



2021 AILA FEDERAL COURT CONFERENCE: BUSINESS LITIGATION

OCTOBER 11, 2021
THE VENETIAN RESORT HOTEL CASINO
3355 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NV

“All Times Indicated Below Are Pacific Time”

- 7:00 am–6:30 pm **REGISTRATION, INFORMATION, AND EXHIBITS**
- Day Coordinator:* *AILA Staff*
- 7:45 am – 8:00 am **WELCOME AND REMARKS**
*H. Ronald Klasko, AILA Past President/High Impact Litigation Committee
Chair/Conference Chair, Philadelphia, PA*
- 8:05 am – 8:55 am **DEMYSTIFYING LITIGATION: DISCUSSION WITH FIRST-TIME LITIGATORS**
*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?
 - Ethical Consideration: Is the Client the Employer, Employee, or Both?
 - Resolution of the Case
- Faculty:*
*Michael R. Jarecki (DL), AILA Board of Governors/Conference Program
Committee, Chicago, IL*
Lauren McClure, Chicago, IL
Zachary Nightingale, San Francisco, CA

9:05 am – 9:55 am

MANDAMUS: WHEN ALL ELSE FAILS

When adjudication of your petition or application is delayed or the adjudication is unlawfully withheld, 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, Whom to Sue/Serve
- When Mandamus Is Appropriate and Not Appropriate
- Mandamus for EAD Delays
- Mandamus for Consular Delays and Administrative Processing
- Mandamus vs. §336(b) for Naturalization
- Overcoming Clients' Reluctance to Litigate
- What Is the Attorney's Ethical Duty to Advise the Client That the Decision May Be Adverse?

Faculty:

Tammy Fox-Isicoff (DL), AILA Board of Governors/High Impact Litigation Committee/Conference Program Committee, Miami, FL

Brian Scott Green, AILA High Impact Litigation Committee, Littleton, CO

Jeffrey A. Devore, Palm Beach Gardens, FL

10:05 am – 10:55 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/Administrative Procedure Act (APA), Exhaustion
- Venue, Whom to Sue/Serve
- Contents of the Complaint, How the Litigation Proceeds, Settlement
- Ethical Considerations
 - Candor to the Tribunal
 - Plaintiff Communication, Authorization, and Written Agreements

Faculty:

Scott D. Pollock (DL), AILA High Impact Litigation Committee/Conference Program Committee, Chicago, IL

Jonathan Wasden, Burke, VA

Gregory Romanovsky, Boston, MA

11:05 am – 11:55 am

RELIEF: WHAT ARE YOU ASKING THE COURT TO DO?

The agency action (or failure to act) is unlawful, but the judge will want to know what a court order will look like. It is important to think through a number of case outcomes and clearly state everything you want in order to achieve complete relief for your client. The panelists will discuss strategies and provide tips to seek exactly the kind of relief the client wants.

- Assessing Case Objectives and Outcomes
- First Relief Option: Ordering the Agency to Act

(DL) = discussion leader

** = invited, not confirmed*

- Differences Between Declaratory Relief vs. Injunctive (Prohibitory and/or Mandatory) Relief
- Second Relief Option: Reverse the Agency Decision on the Merits
- Third Relief Option: Remand for Further Proceedings
- Fourth Relief Option: Other Relief (*E.g.*, Attorney Fees, Such Other Relief as the Court Deems Just and Proper)
- What If the Agency Reopens Sua Sponte and Seeks Remand or Dismissal?
- Ethical Considerations: Attorney's Fees, Drafting a Representation Agreement, Structuring Fee Settlements, Etc.

Faculty:

Charles H. Kuck (DL), AILA Past President/High Impact Litigation Committee, Atlanta, GA

Stephen Manning, Portland, OR

Karen C. Tumlin, AILA High Impact Litigation Committee, Los Angeles, CA

12:05 pm – 12:25 pm

QUESTIONS AND ANSWERS: OPEN FORUM

Faculty from the morning sessions will participate in an open Q&A session with conference participants.

12:25 pm – 1:10 pm

LUNCH (INCLUDED WITH REGISTRATION)

12:40 pm – 1:10 pm

LUNCH PANEL: TALES FROM FEDERAL COURT AND AILA LITIGATION UPDATE

Faculty members will share their best and worst experiences in federal court. In addition, AILA Director of Litigation, Jesse Bless, will provide an update on the latest litigation efforts from AILA National.

Faculty:

Jesse M. Bless, AILA Director of Litigation, Washington, DC

**Select Faculty Members (TBD)*

1:20 pm – 2:10 pm

OVERCOMING GOVERNMENT MOTIONS TO DISMISS AND CHANGE VENUE

The government has recently become much more aggressive in filing motions to dismiss and motions to change venue, both to discourage litigation and to avoid courts issuing unfavorable decisions on the merits. The panelists will discuss what motions to expect and how to defend against them.

- Defending Against Motions to Dismiss Challenging Jurisdiction
- Defending Against Motions to Dismiss Challenging Ripeness and Standing
- Defending Against Motions to Dismiss Challenging Final Agency Action
- Defending Against Motions to Change Venue
- Ethical Issues in Advising Clients

Faculty:

H. Ronald Klasko (DL), AILA Past President/High Impact Litigation Committee Chair/Conference Program Chair, Philadelphia, PA

Jeff Joseph, AILA Secretary, Denver, CO

(DL) = discussion leader

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Kate Melloy Goettel, Legal Director of Litigation, American Immigration Council, Washington, DC

2:20 pm – 3:10 pm

LET’S GET ETHICAL: ADVERTISING, CHARGING, AND SERVING LITIGANTS ETHICALLY

With the increase in federal court immigration litigation comes a surge of ethics questions related to attracting, signing, and serving clients. The panelists will discuss ethical questions that arise from advertising via social media, flat fee litigation, potential conflicts in group suits, and the baseline for good faith allegations. They will use the ABA’s Model Rules of Professional Conduct as the foundation for the discussion.

- Is a Tweet, Post, or Online Comment an Advertisement? What Can Attorneys Say or Not Say? Does an Attorney’s Social Media Profile(s) Violate the Advertisement Rules?
- Refresher on the Rules of Flat Fees: Can Lawyers Declare “No Refunds?” Are Lawyers Required to Record Time for Flat Fee Litigation? When Is Total Fee Unreasonable?
- How Do Attorneys Protect Themselves If Individuals Provide False Information Through Online Sign-Ups? What Is the Baseline for a Good Faith Investigation of the Allegations in the Complaint?
- How Do Lawyers Handle Confidentiality, Adverse Interests, and Settlements in Group Suits?

Faculty:

Cyrus D. Mehta (DL), AILA Ethics Committee Vice Chair, New York, NY

Gregory Howard Siskind, AILA Board of Governors/High Impact Litigation Committee, AILA Author, AILA’s Immigration Law Practice & Procedure Manual, Memphis, TN

Bradley B. Baniyas, AILA High Impact Litigation Committee/Conference Program Committee, Charleston, SC

3:20 pm – 4:10 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?
- Ethical Considerations

- What to Do: The Government Fails to Send Documents They Are Ethically Obligated to Provide and/or Inadvertently Shares Confidential Documents
- Filing an APA Case in Lieu of a FOIA to Obtain the Record/Discovery

Faculty:

Robert H. Cohen (DL), AILA High Impact Litigation Committee, Columbus, OH
Ira J. Kurzban, AILA Author, Kurzban's Immigration Law Sourcebook/AILA
Past President, Miami, FL
Anthony Dominguez, Coral Gables, FL

4:20 pm – 5:10 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
- Ethical Considerations: Filing (to Spur Settlement) When the Harm Is Less Than Irreparable and/or Success Is Unlikely

Faculty:

Diane M. Butler (DL), Seattle, WA
Mark A. Prada, AILA Federal Court Litigation Section Steering Committee/High Impact Litigation Committee, Miami, FL
Jesse M. Bless, AILA Director of Litigation, Washington, DC

5:20 pm – 6:00 pm

THE IMPACT OF THE U.S. SUPREME COURT DECISION IN *KISOR* AND NEW SUPREME COURT JUSTICES 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
- *Auer* Deference in Regulatory Interpretation
- What Changed After *Kisor*?
- How Deference Affects Employment-Based Cases
- How Do You Argue Against Agency Claims of Deference?
- Ethical Consideration: Waiting or Front Running a Supreme Court Decision

Faculty:

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

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

6:00 pm – 6:30 pm

QUESTIONS & ANSWERS: OPEN FORUM

Close out the conference with an interactive open forum with the experts. Faculty members will answer questions and provide practical guidance on issues. Attendees will have the opportunity to learn directly, and seek advice, from seasoned litigators.

6:30 pm

CONFERENCE CONCLUDES

CONFERENCE PROGRAM COMMITTEE

*H. Ronald Klasko, AILA Past President/High Impact Litigation Committee Chair/Conference
Chair, Philadelphia, PA*

Tammy Fox-Isicoff, AILA Board of Governors/High Impact Litigation Committee, Miami, FL

Michael R. Jarecki, AILA Board of Governors, Chicago, IL

Bradley B. Baniyas, AILA High Impact Litigation Committee, Charleston, SC

Scott D. Pollock, AILA High Impact Litigation Committee, Chicago, IL

Jeff Joseph, AILA Secretary, Denver, CO

JJ Area, AILA Education Program Manager, Washington, DC

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