

FEDERATION OF DEFENSE & CORPORATE COUNSEL



FDCC

DEFENSE LAWYERS. DEFENSE LEADERS.



August 9, 2024 -- Issue 236



Good Morning!

Here are your 5+ things to know on developments, upcoming events and progress being made on initiatives the Federation of Defense & Corporate Counsel is undertaking on behalf of all our members.



In today's issue:

- A Message from FDCC President Heidi G. Goebel
- Corporate Counsel Symposium Room Block Closes August 23rd
- Civil "Writes" Monthly Update
- FDCC Wants Your Best Colleagues
- Law Firm Management: It's Not All (Or Only) About Tech
- FRE Rule 702 Update
- On the Docket
- Have a Nice Day: Susan Egeland!

#1 A Message from FDCC President

Heidi G. Goebel



Welcome to the start of 2024-2025 FDCC year! It was wonderful to see so many of you in Toronto, Ontario, Canada for our fantastic Annual Meeting, put on by Convention Chair Marisa Trasatti and Program Chair Tiffany Alexander as we celebrated and closed out the 2023-2024 year spearheaded by now Board Chairman, then President, Craig Marvinney.

This year's theme is **"Finding your home in the FDCC."** Having sat on the Admissions Committee for 13 years, I've seen hundreds of applicants, and am confident that every person in this organization belongs here and has something of value to add to the organization. In making appointments to leadership positions this year, I have tried to honor the requests of each member to get involved in an area which is meaningful to them. Reaching out and engaging our members is something that we all can do.

As opportunities arise, please take a moment to ask yourself if those options are a good fit for your skills. If they are, raise your hand and volunteer. Or look around the sections and committees in which you are involved and reach out to showcase and highlight the skills and talents of other members in the group. There are so many ways to get involved – collaborate on a podcast, solicit or submit articles for the Friday 5's, put forward an idea for an in person presentation at one of our in person meetings, host a local meeting or happy hour in your own town, or perhaps you have a new idea for the organization. If you're eager to participate, but just don't know how, [contact me](#) or any of our board members and we will get you plugged in.

Like most things in life, you get out of this organization what you put into it. I'm looking forward to connecting with you all this year!

#2 Corporate Counsel Symposium Room Block Closing August 23rd

At this year's Corporate Counsel Symposium in the heart of New Orleans from September 15-17, we will have 25 in house counsel presenting from corporations, including:

- First Acceptance
- AmTrust Financial Services
- Asurion
- Rimini Street
- Freeport LNG
- Gillette Children's Specialty Healthcare
- Island Companies
- Lockton Companies
- Monogram Food Solutions
- Ryan
- Corium
- UFG Insurance
- Matthews International
- Richmond National Insurance
- Harford Mutual Insurance Group
- Builders FirstSource
- Latitude
- Zachry Industrial
- DAA Draexlmaier and



- Waev.

Also, throughout the Symposium, FDCC in-house counsel members will share personal stories of encounters with hard problems and how they addressed those challenges in a Ted Talk format.

We will also have networking opportunities including Dine-Around dinners in some of the best restaurants in New Orleans!

You can find all of the information in the [brochure](#), which also contains the full agenda and information on the speakers that have been assembled for the CLE sessions. Please click on the following links to [register for the symposium](#) and to [Direct Date Booking Link - 2024 FDCC Corporate Counsel Symposium](#) at the Windsor Court Hotel.

The room block closes on August 23, 2024.

We look forward to seeing you in New Orleans!

#3 FDCC Civil "Writes" Monthly Update

By: David MacMain



ISSUE OF THE MONTH - FRCP RULE 68 OFFERS OF JUDGMENT

Those of us who practice in the fee-shifting arena such as §1983 claims should be familiar with FRCP Rule 68 Offers of Judgment (OOJ). In short, Rule 68 allows a Defendant to offer to have a judgment taken against him in a specified amount. If the Plaintiff does not accept the OOJ, proceeds to trial

and gets an award less than the previously offered amount, they forfeit fees and costs from the time of the offer – and must pay Defendant’s costs (not fees). Seems simple, right? Not really. I have used Rule 68 Offers judiciously over my 35-year career and have only had one accepted. And, I have never had one ‘tested’ via a verdict in favor of Plaintiff to compare it to the offered amount. This begs two questions - (1) what good are they, and (2) how do they work? The first question is easy to answer, the second one is hard. Indeed, the second question could be the subject of an (at least) 1 hour presentation.

Why and when do I use Rule 68 OOs?

I have used Rule 68 OOs for 2 primary purposes. First, I will make a Rule 68 OO when I have a case that appears to have likely liability, but the Plaintiff is seeking a settlement figure well beyond the case’s reasonable exposure and the fees are going to overwhelm the case value – both in what my client will have to pay in a \$1988 fee petition and in my defense costs.

For example, I recently had a case in which a self-proclaimed street preacher brought suit for alleged First Amendment violations when he was ‘re-located’ by my police officer client just as the good reverend was about to get his pious, judgmental arse kicked by an angry mob of teenagers and their parents outside a high school where the preacher had ‘informed’ the teenagers via a flurry of vile and hateful labels that there were going to a ‘very hot place’ as they did not meet up to the (un-Christ-like) pastor’s narrow view of which people the Good Lord loved. The preacher and his counsel both ‘over-valued’ their case and were using it as a further platform for this so-called preacher to get the attention he so craved.

As we expected, the case was grossly over-litigated and the \$1.01 OO (plus fees) we offered gave us protection from a pyrrhic victory for Plaintiff if there was a \$1.00 nominal award at trial. (By the way – we obtained summary judgment, so the good pastor is now going to have to pay our costs under FRCP 54).

[Please click here to read the entire article](#)

[David MacMain](#) is a founding member and the managing partner of [MacMain Leinhauser PC](#) in [West Chester, Pennsylvania](#). He has broad and extensive trial experience, having [tried over 125 cases](#) to verdict in favor of his clients. Over the course of his more than 30-year legal career, David focuses his practice on the defense and counsel of public entities and officials, educational institutions, religious entities, and non-profits throughout Pennsylvania.

#4 FDCC Wants Your Best Colleagues

By: Alan Rutkin



“Give us your best!” That is the request of the [Membership Recruitment Committee](#). We’re looking for people who are “over and above.” And you know who they are.

Your best colleagues should become our newest members. Please consider it. Do you know people who might add to the FDCC?

If you think you have candidates, please talk with them about the FDCC. Quick answers to most questions can be found [here](#). And then make nominations!

The nominator with the most completed membership applications before January 1 wins \$1,000 to the nominator’s favorite 501(c)(3) charity. Second place gets \$500 to their charity.

Send us your nomination(s) of defense and corporate counsel and industry professionals by [clicking here](#).

Let’s get more “over and above” people in the FDCC!

#5 Law Firm Management:

It's Not All (Or Only) About Tech

By: Stephen Embry



This year's Annual meeting was chock full of eye opening and inspiring presentations. But perhaps the most enlightening time was spent outside of the conference in networking conversations which is, of course, typical. Seeing all my FDCC colleagues helped me gain perspective and renewed my enthusiasm for the FDCC and its mission.

One of the times was when I had a chance to chat with [John Trimble](#). We all know John as not only an outstanding lawyer and frequent consultant to small and mid-size law firms but also a thought leader in law practice management.

Standing in the Food Line

While in line to get food (always a good time to chat), I asked John what he thought was the most frequent challenge to law firms he works with as a consultant. Being the tech evangelist that I am, I expected him to say something about selecting and implementing technology, adopting generative AI adoption, or even dealing with remote work desires. His answer surprised me. Not only were my three assumed challenges not at the top, but they also weren't even among the top two.

His top one: succession issues. In particular, how to get older partners to get out of the way; how to get them to stop drawing compensation beyond their value; and, in general, give up their seats of control. His second choice is more typical. He noted that lawyers are by and large poor businesspeople. Lawyers at all levels, but particularly in firm management, lack a fundamental understanding of basic business and financial principles. John notes, "Many firms don't even bother to prepare and follow an annual budget". Neither of these challenges have anything to do with tech.

The Old Man in the Corner Office

John told me he frequently sees “100-year-old firms that are dying because the 70-80 year old partners still draw full compensations and receive full perks”. By doing so, says John, they deprive younger partners of compensation and involvement in the firm. The result: younger partners, often the firm’s dynamic lifeblood, leave. The attitude of the older partners seems too often to be, “I built this firm, my name is on the door, and I am entitled.” Often lockstep compensation exacerbates the problem.

[Please click here to read the full article](#)

Steve Embry is an FDCC Defense Counsel member with Embry Law, LLC in Louisville, KY. He is a frequent speaker, blogger, and writer on the impact of technology on the practice of law. Steve is the immediate past Chair of the Law Practice Division of the American Bar Association, and formerly Vice-Chair of the ABA’s [Law Technology Resource Center](#), Editor of [Law Practice Today Webzine](#) and member of the ABA’s Law Practice Futures Initiative. Steve is Chair of the Kentucky Law Practice Management Committee.

#5.1 FRE Rule 702 Update



In conjunction with our colleagues and FDCC Members [Alex Dahl](#) and [Dan Steen](#) at [Lawyers for Civil Justice](#), we continue working on efforts to ensure implementation of the [FRE Rule 702](#) gatekeeping standards into federal courts - as well as into the state courts who have not yet adopted similar rules.

In the meantime, here is a new article by California Western Law School Professor Erin Sheley to support Rule 702 efforts: "[Courts Must, As Recently Reminded, Follow The Law In Rule 702 Expert Testimony Determinations.](#)" Research support was provided in part by the Coalition for Litigation Justice.

#5.2 What's on the Docket?



Please register and mark your calendar to attend the following FDCC events of relevant and timely substantive content:

- **August 20, 2024 at 1:00PM ET: Risk Transfer Primer Zoom Session.** Register by sending an email to [Dan Kohane](#) or [John Trimble](#).
- **September 15-17, 2024: Corporate Counsel Symposium** at The Windsor Court Hotel in New Orleans, LA. Co-Chairs: [April Berman](#), [Valerie Kellner](#) & [Shelly Masters](#). Click on the links for the [brochure](#) and to [register](#).
- **October 16, 2024 at 2:00 PM ET: Corporate Counsel Roundtable "Legal Department Cost Pressures in the Post-Pandemic World."** Moderator: [Daniel C. DeMerchant](#), Vice President & General Counsel American Nuclear Insurers. **OPEN TO FDCC CORPORATE COUNSEL MEMEBRS ONLY.** Click here to register.

- **February 23-27, 2025: Winter Meeting at the The Charleston Place Hotel in Charleston, SC. Registration Coming Soon! Convention Chair: [Jeff Kelsey](#) and Program Chair: [Dan McGrath](#)**
- **July 28 - August 3, 2025: Annual Meeting at the [Stein Erikson Lodge & The Chateaux at Deer Valley](#) in Park City, UT. Convention Chair: [Tiffany Alexander](#) and Program Chair: [Lee Hall](#)**

...and finally,

"Have a Nice Day"

Susan Egeland!



Susan is an FDCC Defense Counsel Member and a Partner in the Dallas, TX office of [Faegre Drinker](#).

Her corporate experience in product liability and business litigation, as well as large commercial cases, toxic tort litigation, sexual abuse, aviation and construction, spans numerous industries, including: Insurance, Product Manufacturing, Industrial Facilities and Education.

Susan is a frequent speaker on trial-related topics, including how best to prepare and defend a case from inception through motion practice, discovery and trial.

And today is her birthday. Please join us in filling Susan's In Box with congratulatory wishes:

susan.egeland@faegredrinker.com

Happy Birthday Susan and all our very best to you, Patrick and the family for continued good health, success and happiness in the years to come.

Thank you for being a valued member of the Federation since 2018!

Why FDCC?

"To be the inspired community of vetted defense counsel, exceptional leaders and even better people."




**KEEP
CALM
AND
DEFEND
ON**

Be Exceptional Today!