



NATIONAL FOUNDATION
FOR JUDICIAL EXCELLENCE

Annual Report

2012





OUR MISSION

To address important legal policy issues affecting the law and civil justice system by providing meaningful support and education to the judiciary, by publishing scholarly works and by engaging in other efforts to continually enhance and ensure judicial excellence and fairness for all engaged in the judicial process.



MESSAGE FROM THE PRESIDENT

H. Mills Gollivan

BULLY FOR THE NFJE

It is my privilege and pleasure to serve as the President of the National Foundation for Judicial Excellence (NFJE). For the past eight years, over 900 state court appellate judges from across the country have come to Chicago for the NFJE Annual Symposium. The mission of the NFJE is to provide our attendees an elite judicial educational experience with a defense perspective and counterpoint. Our symposia on the leading legal issues of our time are routinely overbooked and always receive rave reviews from the attending judges.

In July the NFJE will present its Ninth Annual Symposium, entitled “From Jurisdiction to Jurisprudence: Emerging Issues in State and Federal Constitutional Law.” We chose this topic based on input from our attendees and their strong desire to delve into this highly complex topic. The 2013 NFJE program will feature a faculty of preeminent constitutional scholars and practitioners; it promises to be one of our best ever. We are deeply indebted to Program Chair Leslie Packer and the Program Committee for their many months of hard work.

Recently, I was speaking to a group about the NFJE and was asked, “Why are you willing to volunteer so much of your time to the NFJE?” The answer to that question lies in the words of President Theodore Roosevelt, spoken during his Inaugural Address on March 4, 1905. “Much has been given to us,” President Roosevelt said, “and much will rightfully be expected from us. We have duties to others and duties to ourselves; and we can shirk neither.”

The Board and the Program Committee of the NFJE are made up of lawyers who give generously of their time, talent and treasure. Each NFJE Symposium is a labor of love and our volunteers feel an obligation to improve our civil justice system. Every citizen of the United States has a right to the peaceful resolution of their civil disputes. As lawyers, we have the honor of advocating for our clients in matters brought before our state courts. However, as officers of the court, we also have a duty to ensure that our courts are up to the tasks of making the right decisions, at the right time, in each and every case. Our society is premised upon the rule of law and it is essential that our citizens have confidence in the ability of our courts to decide properly the matters brought before them. The Constitution of the United States of America was established, “...in Order to form a more perfect Union, establish Justice, insure domestic Tranquility...promote the General Welfare, and secure the Blessings of Liberty to ourselves and our Posterity...” At the NFJE we believe that a well-educated judiciary is the key to preserving the constitutional rule of law and our civil justice system.

Executing the mission of the NFJE is no small endeavor. Our successes flow from our strong Board, excellent Program Committee, and generous contributions from thousands of civil defense trial attorneys across the country. Our volunteer lawyers shirk neither their duty to themselves nor to the civil justice system. We believe that we are providing the judiciary with an educational opportunity that is vital to this grand democratic experiment and true to another one of President Theodore Roosevelt’s exhortations, “There is no good reason why we should fear the future, but there is every reason why we should face it seriously, neither hiding from ourselves the gravity of the problems before us nor fearing to approach these problems with the unbending, unflinching purpose to solve them aright.”

Thank you to all who have volunteered and supported the National Foundation for Judicial Excellence this year. I know that with your continued help the NFJE will be fulfilling its mission for many years to come and I believe TR would say, “Bully for the NFJE!”

HISTORY OF THE ORGANIZATION

Established in 2004, the NFJE is a 501(c)(3) charitable organization based in Chicago, dedicated to supporting an independent, well-informed judiciary in order to preserve excellence and fairness in the civil justice system. For each of the past eight years, the NFJE has successfully produced a first-rate annual symposium attracting hundreds of state appellate judges. The symposia have featured an array of nationally distinguished legal experts and scholars discussing the contemporary and complex legal issues relevant today in courtrooms across the country. The end result is the top-quality, tuition-free series of educational programs provided by the NFJE, which assist our nation's appellate judges to perform at their highest levels.

- NFJE provides tuition-free judicial education programs.
- NFJE focuses specifically on education for the state appellate judiciary.
- NFJE is a recognized leader in the legal and judicial communities as a reliable source for providing balanced information in its programs.

NFJE is the only organization of its kind led by the Defense Bar.



WHERE THE RUBBER MEETS THE ROAD

Richard T. Boyette, Board of Directors

The NFJE was conceived in 2004 to provide educational opportunities for sitting state appellate court judges regarding issues of importance to the civil justice system and the defense community. The flagship activity of the NFJE is the annual judicial symposium. For eight years (upcoming in July 2013 is the ninth annual judicial symposium), total attendance stands at 972. A total of 410 individual justices and judges from the courts of highest and intermediate appellate jurisdiction of 45 states have attended NFJE symposia. Two hundred eighteen justices and judges have attended more than one symposium. Twenty state chief justices have attended at least one symposium.

From the outset, the NFJE elected to focus its resources on the state appellate judiciary. Statistically speaking, parties and their counsel are more likely to be before a state appellate court than a federal appellate court. Most of the substantive law affecting the defense of claims and lawsuits is made and interpreted by the state appellate courts. For most attorneys and their clients, the state courts are (in perhaps an imprecise use of the idiom), where the rubber meets the road.

By focusing on education of the state judiciary, the NFJE believes that it enhances the quality of civil justice administered by the state courts by exposing appellate judges to balanced presentations on cutting edge legal topics that they are likely to face.

Some of the topics covered in past symposia include:

- comparison of the *Daubert* and *Frye* standards for expert evidence,
- the challenging and evolving landscape of electronic discovery,
- the impact of rapid advances in technology and science on law and legal theories,
- the use of common law nuisance theory in mass tort actions,
- federal preemption and the uncertain boundary between federal and state law, and
- challenges to courts and litigants presented by class actions.

The NFJE was conceived and is operated by the defense bar, and is the only organization providing judicial education that is operated by the defense bar. Yet, the NFJE strives to take a balanced approach to its programming, believing that the defense community is best served by a level playing field. The judges seem to recognize and appreciate this approach, as indicated by positive evaluations by the attendees each year and repeat attendance by many. And while NFJE welcomes financial support from any source, it is dependent upon the defense community—individual attorneys and their firms, as well as their corporate and insurer clients—for annual support.

There can be no doubt of the need for the NFJE, particularly in these times of ever-tightening state court budgets. NFJE pays the travel and lodging expenses for judges to attend the two day symposium. The cost to put on the symposium is approximately \$2,200 per judge. If you have read this far and you are a defense lawyer or a representative of an entity that finds itself participating in the civil justice system, please consider contributing to the support of the NFJE. And if you, the reader, are a member of a state appellate court, please join us in Chicago in July for our Ninth Annual Judicial Symposium.

PROGRAM OVERVIEW: SYMPOSIUM

8th Annual Judicial Symposium July 13-14, 2012 Swissôtel, Chicago

Class Actions and Aggregate Litigation: Lessons Learned, Challenges Ahead

The U.S. Supreme Court decisions in *Wal-Mart v. Dukes*, *A.T. & T. Mobility v. Concepcion* and *Smith v. Bayer* were touchstones for discussions of class actions and aggregate litigation in the state courts. The 2012 symposium focused on state and federal due process issues, the monitoring role of state trial and appellate courts in overseeing the ethical and fiduciary duties of class action counsel, the use and consideration of expert testimony in class action certification review and the fight for state independence in light of the recent Supreme Court decisions.

Number of judges in attendance: 142

Number of states represented: 36

Program Highlights

- *State Attorneys General: Champions of Consumer Protection* presented by Victor E. Schwartz, *Shook Hardy & Bacon LLP*, David A. Logan, *Dean, Roger Williams Law School*, and Thurbert Baker, *McKenna & Long LLP*
- *Overview of Class Action Developments in the U.S. Supreme Court and the Independence of State Procedural Law* presented by Samuel Issacharoff, *Reiss Professor of Constitutional Law, New York University School of Law*, and Jessica Davidson Miller, *Skadden Arps Slate Meagher & Flom LLP*
- *Due Process and Aggregate Litigation* presented by Mark A. Perry, *Gibson Dunn & Crutcher LLP* and Karen Barth Menzies, *Robinson Calcagnie Robinson Shapiro Davis Inc.*
- *The Ethical and Fiduciary Duties of Court and Counsel in State Mass Tort and Quasi-Class Actions* presented by Francis E. McGovern, *Professor of Law, Duke University School of Law*
- *Experts at the Head of the “Class”* presented by Adam L. Hoeflich, *Bartlit Beck Herman Palenchar & Scott LLP* and Judge Lorna E. Propes, *Circuit Court of Cook County*





Prof. Issacharoff is an exceptional lecturer. His panel with Ms. Miller was very informative and thought-provoking. Very entertaining too.



This is the best program that the NFJE has presented. Interesting and excellent presenters.

It was good to see women on the panels and to hear law professors.



Final panel did excellent job of pulling strands of topic.

Thank you for providing an excellent faculty!

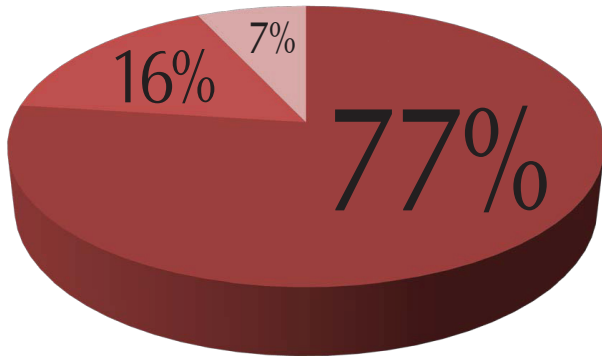


FINANCIAL OVERVIEW

In 2012, the NFJE raised over \$330,000 with the generous support of individual attorneys, law firms, corporations, State and Local Defense Organizations, professional organizations, DRI dues renewal check off and foundations. The John R. Kouris Endowment Fund was created in the spring of 2008. This fund directly supports keynote speaker honorarium for each annual symposium.

Expenses for 2012 accurately reflect the NFJE mission—education of the judiciary. The annual symposium remains the largest expense for the NFJE at seventy-seven (77%) percent. Management and General Expenses reflect the operating costs. Fundraising expenses reflect the printing of materials, professional fees and travel costs related to fundraising.

2012 Expenses

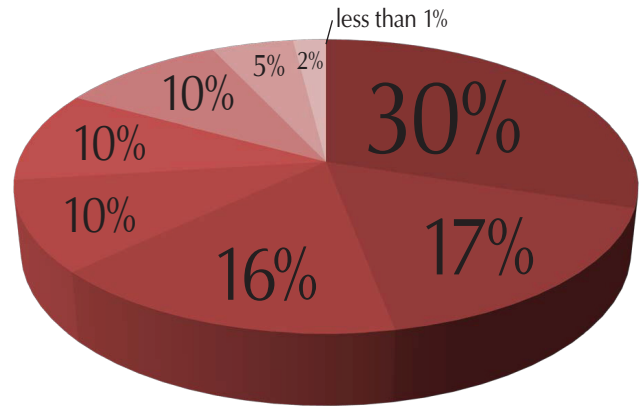


Program Services: 77%

Management & General: 16%

Fundraising: 7%

2012 Revenue



DRI Dues Renewal Checkoff: 30%

Individuals: 17%

Law Firms: 16%

Corporations: 10%

Auction and Raffle: 10%

State and Local Defense Organizations: 10%

Professional Organizations: 5%

Annual Judicial Symposium Hotel Commission: 2%

John R. Kouris Endowment Fund: less than 1%

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