

Faculty of Federal Advocates' Newsletter

News and Events

In This Issue:

[State of the Court: January 2014 Presentation by Chief United States District Court Judge Marcia S. Krieger](#)

[Tenth Circuit Court of Appeals Judges Timothy M. Tymkovich and Neil M. Gorsuch Share "Five Things We Know Now That We Wish We Knew Then"](#)

[Chief United States District Court Judge Marcia S. Krieger Shares Tips for Effective Jury Advocacy From "The Little Black Book" of Juror Comments](#)

[United States District Court Judge Robert E. Blackburn Discusses Evidentiary Topics](#)

[The FFA Congratulates Retired U.S. Magistrate Judge Patricia A. Coan, the CWBA's 2014 Mary Lathrop Award Winner](#)

[Comparison Red-Line Version of The Practice Standard for Civil and Criminal Matters Before The Honorable William J. Martinez](#)

[Court Approves Pilot Program Creating a Civil Case Pro Bono Panel](#)

Who We Are

Board of Directors

**Chad Caby
President**

Charlotte Sweeney

Issue: 2014/1

April 2014

Welcome to the Faculty of Federal Advocates' Second Electronic Newsletter!

Here you will find news about Faculty events and CLE programs along with useful information for federal practitioners, including links to relevant websites.

The Faculty welcomes contributions to our Newsletter from our membership. Newer attorneys, experienced attorneys, and law students are all encouraged to submit articles. If you are interested in submitting an article or item for possible publication, please contact the Faculty by email to pmurphyffa@aol.com.

www.facultyfederaladvocates.org

State of the Court: January 2014 Presentation by Chief United States District Judge Marcia S. Krieger Faculty of Federal Advocates CLE By Marilyn Chappell

Chief Judge Marcia S. Krieger presented the first "State of the Court" address in a continuing legal education program sponsored by the FFA on January 24, 2014. Judge Krieger focused on the United States District Court for the District of Colorado, including how it works, where it has been, and where it is going.

As Judge Krieger explained, our federal district is among the busiest in the United States. This is so for several reasons, including:

- The number of filings per judge (taking into account the complexity of the cases, the District of Colorado is the 11th-

President-Elect

Monica Guardiola
Secretary

Kendra Beckwith
Treasurer

Marilyn Chappell
David Fine
Sean Gallagher
Brian Hoffman
Diego Hunt
Richard K. Kornfeld
Meghan Martinez
Raja Raghunath
Veronica Rossman
Kimberlie Ryan
Juan Villaseñor
Nina Wang
Greg Whitehair

Lino Lipinsky
Past-President

Mission of the Faculty of Federal Advocates

The Faculty of Federal Advocates is an organization of attorneys dedicated to enhancing the quality of the administration of justice in the United States District Court and the United States Bankruptcy Court for the District of Colorado.

The Faculty of Federal Advocates interfaces with the Federal Judges, Magistrate Judges, and Bankruptcy Judges to generate a

- busiest of the 94 federal districts in the United States);
- Colorado is the eighth largest state in the United States;
 - The District is geographically the largest in the United States, second only to Alaska;
 - In the 12-month period ending September 2013, 3,428 civil cases were filed (the largest category - one-fifth - were prisoner petitions), and 585 criminal cases were filed (the largest categories were immigration and drug cases).

The District is expected to become busier with the 2014 opening of the regional United States Patent and Trademark Office in Denver. The busy caseload means that, as criminal and child custody dispute cases are required to receive priority, trial dates for civil cases will be pushed back.

"The storm clouds are on the horizon, and if they get here, it will be a perfect storm," Judge Krieger said. The District needs two more District Judges. "We've needed them for a long time, and we need them now." No new judgeships have been added since 1984, but in that time, Colorado's population has increased by 60 percent.

Currently, seven District Judges, six full-time Magistrate Judges, and two part-time Magistrate Judges manage the District of Colorado's caseload. Four Senior District Judges, ages 67-83, and Visiting Judges also assist with the busy caseload. The District Judges sit in Denver, but under a pilot program, a District Judge will preside over cases in Durango one week every other month. Two part-time Magistrate Judges are based on the Western Slope, in Grand Junction and Durango. One Magistrate Judge spends one day per week in Colorado Springs.

In 2013, the District's greatest challenge was the government shutdown; operations were managed to avoid running out of money before funding was restored. Accomplishments during 2013 included: adoption of the Durango District Judge pilot program; initiation of the Civil Pro Bono Pilot Program, developed in connection with the FFA, with a fund for reimbursement of costs administered by the FFA; creation of the Attorney Services Portal to facilitate attorney registration; redesign of the District's website; and adoption of the proposed pilot project for the direct assignment of cases to Magistrate Judges (implemented in 2014).

In 2014, the District's goals include greater transparency, accessibility, and outreach. Recently, the District formed a selection panel, which included practitioners, tasked with considering the reappointment of Magistrate Judge Hegarty. The panel recommended reappointment, and the recommendation was adopted. The District will encourage further input from practitioners in areas such as proposed amendments to the Local Rules and feedback on the District's website.

continuing dialogue over the needs of the litigants, the courts, and the attorneys. Committed to the enhancement of advocacy skills and professionalism, the Faculty provides continuing legal education programs, including programs with the federal judicial officers.

Quick Links

[Join the Faculty of Federal Advocates Here!](#)

[U. S. Supreme Court](#)

[U. S. Court of Appeals 10th Circuit](#)

[U. S. District Court for the](#)

[District of Colorado](#)

[DColoMediators.org](#)

[American Civil Liberties Union](#)

[U. S. Attorneys Office Colorado](#)

[Federal Public Defender Colorado/Wyoming](#)

[Colorado State Courts](#)

[Judicial Officers Procedures](#)

[Our Courts](#)

[Like Us on](#)

**Tenth Circuit Court of Appeals Judges
Timothy M. Tymkovich and Neil M. Gorsuch Share
"Five Things We Know Now That We Wish We Knew Then"
At Faculty of Federal Advocates CLE
By Catherine Grainger**

This informative CLE was presented on November 12, 2013 to a full house at the Byron White United States Courthouse.

Lesson Number 1: Don't Be Afraid to Take Risks in Your Career. Judge Gorsuch started the talk with his advice about the importance of risk taking. He shared his personal experience of making the choice to leave a lucrative private practice for government work, a risk that ultimately proved to be extremely rewarding. Judge Gorsuch observed that, generally, lawyers are risk averse and need to be reminded about the importance of taking risks. The message, echoed by Judge Tymkovich, was this: you will always regret the risks you didn't take, but never the ones you did.

Lesson Number 2: The Importance of Reputation and Credibility. Judges remember lawyers. A lawyer's reputation precedes her into the courtroom and affects the way a judge approaches the case. The credibility of an advocate is critical to persuasion. To communicate effectively, the lawyer must: 1) be organized - in both the briefs and oral argument - and know the record; 2) present a coherent and honest story where logic is supreme; 3) pay attention to his or her style - judges notice a lawyer's tone and pacing and how the lawyer presents himself; 4) maintain a high ethical standard - be honest and candid with the tribunal and never misstate the record or a case holding; and 5) discuss strengths in the case, but also acknowledge its weaknesses.

Lesson Number 3: Be a Critical Writer. Writing is hard work. Judge Gorsuch's advice: practice "trained dismay." In other words, be critical of your early drafts and give yourself enough time to fix them. After you write a brief, put it down for a day or two and then revisit it with a critical eye. Specific tips on writing included: 1) don't weigh down the Statement of the Case or the factual recitation - be concise or combine the two, as permitted by the Federal Rules of Appellate Procedure and Tenth Circuit practice; 2) read the actual cases you cite; 3) don't put your best arguments in footnotes; 4) less is more; don't be verbose - you don't have to use all of your allotted time or pages; 5) if the facts are complicated, consider including a timeline or flow chart in your brief; 6) remember that your audience includes 20-something law clerks; and 7) remember that the judge doesn't always know everything about the specific area of law at issue in your case - start with the basic and general and work to the complex and specific.

[Facebook!](#)

[Join Our Mailing List!](#)

Lesson Number 4: Moot Courts Improve Oral Argument. Take the time to do moot court presentations to prepare for oral argument. Most lawyers don't use this tool because they don't have time. But the judges can tell when lawyers have practiced. Moot courts may bring to your attention ideas or issues you have never considered before.

Lesson Number 5: Ethics and Mentors. Judge Gorsuch teaches Ethics at the University of Colorado School of Law. Although he imparts the legal rules of ethics to his students, Judge Gorsuch believes that new lawyers really learn ethics from their first employers. Be picky about choosing your colleagues, he advised. The best mentors are those with high standards of ethics and professionalism.

The judges also provided the following revelations in answering questions following their presentation:

- The hard-working and collegial judges of the Tenth Circuit work independently of each other and may have different views of the case at the time of oral argument.
- Oral argument really does make a difference.
- It's better to have an attorney who is an appellate specialist handle an appeal, especially if the trial lawyer has little appellate experience.
- The quality of brief writing has suffered recently, but the quality of oral argument seems to be improving.
- Use the Practitioners' Guide to the Tenth Circuit.
- Read books on the subject of legal writing. Read good novels. Don't just spend your time reading cases.
- Pet Peeves: Don't ignore the other side's best argument. Don't file a petition for rehearing without saying anything new.
- Legal Humor: What is the difference between a Tenth Circuit judge and a lawyer? The judge sleeps better the night before oral argument.
- Don't waive rebuttal at oral argument. It's a true opportunity to go for the jugular. Hit hard and fast.
- The judges and law clerks appreciate hyperlinked briefs.
- If a contract or other document or a photo is key, bring copies to oral argument or attach them to the brief.

**Chief United States District Court Judge Krieger
Shares Tips for Effective Jury Advocacy
From "The Little Black Book" of Juror Comments
At Faculty of Federal Advocates CLE
By Marilyn Chappell**

The Honorable Marcia S. Krieger - along with two individuals who had served as jurors and a court staff member involved in numerous jury

trials - presented a lively CLE program on jury advocacy on July 25, 2013.

The program was based on a "little black book" of juror comments maintained by Judge Krieger since her appointment as a United States District Court Judge in 2002. The "book" contains over 170 comments, made voluntarily and anonymously by jurors from more than 128 civil and criminal trials. It may be viewed by appointment with Judge Krieger's clerk.

Some recurrent themes in the book include:

- Jurors dislike disorganization, delay, wasted time, technological problems, inability to hear attorneys and witnesses, excessive numbers of exhibits, projected exhibits that are illegible or displayed too quickly, and excessive repetition - "get to the point, already";
- Jurors appreciate it when attorneys display a professional demeanor and show respect for others, including opposing counsel; jurors pay attention to attorneys' body language;
- Jurors take their jobs very seriously and look at all of the evidence presented;
- Jurors do not like when experts come across as condescending;
- Jurors consider the instructions very carefully; in one case, one word in an elemental instruction made the difference between a guilty and not-guilty verdict.

Judge Krieger observed that effective jury presentation is aided by reducing the overall number of exhibits and selecting only key exhibits; organizing exhibit binders by witness and in the order of testimony presented; highlighting important language in documents; and providing "road maps" for the jurors in opening and closing statements.

Jurors participating in the CLE discussion made a number of interesting comments about their jury service experiences:

- Overall, jury service was enjoyable but time consuming, and they were concerned about the time commitment's impact on their jobs;
- Attorneys who were overly repetitive or focused too much on emotional issues instead of the facts were described as "annoying" and made jurors feel "uncomfortable";
- Generally, jurors agreed that they based their decisions on the evidence presented and were mindful of the burden of proof.
- The jurors also agreed that their personal experiences with jury trials gave them confidence in the process of trial by jury.

**United States District Court Judge Robert E. Blackburn
Discusses Evidentiary Topics
At Faculty of Federal Advocates CLE
By Marilyn Chappell**

The Honorable Robert E. Blackburn addressed five significant evidentiary issues under the Federal Rules of Evidence, plus several additional topics, at a Faculty of Federal Advocates continuing legal education program on October 4, 2013.

Judge Blackburn focused on the following topics:

- Opinion testimony by lay witnesses under Rule 701;
- Bases for impeachment;
- Bases for expert opinion testimony under Rule 703;
- Character evidence under Rules 404 and 405; and
- Admissibility of business records under Rule 803(6).

Judge Blackburn's comprehensive outline for the program - which is the best evidence of the program's content - is available on the FFA website, under "Past Events," at <http://facultyfederaladvocates.org>

**The FFA Congratulates Retired
U.S. Magistrate Judge Patricia A. Coan,
the CWBA's 2014 Mary Lathrop Award Winner
By Charlotte Sweeney**

Please join the Faculty of Federal Advocates in honoring retired U.S. Magistrate Judge Coan as the 2014 recipient of the Colorado Women's Bar Association's Mary Lathrop Award (the MLA). The FFA is delighted to sponsor the MLA reception and invites all FFA members to join us in recognizing Judge Coan's many contributions to our community. The MLA reception and ceremony will be held at The Sebastian Hotel in Vail, Colorado on May 16, 2014 from 6:00-7:30 p.m.

The MLA is the CWBA's most prestigious award and is presented to an exceptional female attorney who has been a trailblazer for women in both the community and the legal field. Judge Coan is a most deserving recipient.

In 1996, after years of successful private practice in Colorado, Judge Coan was appointed to the position of Magistrate Judge for the U.S. District Court of Colorado. This historic appointment marked the first full-time appointment of a female magistrate judge in our federal district. Judge Coan served as an inspiration and mentor to many female

attorneys. Throughout her tenure on the bench, Judge Coan demonstrated patience, compassion, intelligence and humor. Her legal rulings were thoughtful and instructive, and have continued to shape the law in the District of Colorado.

Following her medical retirement from the Court in 2006, Judge Coan served as a private mediator and arbitrator, donating her fees to charity. From 2009 through early 2013, she provided coaching assistance for the Manual High School debate team and was a debate judge for the Denver Urban Debate League. Beginning in 2009, and continuing to the present day, Judge Coan has served the community in the Colorado Youth at Risk high school mentoring program.

The Faculty of Federal Advocates hopes that you will join us at the 2014 CWBA Annual Convention at The Sebastian-Vail for the 2014 Mary Lathrop Award Ceremony to help us honor and celebrate the career of Judge Patricia Coan. Tickets may be purchased online at <http://www.cwba.org/convention>.

**Comparison Red-Line Version of
The Practice Standard for Civil and Criminal Matters Before
The Honorable William J. Martínez
United States District Judge
U.S. District Court for the District of Colorado**

[You can view the comparison red-line version of Judge Martinez's practice standards here.](#)

**Court Approves Pilot Program
Creating a Civil Case Pro Bono Panel**

The United States District Court for the District of Colorado has adopted a pilot program that creates a panel of attorneys who have agreed to accept pro bono appointments to represent pro se litigants of limited financial means in civil cases before this Court. Attorneys who accept appointments pursuant to the Pilot Program may obtain reimbursement for certain of their costs in Panel cases. The Faculty will administer the cost-reimbursement program, which will be funded, in part, through a one-time \$50.00 re-

admission fee for members of the District Court bar.

For complete information about applications to the Panel and payment of the one-time renewal fee, see the Pilot Program page of the District Court website.

A link to the Civil Pro Bono Pilot Program Plan can be found below.

[Download Civil Pro Bono Pilot Program Plan](#)

SAVE THE DATES!!!

April 17, 2014

The Honorable Raymond P. Moore
Alfred A. Arraj Federal Courthouse, 12:00 - 1:15 pm

May 16, 2014

Mary Lathrop Award Reception, 6:00 - 7:30 pm

June 20, 2014

The Honorable R. Brooke Jackson
Alfred A. Arraj Federal Courthouse 12:00 -1:15 pm

July 10, 2014

The Honorable Philip A. Brimmer
Alfred A. Arraj Federal Courthouse 12:00 -1:15 pm

August 7, 2014

Panel of Magistrate Judges Discussing Consent Jurisdiction
Alfred A. Arraj Federal Courthouse 12:00 -1:15pm

September 20, 2014

The Federal District Court Bench/Bar Roundtable
The Donald R. Seawell Ballroom, DCPA, 8:00 - 11:30 am

October 2, 2014

Faculty of Federal Advocates Cocktail Reception
2014 Gathering of the Bench Bar, University of Colorado Law School
St. Julien Hotel, 900 Walnut Street, Boulder CO
Gathering of the Bench & Bar, 5:00 - 7:00 pm

October 24, 2014

Currents, Eddies, and Whirlpools - A Discussion
on the Flow of Life and Practice of Law
Embassy Suites Downtown Convention Center, 1:00 - 5:00 pm

November 7, 2014

The Bankruptcy Bench Bar Roundtable
Embassy Suites Downtown Convention Center, 1:00 - 5:00 pm

Contact pmurphyffa@aol.com for more information or to register
for any of these programs.

Faculty of Federal Advocates'

Contact pmurphyffa@aol.com for information about
submitting an article for the newsletter and to inquire
about the upcoming programs.

New Attorneys and law students are always
welcome to submit an article.

www.facultyfederaladvocates.org