

# Faculty of Federal Advocates Newsletter

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Issue: 2017/3

October 2017

### Welcome to the Faculty of Federal Advocates October Electronic Newsletter

The Newsletter brings you news about FFA events and CLE programs along with useful information for federal practitioners, including links to relevant websites.

The FFA 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 to be considered for publication, please contact the FFA by emailing [ahoffman@facultyfederaladvocates.org](mailto:ahoffman@facultyfederaladvocates.org).

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

### "The District Court, By the Numbers" Summed Up by Magistrate Judge Hegarty

By Sandy Eloranto

United States Magistrate Judge Michael E. Hegarty shared recent statistics from cases in the U.S. District Court for the District of Colorado, and educated lawyers about the procedural nuances of federal court practice, in a Faculty of Federal Advocates-sponsored continuing legal education presentation on August 24, 2017.

Magistrate Judge Hegarty's goal was to help lawyers more knowledgeably advise clients on what to expect in cases in the District, both before and during trial. His motivation came from observing the impact of such knowledge on the parties during settlement conferences, and from contemplating whether earlier education might help resolve cases, or at least more sharply focus them for trial.

The highlights and key statistics included the following:

#### Judges

**11 District Judges.** These Judges are appointed for life and may be removed only through impeachment and conviction proceedings in the U.S. Congress. Of these, there are the following:

**6 Active Article III Judges:** Chief Judge Marcia S. Krieger and Judges Philip A. Brimmer, Christine M. Arguello, William J. Martinez, R. Brooke Jackson, and Raymond P. Moore. They maintain a full, busy caseload of both civil and criminal matters. They remain on active status until they are eligible for, and choose to go on, senior status. They may decline case assignments through

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## [Mission of the Faculty of Federal Advocates](#)

**The Faculty of Federal Advocates (FFA)** is an organization of attorneys dedicated to improving the quality of legal practice in the federal courts in Colorado by enhancing advocacy skills, professionalism, and the integrity of practice.

The FFA provides continuing legal education classes, mentoring and pro bono opportunities, and other support services to foster and demonstrate commitment to the highest standards of advocacy and professional and ethical conduct. The FFA promotes support, mentorship, education, and camaraderie for federal court practitioners.

Become a member or learn more at our website:  
[facultyfederaladvocates.org](http://facultyfederaladvocates.org)

Renew your membership dues for 2018 today!

## Quick Links

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[U. S. Supreme Court](#)

recusal due to conflicts of interest.

**5 Senior Article III Judges:** Senior Judges Richard P. Matsch, John L. Kane, Lewis T. Babcock, Wiley Y. Daniel, and Robert E. Blackburn. (U.S. Tenth Circuit Court of Appeals Senior Judge David M. Ebel also assists the District as a Senior Judge.) Due to their senior status, they may return cases for re-assignment after reviewing them, without explanation or identification of conflicts of interest. The caseloads they carry vary from judge to judge. Most carry a full civil caseload, but not a full criminal caseload. Their respective caseloads relative to an active District Judge determines the number of chambers staff (judicial assistant and/or law clerks) they each are permitted to have.

**1 empty Active Article III Judge slot.** (Created when District Judge Blackburn took senior status last year.)

**9 Magistrate Judges.** The full-time Magistrate Judges are "on the wheel" for civil case assignments and receive direct assignments along with District Judges. All cases assigned to a District Judge are also assigned a Magistrate Judge. Cases assigned directly to a Magistrate Judge are not assigned with an additional judge. When a Magistrate Judge is directly drawn to a civil case, the parties must decide in writing whether to consent to Magistrate Judge jurisdiction; if they do not unanimously consent, their case is assigned to a District Judge, and the Magistrate Judge stays on the case as the second judicial officer. Of the Magistrate Judges, there are:

**7 Full-Time Magistrate Judges:** Magistrate Judges Michael J. Watanabe, Craig B. Shaffer, Michael E. Hegarty, Kristen L. Mix, Kathleen M. Tafoya, Nina Y. Wang, and Scott T. Varholak. They are assigned to the District's Denver courthouses. The District is considering a proposal to transfer Judge Tafoya to Colorado Springs.

**2 Part-Time Magistrate Judges:** Magistrate Judge David L. West, who serves in Durango, and Magistrate Judge Gordon P. Gallagher, who serves in Grand Junction.

## Dockets

**Level of Case Filings.** Between 3,100 and 3,300 cases have been filed in the District each year in recent years, without any significant change.

**Semi-annual Report to Administrative Office of the U.S. Courts.** The District is required to report motions that have been pending for over six months, and cases pending for over three years. The report is issued in April and October; hence, there is an increase in opinions issued in March and September. Judges are not subject to discipline for motions or cases appearing in the report, but they try to avoid this from occurring.

## Civil Trials in 2016 and to Date in 2017

In 2016, the District had 45 jury trials and 7 bench trials (up 3 jury trials and down 2 bench trials from 2015). Based on current activity, Judge Hegarty is projecting an increase for 2017, to 53 jury trials and 14 bench trials.

Of the 45 jury trials in 2016, 42 were presided over by District Judges, and 3 by

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

[U. S. District Court  
District of Colorado](#)

[DColoMediators.org](#)

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Magistrate Judges. This means that the District Judges averaged three trials. Approximately 1% of District cases result in trials.

In 2016, defendants prevailed at trial 65% of the time and plaintiffs prevailed 35% of the time. This is an increase for defendants since 2012, and the trend is continuing so far in 2017. Of 10 civil rights trials, only 1 resulted in a verdict for the plaintiff.

The average verdict amount in 2016 was \$1.1 million, down from \$1.4 million in 2015. But the average to date in 2017 is already significantly higher, at \$6 million - even including Taylor Swift's verdict of \$1.00.

The District maintains Average Time-To-Trial (TTT) statistics. As of 2016, TTT from filing date was 28.6 months for District Judges (26.6 months for Magistrate Judges), which is in line with national averages. However, to date, 2017 is averaging longer, at 30 months for District Judges. While TTT is not impacted by jury versus bench trials, it is on average shorter for cases assigned to Magistrate Judges.

With respect to dispositive motions practice, 40% of dispositive motions were referred to Magistrate Judges, with significant requests for extensions of time by parties on briefing schedules. The District's statistics on Time-to-Order (TTO) from opening brief filing date include the following:

- Motions to Dismiss: With Magistrate Judge recommendation, 1.5-7.1 months; for District Judges without Magistrate Judge's recommendation, 2.2-6.9 months.
- Motions for Summary Judgment: With Magistrate Judge recommendation, 1.6-9 months; for District Judges without Magistrate Judge's recommendation, 2.8-9 months.

Judge Hegarty noted other trends: greater numbers of motions to compel arbitration, and an increase in the amount of attorneys' fee awards.

### **Criminal Trials in 2016 and to Date in 2017**

In 2016, 399 criminal cases were filed in the District. Trials of 9 felony and 1 misdemeanor matters were conducted.

This year is trending upward with a projected 17% increase over last year. To date, 300 cases have been filed, with the District on track for an estimated 463 cases total.

Judge Hegarty observed that every jury trial during the last several years has resulted in a conviction, while 50% of bench trials have resulted in acquittals. [Note: After the presentation, the District experienced a felony criminal acquittal at a jury trial, in a case involving a Transportation Security Administration officer who, while conducting a pat-down search of a citizen, was shoved, resulting in the citizen being charged with assault.]

### **Miscellaneous Issues**

**Magistrate Judge Consent.** In 35 months of direct assignments of civil cases

to Magistrate Judges, 2,600 cases have been assigned directly - an average of 12.5 cases per Magistrate Judge each month. Twenty to thirty percent of cases terminate before the parties' consent decision is due. In the remaining cases, the parties consent on average in 42% of them.

The trend in 2017 so far has been away from consent - parties have consented in only 27% of cases eligible for consent jurisdiction. Judge Hegarty noted that in light of the increasing criminal docket that the District Judges must handle, the time to trial is, on average, shorter in cases presided over by Magistrate Judges.

**Alternative Dispute Resolution.** Judge Hegarty said that the number of settlement conferences conducted by Magistrate Judges was 60-80 per year in recent years, down significantly from 700-800 per year in earlier years. While Early Neutral Evaluation proceedings may be conducted, they are "all but extinct."

**Pro Se Parties.** Judge Hegarty noted that there has been an increase in pro se litigants in the District's cases. As a result, there has been a bigger push on attempting to get counsel retained to assist pro se parties.

A more detailed summary of the trial results and statistics can be found in Magistrate Judge Hegarty's Memorandum from the District Court, By The Numbers, available on the FFA website at <http://www.facultyfederaladvocates.org/past-events/>.

### **FFA Forum Captivates Attendees** By Kaelyn Gustafson



*Participants discuss mindfulness and the law.*

Full-day conferences rarely capture attendees' undivided attention. Though participants are usually willing, their attention spans inevitably cave to the incessant stream of e-mails buzzing their smartphones. Even fewer conferences pervade participants' psyches enough to bring them to tears in front of professional acquaintances and strangers. Yet the Faculty of Federal Advocates' 2017 Forum, "A Dialogue on Emotional Intelligence, Mindfulness, Professionalism, and Life in the Law," accomplished just that.

Numerous judges facilitated small-group discussions in between compelling presentations. Those in attendance included United States District Court Chief Judge Marcia S. Krieger, Senior Judge Robert E. Blackburn, and Magistrate Judges Michael J. Watanabe, Michael E. Hegarty, Nina Y. Wang, and Scott T. Varholak;

Colorado Supreme Court Justices Brian D. Boatright, Richard L. Gabriel, and Gregory J. Hobbs (retired); Colorado Court of Appeals Judges Daniel M. Taubman, Robert D. Hawthorne, Gilbert M. Román, Diana L. Terry, Terry Fox, Stephanie E. Dunn, Elizabeth L. Harris, and Rebecca R. Freyre; Denver County Judge Olympia Z. Fay; and Robbie M. Barr (retired).

The Forum opened with a lively presentation on emotional intelligence, "What's EQ Got to Do with It?," by Kari Knutson, a self-described "counselor, mother, closet rap artist, itchy-foot traveler, and chronic extrovert." She identified five factors underlying emotional intelligence: self-awareness, emotional self-regulation, motivation, empathy, and relationship skills. She engaged the group with role-playing exercises, including reenactments from cinematic classics such as "Runaway Bride" and "Rocky." She encouraged participants to reflect upon and acknowledge their external and internal motivations. "Be careful how you talk about yourself," she admonished, "because you're listening."

The small-group conversations that followed yielded surprisingly emotional colloquies. A University of Denver student - and mother - fought back tears as she shared how she had a "mom moment" in her 1L class. A commercial litigation partner acknowledged the pervasive pressure to approach the adversarial profession in a certain way - often not the most civil or just way. The stunning ease with which participants shared deeply personal thoughts with their peers (and mostly strangers) spoke volumes about the effectiveness of Ms. Knutson's presentation.

A presentation on mindfulness and the law, by Professor Rhonda Magee of the University of San Francisco School of Law, followed. She emphasized that the "practice of law" is called "practice" for a reason: attorneys do not just fall into the profession, but instead actively work on their careers. Engaging mindfulness is much the same - it is a muscle to be built and strengthened. She walked participants through a variety of tools they could use to "pay attention to the present moment in an intentionally open way." She noted the scientifically-proven correlation between empathy and self-compassion on one hand, and the capacity to be ethical on the other. She concluded that mindfulness can serve as a solid foundation for practicing law, and challenged the roomful of attendees to create a more just profession by consciously engaging mindfulness.

The small group discussions that followed generated acknowledgments that a conscious effort to practice law with more civility could lead to better outcomes for clients and could improve the overall reputation of the profession.

Justice Gabriel's closing discussion underscored the role of professionalism in sustaining and improving the integrity of the legal profession. He lamented that legal professionalism has been on the decline, providing evidence from pop culture: the portrayal of lawyers has gone from the quiet, principled discourses by Atticus Finch to Jack Nicholson's "you can't handle the truth" bulldog advocacy. Justice Gabriel acknowledged the pervasive perception - arguably a misperception - that hardball tactics work, but posited that, in fact, such tactics do not serve lawyers or their clients well. He concluded his talk by challenging members of the legal profession to rededicate themselves to the mentorship of young lawyers, to actively call out unprofessional conduct, and to acknowledge and reward integrity and civility.

Forum participants left with tools for practicing mindfulness, a refreshing sense

of self-realization, and an intentional recommitment to inspire honor in the legal profession.



### **Judges' Corner: *Our Courts*: A Model for Adult Education**

By Justice Richard L. Gabriel

*Our Courts*, a joint activity of the Colorado Bar Association and the Colorado Judicial Institute, was founded in 2007 with a mission of providing nonpartisan informational programs to adult audiences to further public knowledge and understanding of the state and federal courts in Colorado. Supported by a number of partner organizations, including the Faculty of Federal Advocates, *Our Courts* has become a national model for adult education on matters related to the judiciary.

This article provides a brief introduction to the *Our Courts* program. The article begins by recounting *Our Courts*' genesis. It then discusses *Our Courts*' current activities. And it concludes by noting some of *Our Courts*' upcoming projects and initiatives.

#### **The Genesis of *Our Courts***

*Our Courts* was born in the aftermath of Amendment 40, the unsuccessful 2006 ballot initiative that sought to term-limit Colorado's appellate judges. Among its many lessons, the campaign regarding Amendment 40 revealed how little most Coloradans know about our courts generally and specifically about how judges are selected and retained. Coloradans also seemed to know little about their own significant roles in the state court processes for selecting and retaining judges.

Chief Judge Marcia Krieger of the United States District Court for the District of Colorado, and Judge Russ Carparelli, then a Colorado Court of Appeals Judge and now a senior judge on that court, recognized that adult Coloradans had few places from which to obtain nonpartisan information on how courts work. So, Judges Krieger and Carparelli recruited their friend and noted Colorado educator Dr. Ellie Greenberg to explore the development of a program to educate adult audiences regarding Colorado's federal and state courts. They took their idea to the Colorado Judicial Institute and the Colorado Bar Association, and the two organizations agreed to support their efforts.

Following these discussions, like-minded lawyers and judges joined the effort to develop the program. Together with Judges Krieger and Carparelli, Judge Steve Bernard of the Colorado Court of Appeals created *Our Courts'* first presentation, "Our State Courts." This PowerPoint presentation introduces *Our Courts'* central themes: our courts ensure equal justice under the law by providing fair and impartial tribunals that apply the rule of law equally to all; Colorado state court judges are selected based on their qualifications and are evaluated based on their performance; and non-lawyers play a significant role in evaluating judicial applicants and sitting judges.

Having thus begun, the question became how to introduce *Our Courts* to audiences who might be interested in learning about the court system. As a first step, *Our Courts'* founders reached out to a number of established organizations that might be willing to partner with *Our Courts* in pursuing its mission of public education. These organizations included the Colorado Bar Association, the Colorado Judicial Institute, the Colorado state and federal courts themselves, the Faculty of Federal Advocates, the Institute for the Advancement of the American Legal System, the League of Women Voters, the Colorado State Library, the Colorado community college system, the University of Colorado School of Law, the University of Denver Sturm College of Law, and the University of Colorado at Denver School of Public Affairs. In addition, with substantial help from the public education team at the Colorado Bar Association, which was then and continues to be headed by Carolyn Gravit, *Our Courts* decided to approach organizations that it anticipated would be interested in learning about the judiciary and that it knew were in frequent need of speakers. Service organizations such as Rotary and Kiwanis Clubs were obvious choices.

The response was overwhelming, and *Our Courts* was immediately in constant demand for presentations. And before long, those who had seen the state courts presentation were asking for additional programs and speakers. As a result, *Our Courts* ultimately developed a host of new programs and trained hundreds of speakers to present *Our Courts* programs throughout Colorado. Speaker training was (and remains) particularly important because *Our Courts* is, in large part, a judges' speakers bureau, and having any speaker depart from the *Our Courts* mission of providing *nonpartisan* information, even if inadvertently, would interfere with what *Our Courts* had worked so hard to develop.

*Our Courts* also began to focus on audiences that were too often underserved by educational programs like the ones the *Our Courts* program was developing. To that end, the *Our Courts* Hispanic Outreach program, affectionately dubbed "OCHO," was created. And this resulted in a number of *Our Courts* programs (as well as *Our Courts* brochures) being translated into Spanish, for presentation by trained Spanish-speaking judges and lawyers. *Our Courts* was off and running.

### **Our Courts Today**

Today, *Our Courts* offers ten separate presentations: "Our State Courts," "Our United States Courts," "U.S. and State Courts Serving Colorado," "Colorado's Judicial Merit Selection and Retention System," "See You In Court: the Life of a Civil Lawsuit," "Law and Order: The Life of a Criminal Case," "Divorce in Colorado Courts," "An Economic Fresh Start: Bankruptcy Basics," "An Introduction to U.S. Immigration Courts," and "Lincoln's Legacy of Equality &

Liberty." Four of these presentations (the state and federal court presentations, the combined state and federal court presentation, and the immigration presentation) are available in Spanish, and each of *Our Courts'* programs is always presented free of charge, with the understanding that *Our Courts* presentations and presenters take no position regarding any court case, legislation, ballot issue, or proposed change in the court system.

With the exception of the Abraham Lincoln presentation, each presentation is in the form of a PowerPoint, and all are designed to generate audience participation and discussion. In order to achieve this, most of the presentations begin with a hypothetical case, and time permitting, speakers are encouraged to have the audience play the roles of the opposing parties, the court, and the public. Central to each program is the importance of fair and impartial courts applying and preserving the rule of law equally for all.

To date, *Our Courts* volunteer speakers have presented approximately six hundred presentations to over 16,000 people. In addition, *Our Courts* volunteers have sponsored a number of "Law School for Journalists" sessions, in which *Our Courts* members have provided nonpartisan information to assist journalists in understanding the judicial system and how it addresses issues in actual cases. *Our Courts* volunteers also wrote and created a video on the separate branches of government that was generously produced, for free, by the Colorado Bar Association's Continuing Legal Education group and that is shown at the monthly naturalization ceremonies conducted by the United States District Court for the District of Colorado. And through Chief Judge Krieger's efforts, a video spotlighting the *Our Courts* program was recently prepared by the Administrative Office of the U.S. Courts and will soon be posted on that organization's website, as a means of encouraging others to develop similar education programs.

For all of its many efforts, in 2010, *Our Courts* was awarded the American Bar Association's Burnham "Hod" Greeley Award, which recognizes extraordinary outreach efforts demonstrating to the public the need for a fair and impartial judiciary.

### **Upcoming Projects and Initiatives**

Throughout its existence, *Our Courts* has held true to its mission of providing nonpartisan information to adult audiences throughout Colorado. It is not, however, resting on its laurels. *Our Courts* is continuing to explore and develop new programs and audiences. For example, *Our Courts* has increased outreach efforts to the African-American community and, to that end, put on a presentation to community leaders at New Hope Baptist Church. In addition, *Our Courts* has developed a program for high school seniors, which was piloted at the Denver School of Science and Technology, to teach soon-to-be voters about their important roles in selecting and retaining Colorado state court judges. And *Our Courts* members are returning to *Our Courts'* core audiences to re-introduce them to the program and to show them its newest presentations.

### **Conclusion**

Few could deny that today's business and legal climate has become increasingly complex. Nor can it be denied that civil discourse is often difficult in an ever-more-polarized society. In this environment, it is perhaps more important than



ever for Coloradans to have access to nonpartisan information about Colorado's federal and state courts, which have served as the cornerstone for equal justice under the law and liberty and justice for all in this state.

For a decade, *Our Courts* has helped fill this significant need for public education about the court system, and it has done so with great success. *Our Courts* members look forward to continuing these important efforts, and the program welcomes ideas as to how it may continue to fulfill its important mission.

Further information about *Our Courts*, and scheduling *Our Courts* presentations, is available at its website, [www.ourcourtscolorado.org](http://www.ourcourtscolorado.org).

*Richard L. Gabriel is a justice of the Colorado Supreme Court and currently serves as chair of the Executive Committee of the Our Courts Program.*

### **Limited Scope Representation and Unbundled Legal Services Under New Rules - A CLE**

By Lisi Owen

Attorneys in Colorado state courts have long been permitted to provide limited scope representation-often referred to as "unbundled" legal services-in a variety of civil matters. However, the United States District Court for the District of Colorado had long considered that approach unworkable and antithetical to the ethical obligations of a federal court practitioner.

In a change of course, in 2015 the District's Local Rules were modified to permit the provision of limited scope representation in federal court (*see* D.C.COLO.LAttyR 2 and 5). Initially the rules permitted lawyers to provide such representation only in prisoner cases, easing the burden of the District's massive pro se prisoner docket. In 2016, the rules were further amended to permit limited scope representation in all types of civil cases.

On August 17, 2017, the Faculty of Federal Advocates hosted a well-attended continuing legal education program at which three judges and a practicing lawyer presented their views on the provision of unbundled legal services under the revised rules. Senior District Judge Robert E. Blackburn, Colorado Court of Appeals Judge Daniel M. Taubman, and Denver County Court Judge Adam J. Espinosa offered insights into representing parties in a limited capacity in federal court. Danaé Woody, a civil litigator who has developed a robust unbundled practice, explained the benefits and pitfalls of limited scope representation. Attorney Seth Benezra moderated the presentation.

Judge Taubman enlightened audience members with the historical background of Colorado's limited representation rule. Unbundling was originally conceived of by members of the Denver Bar Association's Thursday Night Bar (now Metro Volunteer Lawyers), who provided volunteer legal services through Thursday evening walk-in clinics. They believed unbundling would promote pro bono practice: busy lawyers would be more likely to provide representation in portions of cases, which would be easier and consume less of their time than full representation. The unbundling proponents asked the Colorado Supreme

Court Ethics Committee whether limited representation would be ethical. After the Ethics Committee gave the green light for limited representation in pro bono cases, attorneys in private practice caught on and started to use the model as a viable means of providing services to paying clients as well.

Judge Blackburn spoke on limited scope lawyers' practice in the District. Focusing on counsel's obligation to file a motion to withdraw, which is not required in state court, Judge Blackburn explained that getting the court's permission both to enter an appearance and to withdraw serves as protection to the lawyer and ensures that all parties and the court are fully aware of the lawyer's duties and obligations in the case.

Judge Espinosa addressed the importance of a lawyer's obtaining informed consent from the client before providing limited scope representation, and the lawyer's obligation to limit the scope of representation in a reasonable manner. Simply because the rules permit a lawyer to provide limited scope representation does not mean that the lawyer can leave the client in a lurch. It is extremely important, whether in state or federal court, that a lawyer ensure that the client understands the risks and advantages of limited scope representation and precisely define the scope of representation in terms the client comprehends. Judge Espinosa also emphasized the importance of communication with the court and opposing counsel about the scope of representation.

Ms. Woody encouraged lawyers considering limited scope representation in federal court to be open-minded and creative. Unbundling has allowed her to represent people who might not otherwise have been able to afford or otherwise access a lawyer's services. Like Judge Espinosa, Ms. Woody made clear that the scope of the engagement is critical, and advised lawyers to explicitly reduce the terms of the scope to writing, including when those terms change. She referred lawyers to helpful resources from the Colorado Bar Association's Modern Practice of Law Initiative, including sample engagement agreements. (Sample limited scope representation forms and pleadings are also available on the District's website, at <http://www.cod.uscourts.gov/RepresentingYourself/LimitedRepresentation.aspx>.)

While the details of unbundled federal court legal practice are still developing, and practitioners should stay apprised of rule changes and best practices, existing resources can assist with developing a successful limited scope practice in federal court. Whether lawyers are interested in unbundling to expand their ability to provide pro bono services or to diversify their private practice, they can take advantage of the recent changes to the District's Local Rules permitting limited scope representation.

**Practicing as a New Federal Trial Lawyer: What You Need to Know -  
An FFA CLE  
By Ben Strawn**

On June 2, 2017, the Faculty of Federal Advocates hosted an afternoon of presentations and interactive discussions for lawyers new to practicing in

federal court in Colorado. Christine Samsel, FFA Board President, opened the event by welcoming the seventy-plus attendees and briefly discussing the FFA's mission of helping lawyers improve their practice in federal court. She then introduced United States District Judge Philip A. Brimmer for the opening presentation.

Judge Brimmer spoke about several introductory - but too-often neglected - concepts important to practicing in federal court. The first related to the bases for federal court jurisdiction, including nuances attorneys sometimes miss when pleading diversity jurisdiction in cases involving limited liability companies (LLCs) or trusts. Judge Brimmer next discussed the differing roles of District Judges and Magistrate Judges. He concluded with practice pointers on courtroom etiquette, including to: stand when addressing the court, always be on time, and keep one's personal feelings about opposing counsel to oneself.

Magistrate Judge Craig B. Shaffer focused on the four primary roles Magistrate Judges serve in the federal courts: (1) acting as trial judges when the parties consent to their jurisdiction; (2) resolving pretrial disputes in consent cases or when District Judges refer them such disputes in the first instance; (3) serving as mediators or settlement facilitators (though less so in recent years); and (4) handling pretrial matters in criminal cases. He then gave tips for practicing before any judge, including: reviewing the applicable rules and practice standards (including the Federal Rules of Civil Procedure Advisory Committee Notes); observing a proceeding similar to the one for which you are preparing (*e.g.*, a trial in front of the same judge); refraining from "zealous advocacy" as an excuse for neglecting your responsibility to act as a problem solver; and remembering that Rule 1 requires attorneys and the Court to chart a "just, speedy, and inexpensive" route to resolving the case.

Jeffrey Colwell, the District's Clerk of Court, and Ed Butler, Legal Officer for the Court, gave the third presentation. Mr. Colwell focused on how attorneys can work with the Clerk's office staff to ensure attorneys follow correct procedures for filing documents. Although staff cannot give legal advice, they can assist on properly using the Case Management/Electronic Case Files (CM/ECF) filing system. Proactive (and polite) interactions with staff are welcome and can smooth the process for all involved. Mr. Butler presented the results of interviews he conducted with judges and their staff about commonly-made attorney mistakes. He emphasized the importance of using the Local Rules' procedures and following individual judges' practice standards. A summary of these practice pointers is available [here](#) (*see pp. 30-39*).

U.S. Bankruptcy Judge Elizabeth E. Brown then presented about Colorado bankruptcy court practice. Recognizing her audience was primarily civil litigators, she gave a brief overview of practice in her court and the most common ways people find themselves as parties in bankruptcy court. She then focused on the two most important aspects of bankruptcy law for civil litigators to keep in mind: (1) the stay of pending litigation triggered by a party's bankruptcy filing; and (2) the bankruptcy court's ability to claw back funds paid by a party pre-bankruptcy and the effect this may have on pre-bankruptcy settlements. Civil litigators should also know that not all types of civil claims are dischargeable in bankruptcy.

Next was a panel discussion with young lawyers who have taken cases through the District's Civil Pro Bono Panel program. The program pairs volunteer attorneys with pro se parties of limited means for whom the District has appointed counsel. Lisi Owen, Tess Hand-Bender, Anne Zellner, and CiCi Cheng offered advice based on their experience gained through the program. They discussed some of the unique challenges in handling cases for the program's clients, many of whom are prisoners, and the significant benefits gained from first-chair trial experience and through client relationships. (Attorneys interested in more information about the program should contact Ed Butler.)

The event concluded with "Lawyers Who Think," an ethics trivia game. Kendra Beckwith moderated, with N. Reid Neureiter and Kevin Traskos serving as panelists. Audience members divided into teams and answered questions about the overlay of the District's Local Rules on attorney conduct with the Colorado Rules of Professional Conduct, focusing on the perhaps unexpected ways in which those two sets of rules differ, and including discussion of the District's process for investigating alleged violations and for enforcing its rules.

The FFA thanks the judges and lawyers who participated in the program, as well as all the attendees.

### **Behind the Scenes of Pro Se Litigation in the District of Colorado**

By Lisi Owen

The pro se docket in the United States District Court for the District of Colorado is substantial. Nearly a quarter of cases filed in the District each year involve at least one party without a lawyer. Of those cases, about two-thirds are filed by prisoners. The District is not unique: many other federal district courts are similarly inundated with pro se litigation, and they approach adjudication of pro se cases in varying ways.

The District's pro se intake review division, supervised by Magistrate Judge Gordon P. Gallagher and Senior District Judge Lewis T. Babcock, increases efficiency in managing the pro se docket with the substantial efforts of seven pro se intake attorneys, collectively occupying five full-time positions. Under authority including 28 U.S.C. §§ 1915 and 1915A and D.C.COLO.LCivR 8.1, they review initial pleadings to determine whether cases should be drawn to a presiding judge and proceed down the ordinary litigation path; be dismissed; or require amendment of pleadings to cure defects.

Nicole Irby, one of the District's pro se attorneys, explained that she and her colleagues review about 1,000 cases per year. They use this "screening" process to weed out legally frivolous prisoner, *in forma pauperis*, and habeas corpus cases. They determine whether remaining cases appear to state claims but fail to comply with the Federal Rules of Civil Procedure. They assess whether a case can coherently be heard by a presiding judge as pled and, if not, prepare orders for Magistrate Judge Gallagher's review directing pro se litigants

to amend pleadings.

According to Ms. Irby, allowing pro se litigants to fix their mistakes is critical under Tenth Circuit directives to the district courts to liberally construe pro se pleadings and to give pro se litigants adequate opportunity to plead their cases even though they may not be well-versed in the Rules of Civil Procedure.

Magistrate Judge Gallagher and Ms. Irby agreed that a person's trouble in articulating claims does not mean that he or she has none to be heard.

Many pro se litigants' claims do not make it past the screening stage, notwithstanding multiple opportunities to amend pleadings. The pro se attorneys and Magistrate Judge Gallagher may determine that a claim lacks merit; some litigants are unable to comply with judicial directives to amend their pleadings to cure defects. If the screening process yields a recommendation by Magistrate Judge Gallagher of dismissal, Senior District Judge Lewis T. Babcock makes the final determination on a dispositive ruling.

Magistrate Judge Gallagher was asked to be the first line supervisor for the pro se intake division upon Magistrate Judge Boyd Boland's retirement in 2015.

Work on pro se cases aligns with Magistrate Judge Gallagher's interest in criminal law and allows him to see criminal cases in a different light than in his experience as a criminal law practitioner.

While open to learning about new, more effective approaches to managing a bustling pro se docket, and while keeping apprised of other districts' management ideas, Magistrate Judge Gallagher and the pro se intake attorneys are proud of the work the District has done to stay at the forefront of this issue.

The challenge will continue to be, at least for the foreseeable future, maintaining a handle on an ever-increasing pro se docket without corresponding increases in budget or staffing.

### **Magistrate Judge Gordon Gallagher: Balancing Unique Part-Time Judge and Attorney Roles in Grand Junction**

By Dan Shaffer

*United States Magistrate Judge Gordon P. Gallagher has served as a magistrate judge in the U.S. District Court for the District of Colorado since October 2012.*

Magistrate Judge Gordon Gallagher has the unique position of presiding over federal matters while also maintaining a part-time criminal defense practice. He splits his time between private practice and his service as a Magistrate Judge in the U.S. District Court for the District of Colorado, at the Wayne Aspinall Courthouse in Grand Junction. He has practiced law in Western Colorado for twenty years, having served as a Mesa County prosecutor before entering private practice.

While Judge Gallagher is one of twenty-seven part-time U.S. Magistrate Judges across the country, he is perhaps the only one who also practices criminal defense. Judge Gallagher may find himself litigating on behalf of a client in the morning in Colorado state district court, and presiding over litigation in federal district court that same afternoon.

As Judge Gallagher observed: "I have a foot in each part of the profession, which presents a highly unusual and sometimes uncomfortable circumstance." He is "extremely vigilant about maintaining the sanctity of my roles as judge and attorney as separate and distinct." His judicial position has involved a "transition that has altered prior relationships with friends and colleagues." "Those who may practice before me really can be no more than friendly acquaintances," while "true friendship" with attorneys means "automatic recusal" on his part and "effectively precludes them from practice in federal court" in Grand Junction. Also, while the "addition of a new set of friends and colleagues on the bench provides some solace for the loss of relationships due to the transition" for most judges, Judge Gallagher's "closest judicial colleagues are 250 miles away - while they are always welcoming, friendly, and helpful, they are not a stroll away down the hall during a coffee break."

Further, given the small size of the law enforcement community on the Western Slope, many officers are cross-sworn by state and federal agencies, often creating conflicts precluding Judge Gallagher from accepting state criminal cases, especially involving drug interdiction. "To the local judges I must remain an attorney, not a colleague."

Judge Gallagher serves an important judicial role on the Western Slope. The District has judges in Grand Junction and Durango to serve the many needs of the outer reaches of the District. There is a need for a remote judge in Grand Junction because Mesa County, of which Grand Junction is the county seat, is 250 miles from Denver, and two-thirds of Mesa County is designated as federal lands. Nearly 40% of Colorado is comprised of federal lands, a substantial portion of which is on the Western Slope.

Magistrate Judge Gallagher presides over the District's Jury Division 3, which stretches from the Continental Divide to the Utah border and from Wyoming to Dallas Divide (about thirty minutes north of Telluride). Recently, San Miguel and Ouray Counties were transferred to Jury Division 2, based in Durango and presided over by Magistrate Judge David West. (Jury District 1 is based in Denver, and District 2 consists of the Colorado Springs/Pueblo area.) The assignment of local matters to Magistrate Judges Gallagher and West occurs through the District's Western Slope Protocol. The intent is to create better access to the federal courts for the people of Western Colorado.

Judge Gallagher's duties on the bench vary considerably. Approximately one-third of his time is devoted to managing the criminal docket. The other two-thirds is split among managing his civil docket, conducting naturalization ceremonies and travel and administrative duties, and overseeing a pro se filing screening division.

Judge Gallagher's pro se screening work is significant on a District-wide basis. The District receives about one thousand pro se filings per year, largely generated from litigants in thirty-plus federal and state facilities. These filings include §1983 claims, *in forma pauperis* pleadings, and habeas corpus actions. Judge Gallagher, along with seven intake attorneys in Denver, screens these filings for merit and issues curative orders to correct initial complaints. Nearly two-thirds are ultimately dismissed after consideration by Article III Judges.

The District is fortunate to have Judge Gallagher's service, balancing his unique

**View from the Criminal Bench: An FFA CLE with District Judges  
Brimmer and Arguello**

On July 21, 2017, United States District Judges Philip A. Brimmer and Christine M. Arguello participated in a Faculty of Federal Advocates-sponsored presentation, moderated by FFA Board Member Veronica Rossman, about federal criminal practice in the District of Colorado. The presentation tracked the timeline of a federal criminal case and focused on the types of proceedings typically heard by district judges.

More information about the presentation is available on the FFA website [here](#).

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**Thursday, November 16, 2017**

12:00 - 1:15 p.m.

**What Does Fairness Mean and Why Should We Care?**

*A Discussion with Judge John L. Kane on His Fortieth Anniversary as a Judge  
with The Honorable Nina Y. Wang*

Alfred A. Arraj Courthouse, Jury Assembly Room

**Tuesday, December 5, 2017**

5:00 - 7:00 p.m.

**The FFA Annual Networking Reception**

*Lannie's Clocktower Cabaret*

1601 Arapahoe St, Denver, CO

Come enjoy a complimentary drink and hors d'oeuvres.

**Thursday, December 14, 2017**

9:00 a.m. - 1:00 p.m.

**Skills Training: Depositions and Dispositive Motions  
and**

**Roundtable Luncheon to Discuss *Pro Bono* Representation  
Through the USDC *Pro Bono* Panel**

This training will be useful to all attorneys and will provide special information on *pro bono* representation through the USDC Pro Bono

Panel  
FREE

Davis Graham & Stubbs LLP  
1550 17th St Suite 500, Denver, CO

**Thursday, January 18, 2018**

3:00 - 4:30 p.m. (Please note the unique time.)

**Perspectives from the 10th Circuit Bench**

*Hon. Robert E. Bacharach*

*Hon. Gregory A. Phillips*

*Hon. Carolyn B. McHugh*

*Hon. Nancy L. Moritz*

*The United States Court of Appeals  
For the Tenth Circuit*

Alfred A. Arraj Courthouse, Jury Assembly Room

**Friday, January 26, 2018**

12:00 - 1:15 p.m.

**Current Issues in IP Law**

*Mark A. Lemley, Stanford University School of Law*

Alfred A. Arraj Courthouse, Jury Assembly Room

**Friday, February 1, 2018**

8:30 - 9:30 a.m. Continental Breakfast Will Be Served

**State of The Court 2018**

*The Honorable Marcia S. Krieger*

*Chief Judge, United States District Court for the District of Colorado*

Alfred A. Arraj Courthouse, Jury Assembly Room

**Thursday, February 15, 2018 (Training Date - Full Day)**

**Friday, March 2, 2018 (Trial Date - Full Day)**

**Trial Advocacy Training Program**

Alfred A. Arraj Courthouse

**Friday, April 20, 2018**

1:30 - 4:30 p.m.

**The Faculty of Federal Advocates**

**US District Court Bench - Bar Roundtable**

The Magnolia Ballroom

818 17th St, Denver, CO

Contact [ahoffman@facultyfederaladvocates.org](mailto:ahoffman@facultyfederaladvocates.org) for more information or to register for any of these programs.

Or register on-line:

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

**Faculty of Federal Advocates**

Contact Mandi Hoffman, Executive Director, at [ahoffman@facultyfederaladvocates.org](mailto:ahoffman@facultyfederaladvocates.org) for information about submitting an article for the newsletter.

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