

# Faculty of Federal Advocates Newsletter

## *News and Events*

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**SAVE THE DATES!!!**

**Issue: One**

**July 2013**

### **Welcome to the Faculty of Federal Advocates' New 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](mailto:pmurphyffa@aol.com).

### **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. The fee will be due on August 15, 2013.

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

### Who We Are

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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 continuing dialogue over the needs of the litigants, the courts, and the attorneys. Committed to the enhancement of advocacy skills and professionalism, the

of the District Court website.

A link to the Civil Pro Bono Pilot Program Plan can be found below. In addition, copies of the plan are available for inspection and photocopying at the office of the Clerk of the Court at the Alfred A. Arraj U.S. Courthouse Annex, located at 901 19th Street, Denver, Colorado 80294.

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

**Magistrate Judges Boland and Hegarty  
Inform About Consent Jurisdiction  
At Faculty of Federal Advocates Brown Bag CLE  
by Marilyn Chappell**

In a lively discussion at a Faculty of Federal Advocates Brown Bag CLE on April 19, 2013, Magistrate Judges Boyd Boland and Michael Hegarty addressed a significant topic concerning our federal court's caseload: consent jurisdiction. Magistrate Judge Kristen Mix, who attended the session, added her thoughts.

Consent jurisdiction allows Magistrate Judges, rather than District Judges, to handle all aspects of a civil case, including trial, when the parties so consent. The source of consent jurisdiction is 28 U.S.C. § 636. Under a more limited form of such jurisdiction, parties may also consent to a Magistrate Judge's jurisdiction over a dispositive motion that has been pending for six months or more (*see* Local Rule 72.3, the so-called "Pringle Rule"). Local Rule 72.3.B, however, prohibits Magistrate Judges (and other court officials) from "attempt[ing] to influence the granting or withholding of consent."

Because of the heavy caseloads of the District Judges, and greater scheduling flexibility of Magistrate Judges, the consent determination can significantly affect case scheduling issues. Approximately 3,000 cases are pending in our court; 500 are criminal felony matters, handled by District Judges. Currently, approximately 40-45 cases are before the Magistrate Judges on consent. The average District Judge caseload is 232 cases; the average Magistrate Judge consent caseload is eight cases.

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  
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[District of Colorado](#)

[American Civil  
Liberties Union](#)

[U. S. Attorneys Office  
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Parties are provided with a consent form at the outset of a civil action. Each such action has a District Judge and Magistrate Judge assigned. The parties may consent to Magistrate Judge jurisdiction at any time through 14 days after the discovery cutoff.

Further, although not part of consent jurisdiction, District Judges are increasingly asking Magistrate Judges to recommend decisions on dispositive motions. In addition, Magistrate Judges may make determinations on non-dispositive issues without the consent of the parties.

The Magistrate Judges at the program noted that, if they conducted an early neutral evaluation, and the parties later consented to Magistrate Judge jurisdiction, it would be appropriate to reassign the case to another Magistrate Judge.

In several other districts, Magistrate Judges are directly assigned to cases: they handle the cases unless and until the parties fail to consent if dispositive motion issues arise. District Judges are also assigned, but those judges' identities are disclosed only if the parties fail to consent. Whether our court will adopt such a system is unknown.

### **Observations of a Judge (who was also a Juror)**

#### **on Jury Selection and Service**

**The Honorable Christine M. Arguello**

**by Charlotte Sweeney**

The Faculty of Federal Advocates welcomed Judge Arguello to its brown bag series on May 16, 2013. Judge Arguello recently had the privilege of serving on a criminal jury in a state court case. That experience, coupled with her observations of jury trials in her courtroom, caused her to recently alter her jury selection procedures in significant ways.

First, recognizing that jurors can absorb only a finite amount of information, Judge Arguello has instituted a condensed jury trial day that features an early start time, short breaks and the day's adjournment at 2:45. This schedule allows for increased juror concentration and a full six hours of transcript time. Jurors appreciate the lack of wasted time and attorneys enjoy the additional preparation time at the end of each day.

Second, Judge Arguello conducts jury selection for both civil and criminal jury trials the Monday of the week before the scheduled trial. This eliminates the delay sometimes caused by multiple trials on the same day, increases the jury utilization rate, gives selected jurors time to make employment and family arrangements, and allows each trial to begin with opening statements at 8:00 on the first day of scheduled trial.

Third, Judge Arguello requires peremptory strikes to be exercised simultaneously. That is, each side will fill out a strike sheet listing the respective strikes and will hand it to the clerk at the same time. While acknowledging that this may eliminate some of the gamesmanship of jury selection, it reduces the time needed to select a final jury.

Judge Arguello also indicated that she is considering allowing jurors in civil cases to submit questions, which would be screened and rewritten (if necessary) by the court and counsel before being read in open court. She observed that jurors can get sidetracked by one lingering detail, which, if left unaddressed, may cause the jury to lose focus on the overall issues of the case. Following a jury question, Judge Arguello would allow both attorneys to conduct follow-up questioning, if needed.

Finally, Judge Arguello shared a list of things jurors dislike, which she strongly urged attorneys to keep in mind:

1. Wasting time
2. Failing to use or publish exhibits
3. Attorneys treating the Court, opposing counsel or witnesses rudely
4. Sidebars
5. Having depositions read or played by video

**Representing Guantanamo Detainees:  
Criminal Defense and Habeas Corpus Actions  
by Catherine Grainger**

An intriguing Brown Bag panel discussion was held on February 21, 2013 on the subject of Representing Guantanamo Detainees. The panel consisted of Jeffrey P. Colwell, new Clerk of the U.S. District Court for the District of Colorado and former Chief Defense Counsel for the Office of Military Commissions, who defended and then oversaw the defense of GITMO detainees in their war crimes trials. The other two panel members, Mari Newman and Trip Mackintosh, both private lawyers, each represented five GITMO detainees (pro bono) in habeas corpus proceedings.

Mr. Colwell discussed the laws of war and President Bush's post-9/11 Executive Order giving the Secretary of Defense detention authority and declaring that detainees shall be tried, not in any U.S., foreign or international court, but exclusively in front of a U.S. military commission. Ms. Newman discussed the fact that most of the GITMO detainees have been there for over ten years and most have never been charged. She described incidents of torture and the deplorable conditions of confinement at GITMO. Despite being given the right to petition a U.S. court for habeas corpus relief (an attempt to strip detainees of the right to petition for habeas corpus relief was rejected by the Supreme Court) and despite several successful habeas petitions at the trial court level, most of the detainees' habeas cases have been overturned on appeal and none has made it to the Supreme Court.

Mr. Macintosh reported that the assistance provided to GITMO detainees by lawyers around the country has been the greatest pro bono effort in U.S. history. He added that reported incidents of mistreatment at GITMO decreased once the lawyers got involved. Mr. Macintosh criticized the flawed ways in which detainees were charged resulting in bad guys getting out and the others (not the "worst of the worst") remaining at GITMO. He also discussed the annual cost of keeping a prisoner at GITMO (about \$800,000) versus the annual cost of keeping the average U.S. prisoner (about \$50,000). All panel members seemed to agree that GITMO should be closed and the 166 remaining detainees (86 of whom have been cleared for release) should either be released, as appropriate, or relocated to other prisons, an effort that would save the government hundreds of millions of dollars.

The FFA extends its thanks to Jeff Colwell, Mari Newman and Trip Mackintosh for their willingness to participate in the Brown Bag series and for sharing their experiences.

**Raymond P. Moore Sworn In As the Newest  
Article III Judge In Our District on March 31, 2013**

Judge Raymond P. Moore was born in 1953 in Boston, Massachusetts, and received his Bachelor of Arts, cum laude, in 1975 from Yale College. He received his Juris Doctorate in 1978 from Yale Law School. He served as an associate at Davis, Graham & Stubbs from 1978 to 1982. From 1982 to 1986, he served as an Assistant United States Attorney in the District of Colorado. He returned to Davis, Graham & Stubbs in 1986 and became a partner in 1987. He served as an Assistant Federal Public Defender in Colorado from 1993 to 2003. In January 2004, he became the Federal Public Defender for the Districts of Colorado and Wyoming, serving until 2013.

As a Federal Public Defender for the past twenty years, Judge Moore represented persons accused of violating federal criminal laws who could not afford to retain counsel. During private practice at Davis, Graham & Stubbs in the late eighties to early nineties, Judge Moore worked exclusively in real estate, general litigation, and oil and gas. His clients were mostly corporate entities, although he also represented individual clients on occasion.

[You can view Judge Moore's answers to the United States Committee on the Judiciary's Questionnaire for Judicial Nominees here.](#)

[Judge Moore's practice standards have been published on the Court's website here.](#)

**Did You Know About the New Website  
[www.DColomediators.org](http://www.DColomediators.org)?**

As a service to litigants in civil cases, the United States District Court for the District of Colorado has invited the Faculty of Federal Advocates to compile a roster of attorneys who practice full or part time as professional mediators in federal lawsuits. The roster can be found at [www.dcolomediators.org](http://www.dcolomediators.org). Interested mediators, who must be members in good standing of at least one state bar, may register for the roster at the site.

Mediation is a flexible, non-binding, confidential process in which a neutral person facilitates settlement negotiations.

Neither the Court nor the FFA verifies the credentials listed by the participants, monitors the roster members, or plays a role in the hiring, compensation, or discipline of mediators who join the roster. Litigants are encouraged to conduct a careful review of the background and credentials of any mediator hired from the roster.

**Colorado's *Our Courts* Program:  
Providing Information about  
Our State and Federal Courts**

Do you know about the *Our Courts* program?

In 2010, *Our Courts* was awarded the ABA's Burnham "Hod" Greeley Award, which recognizes extraordinary outreach efforts that show the public the need for a fair and impartial judiciary. This joint activity of the Colorado Judicial Institute and the Colorado Bar Association provides nonpartisan programs to audiences around the state to further

public knowledge and understanding of Colorado's courts. Since its founding in 2007, *Our Courts* has provided more than 360 presentations about Colorado's State and Federal Courts to audiences in Colorado and Wyoming. Chief Judge Marcia Krieger and Judge Russell Carparelli of the Colorado Court of Appeals, who founded *Our Courts*, deserve our thanks.

In addition to its presentations, *Our Courts* now provides informational videos on its website: [www.ourcourtscolorado.org](http://www.ourcourtscolorado.org). These videos include presentations by Colorado Judges and speakers on a number of topics about our court system. For more information about this nationally recognized, award-winning program, or to schedule a presentation or view the videos, visit the *Our Courts* website.

## **SAVE THE DATES!!!**

### **July 25, 2013**

The Honorable Marcia S. Krieger, Chief Judge  
The Little Black Book of Juror Comments & Tips  
for Effective Jury Advocacy  
Alfred A. Arraj Federal Courthouse, 12:00 - 1:15 pm

### **August 30, 2013**

Please Join Us at a Reception at the Broadmoor  
on the Mountain View Terrace, 4:30 - 7:00 pm  
During the 10<sup>th</sup> Circuit Bench and Bar Conference

### **September 13, 2013**

A Brown Bag on "Leaning In: Ensuring We are All at the Table"  
inspired by Sheryl Sandberg's book  
*Lean In: Women Work, and the Will to Lead*  
with U.S. Representative Diana DeGette,  
the Honorable Marcia S. Krieger, Chief Judge,  
U. S. District Court for the District of Colorado, and  
D. Rico Munn, Esq., Superintendent, Aurora Public Schools,  
at the Colorado Supreme Court Courtroom,  
Ralph L. Carr Colorado Justice Center, 12:00 - 1:30 pm

### **September 13 and 20, 2013**

Trial Advocacy Program  
The U.S. District Court and The U.S. Bankruptcy Court  
for the District of Colorado, 8:30 am

### **October 4, 2013**

The Honorable Robert E. Blackburn  
The Most Important Rules of Evidence for Trial Lawyers

Alfred A. Arraj Federal Courthouse, 12:00 - 1:15 pm

**October 19, 2013**

The Tenth Annual Federal Judges and  
Federal Magistrate Judges Roundtable!  
The Donald R. Seawell Ballroom, DCPA, 8:00 - 11:30 am

**October 25, 2013**

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

**November 15, 2013**

A Brown Bag with the Honorable Timothy M. Tymkovich and  
the Honorable Neil M. Gorsuch  
12:00 - 1:15 pm

**December 5, 2013**

The Annual CLE Extravaganza Program!  
The Magnolia Ballroom  
Downtown Denver, 1:00 - 5:00 pm  
With a reception to follow

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**Faculty of Federal Advocates**

**[www.facultyfederaladvocates.org](http://www.facultyfederaladvocates.org)**

Contact **[pmurphyffa@aol.com](mailto:pmurphyffa@aol.com)** for information about  
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the upcoming programs.

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