vs. Administrative Procedure Act (APA)
- When Mandamus Is Appropriate, Overcoming Government Defenses
- Mandamus vs. §336(b) for Naturalization, Mandamus for Consular Delays
- Specific Issues for EB-5 Mandamus

Faculty:
Tammy Fox-Isicoff (DL), AILA Board of Governors/Conference Program Committee, Miami, FL
Jeffrey A. Devore, Palm Beach Gardens, FL
*Anthony Drago Jr., Boston, MA

10:00 am - 11:00 am  **DECLARATORY JUDGEMENT BASICS: TURNING “NO” TO “YES”**
Has your client received a denial? If so, often the quickest and most successful strategy to overturn the denial is to file a declaratory judgment complaint. The panelists will explain how this is done and advise on best practices for filing.

- Standard of Review/APA, Exhaustion
- Venue, Who to Sue/Serve
- Limitation to Administrative Record
- Contents of the Complaint, How the Litigation Proceeds, Settlement
- What Happens When the Government Reopens the Case?

Faculty:
Denyse Sabagh (DL), AILA Past President, Washington, DC
Brent W. Renison, Portland, OR
*Anis N. Saleh, Coral Gables, FL

11:00 am – 11:10 am  **NETWORKING BREAK**

*(DL) = discussion leader
* = invited, not confirmed
11:10 am – 12:00 pm  **OVERCOMING CLIENTS’ RELUCTANCE TO LITIGATE**
The USCIS decision overlooks evidence, gets the facts wrong, and misstates the law. The case is, therefore, ideal for judicial review under the APA. But do you have a plaintiff?

- What’s in It for the Client(s)? Appealing to a Sense of Injustice
- Is Retaliation Something to Be Concerned About? Avoiding Publicity
- Alternative Fee Arrangements and the Equal Access to Justice Act (EAJA)
- Timing of Relief: Explaining Procedural Possibilities
- Beneficiary Standing

*Faculty:*
Scott D. Pollock (DL), Conference Program Committee, Chicago, IL
*Robert H. Cohen, Columbus, OH*
*Jonathan Wasden, Burke, VA*

12:00 pm – 12:20 pm  **QUESTIONS AND ANSWERS: OPEN FORUM**
Faculty from the morning sessions will participate in an open Q&A session with conference participants.

12:20 pm – 12:35 pm  **LUNCH (INCLUDED WITH REGISTRATION)**

12:35 pm – 1:25 pm  **LUNCH AND DISCUSSION WITH GOVERNMENT LAWYERS**
- Structure of the Defense
- Typical Profile of the Government Attorney Handling the Case
- Why So Many Motions to Dismiss?
- Retaliation
- Settlement

*Faculty:*
Bradley B. Banias (DL), Conference Program Committee, Mount Pleasant, SC
*Former and Current Government Litigators*

1:30 pm – 2:20 pm  **IS THE ADMINISTRATIVE RECORD REALLY THE ADMINISTRATIVE RECORD?**
Preparing a case for USCIS or another administrative agency should anticipate future litigation by making a strong record. Are you satisfied that you have provided everything that a district court judge needs to decide the case on a motion for summary judgment or after trial? What options exist for supplementing the record?

- Importance of the Administrative Record (AR), What Should Be Included
- Challenging the AR, Use of FOIA
- Is Discovery Available? If So, Under What Circumstances?
- Factors to Consider When Filing the AR in Advance
- Is Refiling Preferable to Moving Forward in Court with a Weak AR?

*Faculty:*
*Zachary Nightingale (DL), San Francisco, CA*
2:25 pm – 3:25 pm **LITIGATION WITH 2020 VISION: WHAT’S HOT IN THE COURTS?**

More employment-based cases are being litigated than ever before. Panelists will take the concepts discussed in earlier sessions and explain how they have been applied in litigating the most frequent types of petition denials.

- H-1B Specialty Occupation, L-1A/B
- Employer-Employee Relationship
- EB-1A
- EB-5
- F/J Unlawful Presence

**Faculty:**

- H. Ronald Klasko (DL), AILA Past President/Administrative Task Force Committee Chair/Conference Program Chair, Philadelphia, PA
- *Diane M. Butler, AILA Board of Governors/Membership Committee Chair, Seattle, WA

3:25 pm – 3:35 pm **NETWORKING BREAK**

3:35 pm – 4:25 pm **GETTING IMMEDIATE RELIEF FOR YOUR CLIENT THROUGH A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

Sometimes a client will lose status or otherwise be prejudiced while a declaratory judgment action is pending. The panelists will discuss the law and practical experiences in obtaining temporary restraining orders (TROs) and preliminary injunctions (PIs) to keep the client in status.

- Strategic Use of the TRO/PI
- How and When to File the TRO
- What Happens After You File?
- Procedural Aspects Moving from TRO to PI
- Success in Employment-Based Immigration Cases

**Faculty:**

- *Justin Burton, Chicago, IL*
- Jesse M. Bless, AILA Director of Litigation, Washington, DC

4:30 pm – 5:00 pm **THE IMPACT OF THE U.S. SUPREME COURT DECISION IN KISOR ON DEFERENCE TO USCIS**

While judicial deference to agency decisions has traditionally been a major hurdle to successful federal court litigation, this may be changing. The panelists will explain how the recent U.S. Supreme Court decision in *Kisor v. Wilkie* may increase chances of successful challenges to agency actions.

- *Chevron* Deference for Statutory Interpretation

*(DL) = discussion leader
* = invited, not confirmed*
• *Auer* Deference in Regulatory Interpretation
• What Changed After *Kisor*?
• How Defeance Affects Employment-Based Cases
• How Do You Argue Against Agency Claims of Deference?

*Faculty:*
*Paul W. Hughes, Supreme Court and Appellate Practice Group Co-Chair, McDermott Will & Emery LLP, Washington, DC*
*Leslie K. Dellon, Staff Attorney (Business Immigration), American Immigration Council, Washington, DC*

5:00 pm – 5:45 pm  
**QUESTIONS & ANSWERS: OPEN FORUM AND WORKSHOP**
Close out the conference with an interactive open forum and workshop with the experts. Faculty members will be seated at tables to answer questions and provide practical guidance on issues. Attendees will have the opportunity to learn directly, and seek advice, from seasoned litigators.

---

**CONFERENCE PROGRAM COMMITTEE**

*H. Ronald Klasko, AILA Past President/Administrative Task Force Committee Chair/Conference Chair, Philadelphia, PA*
*Tammy Fox-Isicoff, AILA Board of Governors, Miami, FL*
*Michael R. Jarecki, AILA Board of Governors, Chicago, IL*
*Jeff Joseph, AILA Administrative Litigation Task Force Vice Chair, Aurora, CO*
*Bradley B. Banias, Mount Pleasant, SC*
*Scott D. Pollock, Chicago, IL*

*JJ Area, AILA Education Programs Manager, Washington, DC*