

Courthouse Connection

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Featured Article

Thirty Years of Judicial Service



From Left: Judge Whipple, Chief Judge Gaitan and Judge Fenner

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In honor of these achievements, the Federal Law Clerk's Society and the Federal Practice Committee are hosting a reception on Oct. 19. The event will also welcome the incoming law clerks to the district. All Western District attorneys are invited to attend and should contact Cheryl LaBrecque at cheryl_labrecque@mow.uscourts.gov if your invitation has been misplaced. **Full Story Page 2**

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Thirty Years of Judicial Service

In 2010, three of the Western District's judges will each celebrate over 30 years of public service. Judge Dean Whipple hits 36 years, with 13 years on the state bench and 23 as a federal district judge. Chief Judge Fernando J. Gaitan Jr. combines 13 years of service in circuit court and the Missouri Court of Appeals with 19 years on the federal bench. And Judge Gary A. Fenner served 16 years as a state circuit and appellate judge before moving to the federal court for the next 14 years.

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Chief Judge Fernando J. Gaitan Jr.

The journey began with a law degree from UMKC in 1974, where Gaitan was a member of the Law Review. He served as counsel for the Southwestern Bell Telephone Co. until his appointment to the state trial bench for the 16th Judicial Circuit in Kansas City, Mo., in 1980. He served on the bench as a trial judge until 1986, when he was appointed to the Missouri Court of Appeals, Western District. It may not be well known, but Judge Gaitan and Judge Fenner served as appellate judges at the same time for the Missouri Court of Appeals. Gaitan served as an appellate judge until 1991.

In 1991, Gaitan was appointed by President George Herbert Walker Bush to become a U.S. District Court judge for the Western District of Missouri. He became chief judge in 2007.

From 1997 to 2003, Gaitan was appointed by Chief Justice William Rehnquist to serve as a member of the Federal-State Jurisdiction Committee of the Judicial Conference. He currently serves as a UMKC trustee, a university where he has served as an adjunct professor at the School of Law. He also is an advisory board member to the Kansas City Crime Commission's

"Second Chance" Foundation. Some of the awards he has received include the UMKC Alumnus of the Year and the 2009 Pittsburg State University Meritorious Achievement Award.

Gaitan has also served on several non-profit boards, including 25 years of service as a St. Luke's Hospital board member. He has received numerous accolades from local organizations, such as the Difference Maker Award given by the Urban League of Greater Kansas City and the Greater Kansas City Chamber of Commerce Centurion Leadership Award.

Gaitan has touched many lives through the mentoring of law clerks. Assistant U.S. Attorney Lajuana Counts clerked for Gaitan at the Missouri Court of Appeals from 1988 until 1989. Counts feels "fortunate to have clerked for a judge who actively engaged me in vigorous discussions about each opinion he authored. Our dialogues helped prepare me to become a better prosecutor and appellate attorney."

She continued: "What makes him such an exceptional judge is the fact that he has served on both the trial and appellate court levels. He understands the rigors of the entire spectrum of the judicial system—he has experienced, firsthand, having his rulings scrutinized by the appellate court, as well as knowing what it is to scrutinize another judge's ruling! He's taken his collective experience on each judicial level to become the great leader he is today as the chief judge."

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Charlie Harris, an attorney with Seyferth Blumenthal & Harris LLC, also served as one of Gaitan's law clerks. "My law clerk time with Judge Gaitan is the most cherished time of my entire life. It was a tremendous opportunity to grow as a lawyer and a person. Our relationship has developed over the years from judge/clerk to mentor/mentee to friend. I consider Judge Gaitan to be one of the brightest individuals I have ever met and one of my closest friends."



Judge Dean Whipple

On Oct. 19, 2010, The Honorable Dean Whipple will also be honored for over 30 years of service as a state and federal judge.

Whipple began his career of public service as Laclede County prosecuting attorney in 1967. The position was "part time" with an annual salary of \$6,056. It turned out to be more like a full-time position, and he spent most of his time prosecuting cases. He had time for only a small private practice, doing some domestic and real estate work.

In 1974, Whipple ascended to the state bench as circuit judge for Missouri's 26th Judicial Circuit. He was re-elected in 1980 and 1986. He traveled five counties to hear cases in his circuit, the farthest courthouse being in California, Mo., 90 miles from his residence in Lebanon.

In May 1987, President Ronald Reagan nominated Whipple to serve as a U.S. District Court judge. At the time, President Reagan was acting on the recommendations of Senators Jack Danforth and Christopher "Kit" Bond. Judge Whipple was confirmed by the

U.S. Senate on Dec. 9, 1987, and entered duty on Dec. 29, 1987, making him the 25th U.S. District Court judge to be appointed for the Western District. Jack Danforth later commented that of all the men and women he had recommended to serve on the federal bench, none enjoyed more heartfelt support from friends and associates than Dean Whipple.

Whipple served as chief judge for WDMO from January 2000 through January 2007, at which time he took senior status. Senior status has not slowed him down—to this day, he continues to maintain a full caseload.

Whipple's record on the federal bench speaks for itself, as he has presided over countless criminal and civil cases. In *G.L. v. Stangler*, Whipple monitored efforts to correct deficiencies in training and licensing of foster homes and other aspects of the handling of foster children in Jackson County. Upon his assignment to the case of *Hall v. Jackson County Department of Corrections*, Whipple oversaw Jackson County's efforts to reduce overcrowding within the Jackson County jail.

Another noteworthy matter from Whipple's caseload is *Jenkins, et al. v. Kansas City School District, et al.*, commonly known as the Kansas City school desegregation case. Whipple was assigned the 1977 case in 2000, and issues continue to arise related to the enforcement of the terms of the 2001 consent judgment. He also continues to oversee the operations of the Housing Authority of Kansas City through the case of *Tinsley, et al. v. HUD, et al.* and has presided over the Tinsley case since its filing in 1989.

During Whipple's time on the federal bench, 30 different law clerks have rotated through his chambers. Whipple has extended the education of his law clerks in an informal and unassuming way, teaching by example as they watch him perform his judicial duties.

Barrett Vahle is an attorney with Stueve Siegel Hanson LLP and served as one of Whipple's law clerks from August 2005 to January 2007. "The great thing about working for him is that he likes lawyers, he likes juries, and he likes trying cases," Vahle states. "Judge Whipple enjoys his job, and that trickles down to everyone around him. That's why it's such a good experience to work for him."

One change Whipple has seen since he started practicing law in Laclede County is a decline in the civility among attorneys. He attributes part of this to the fact that in rural areas, members of the legal community work with the same lawyers day after day. In a more urban setting such as Kansas City, it may be years before two lawyers will encounter each other again. If there's just one piece of advice that he could offer to attorneys, it's to be a person of your word: Say what you mean and mean what you say.

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The most notable change Whipple has seen in federal court since his arrival has been the migration to electronic case filing. He sees this as a tremendous boon not only to the court, but also to the bar. With electronic filing and the evolution of other court processes, the judge has also seen an improvement in court staff professionalism and efficiency.

Whipple states that he did not go to college to go to law school. He also did not go to law school with the idea that he would ever be a judge. He points out though that he feels very fortunate to have had the opportunity to get into a profession that he enjoys so much. Whipple is known to be a Missourian to the core, and he has never forgotten his Laclede County roots. This forms a large part of his character, and his colleagues on the bench refer to him as a hard worker who is always willing to help out another judge who needs assistance.



Judge Gary A. Fenner

After receiving a B.A. from the University of Kansas in 1970, Judge Gary A. Fenner received a J.D. from the UMKC School of Law in 1973. He served as assistant city attorney in St. Joseph, Mo., from 1973 to 1977. He worked part time as a business law instructor for Webster College from 1976 to 1977, and he was in private practice in St. Joseph from 1977 to 1979 with Shoemaker, Summers and Fenner. He was a member of the St. Joseph City Council in 1977 and 1978. From 1979 to 1987, Fenner sat as circuit judge on the 5th Judicial Circuit Court of Missouri and then on the Missouri Court of Appeals, Western District, from 1988 to 1996, serving as chief judge from 1994 to 1996.

Nominated by President William Jefferson Clinton on Dec. 13, 1995, Fenner took the seat on the U.S. District Court for the WDMO that was vacated by Judge Scott Wright, who took senior status. He was confirmed by the U.S. Senate on July 10, 1996, and received his commission on July 25, 1996.

The Joseph E. Stevens Aspire to Excellence Award was bestowed upon Fenner in 2008 by the Kansas City Metropolitan Bar Association as recognition for outstanding service in improving the quality and administration of justice in the Kansas City Area.

Fenner is identified as a model of professionalism and judicial decorum, showing dedication and willingness to work with the bar to improve the administration of justice. These qualities have been demonstrated throughout his tenure at all levels, from the circuit court and appellate court to the federal court. Michael Oliver of the U.S. Attorney's Office in Springfield, says: "I have been privileged to appear before Fenner in both state and federal court. Over the years, Judge Fenner's evenhanded firmness has repeatedly reminded me of a government attorney's duty to fairly hold offenders accountable."

Born and raised in St. Joseph, Fenner graduated from Christian Brothers High School and became interested in the legal profession through his brother, Mike Fenner, who is now a law professor at Creighton University School of Law.

Fenner has been active in many local and national organizations over the years. He is currently serving as a member of the Board of Directors of the Federal Judges Association and as a member of the Financial Disclosure Committee of the Administrative Office of the U.S. Courts. He served as president of the 8th Circuit District Judge's Association from 2005 to 2007, and he has been a member of the St. Joseph Bar Association since 1973 and a member of the KCMBA since 1988.

Fenner has presided over innumerable civil and criminal cases in the course of his career. Undoubtedly, the most memorable one to date was a state court divorce case where, after the hearing was concluded, the husband pulled a gun out of his boot in an attempt to shoot the judge. Fortunately, the man was stopped by court officers. That day, his role changed from judge to victim to witness for the prosecution.

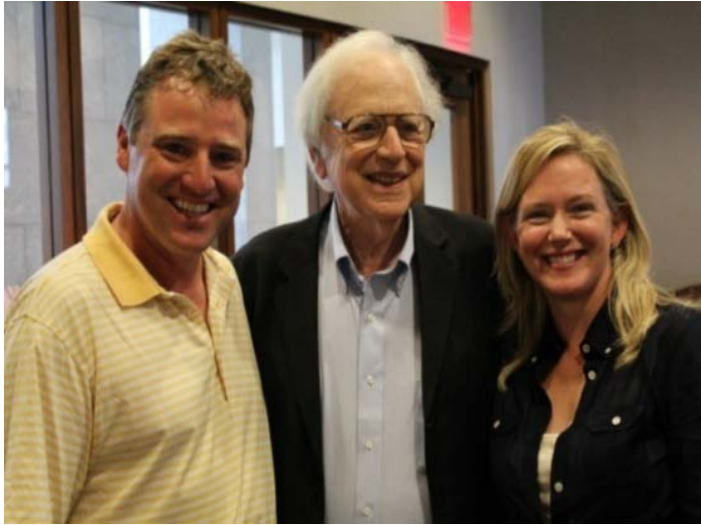
It is also significant to note that Judge Fenner has presided in cases involving 14 defendants against whom the government has sought the death penalty—all but one of those cases were at the federal level. Jeff Valenti of the U.S. Attorney's Office states that "I had the responsibility of trying a three-defendant capital case before Fenner only months after

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starting with the USAO. That case was quite complex and took a total of five weeks to try. With a total of nine attorneys in the courtroom, two for the government and seven on behalf of the defendants, Fenner was able to manage all the competing voices and move the case to resolution. His professionalism and judicial demeanor impressed me then and continue to impress me now."

Jim Humphrey with Polsinelli Shughart PC and a former law clerk to Fenner writes: "I had the good fortune of spending the first two years of my legal career clerking for Judge Fenner. I saw a man who takes his job seriously and demands that the lawyers appearing in front of him do the same. At the same time, he is a lawyer's judge, and I saw him on a number of occasions take the time to offer compliments, advice and input with no purpose other than to assist lawyers in their practice."

Judge Sachs Celebrates a Milestone



Adam Sachs, Judge Sachs and Julana Harper-Sachs

Many of you have visited the Antique Room, which is on the second floor of the courthouse outside the area where the Bartlett and Koger Lectures are held. We use this room for special occasions, as it houses mementos from judges and prior courthouses and reminds us of the rich history of the Western District. And on Sept. 13, the court celebrated another special occasion in the Antique Room—the 85th birthday of Judge Howard F. Sachs. Joined by his family and chambers staff, Judge Sachs reminisced with friends and colleagues while enjoying his birthday cake.

In the 1950s and early '60s, prior to joining the judiciary, Judge Sachs had a background in civil rights activity, particularly in opening the Bar Association, and in writing and defending the legality of the local ordinances prohibiting discrimination by hotels, motels and restaurants. A former law clerk for Judge Albert Ridge, Judge Sachs was appointed to the bench by Senator Thomas F. Eagleton in 1978.

As Judge Sachs is the Western District's resident scholar and historian, it was particularly fitting that the court was able to make a little more history by marking this special milestone with the Sachs family.



Judge Gaitan and Judge Fenner



Karen Graves, Judge Sachs and Sarah Wiese



Judge Benton and Judge Federman

Happy Birthday Federal Courts!

September 24 marks the anniversary of a groundbreaking American invention—a federal court system separate from the individual state courts.

The anniversary of the Judiciary Act of 1789 is a time to recognize the first Congress for creating a court system capable of growing to meet the nation's needs.

Read the entire article at

http://www.uscourts.gov/News/NewsView/10-09-15/Anniversary_Marks_Creation_of_U_S_Federal_Court_System.aspx.

Making a Federal Case: WDMO Educational Outreach Program

According to “The Book of Lists,” the fear of public speaking ranks No. 1 in the minds of the majority of people.

But this is not the case for members of the Western District of Missouri Federal Practice Committee or WDMO judges. Rather, it's just the opposite. They are looking for opportunities to speak to Kansas City Area civic organizations and clubs. Taking their show on the road, “Making a Federal Case in the Western District of Missouri” is coming to fruition.

On Sept. 9, 2010, Judge Fenner and area attorneys Todd Bartels and Lisa Nouri hit the speaking circuit by giving a presentation at the Downtown Rotary Club of Kansas City's monthly luncheon. More than 75 attendees learned a little bit more about famous cases filed in the WDMO, the differences between federal court and state court, the process for federal judgeship appointment, and WDMO specifics, including facts about the judges, jurisdiction and case statistics.

During the question and answer session, the esteemed panel fielded questions such as: “What is the difference between district and magistrate judges and the work they perform?” “Does the federal court work from sentencing guidelines, and if so, can you explain a little about that process and some of the factors involved in the decision-making?” and “How is the federal jury pool created?”



Lisa Nouri, Todd Bartels and Judge Gary Fenner

Members of area civic organizations who wish to have a judge and members of the WDMO bar speak about the judiciary, (free of charge) may contact Diana Diaz at diana_diaz@mow.uscourts.gov. Presentations can be tailored in content and length to meet the needs of the audience.



Judge Gary Fenner



Ross T. Roberts Inn of Court Program

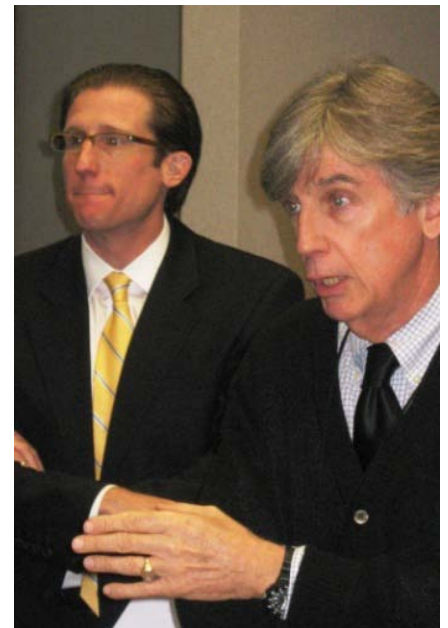
The Western District has long partnered with the Kansas City Metropolitan Bar Association in its efforts to develop the trial skills of young attorneys through the Ross T. Roberts Inn of Court Program. The Ross T. Roberts Inn of Court Program exposes young



Adam T. Suroff

attorneys to CLE luncheons geared toward the practical skills needed to become a successful litigator, and offers opportunities for one-on-one instruction and critiques from state and federal judges as well as experienced attorneys in the legal community. There are three components to the Ross T. Roberts Inn of Court Program: (1) a CLE luncheon series; (2) preparatory sessions led by Chief U.S. Magistrate Judge Robert E. Larsen, in which young attorneys enrolled in the program are instructed on a specific aspect of trial; and (3) performance sessions, where the young attorneys are afforded an opportunity to practice the aspect of trial on which they have been instructed and receive feedback on their performance.

An exciting change has been made to the performance sessions this year. In addition to the young attorneys receiving feedback on their respective performances from judges and experienced litigators, the attorneys will now also be able to critique their own performances. For the first time, all performance sessions will be videotaped. The attorneys will be given access to their videotaped performances so they can observe firsthand any aspects of their delivery of which they were not previously aware. This change will undoubtedly make the experience more meaningful for those enrolled in the program. The court is proud to play a role in the development of the next generation of trial attorneys.



Circuit Judge W. Brent Powell and
U.S. Magistrate Judge Robert Larsen



Adam Suroff and Rebecca Suroff



View the 2010-11 Program Schedule at
http://www.mow.uscourts.gov/outreach/2010_2011/luncheon_schedule.pdf.

WDMO CELEBRATES CONSTITUTION DAY 2010

Judge Fenner Speaks at MWSU

District Judge Gary A. Fenner was presented with a plaque from Missouri Western State University on Sept. 17, 2010. Judge Fenner delivered an educational Constitution Day presentation summarizing the balance of powers as set forth in the Constitution and detailing the structure of the federal courts. His presentation was complete with his personal story of the process—becoming confirmed as a federal judge.



Special Naturalization Ceremony

The court celebrated Constitution Day 2010 on Sept. 17, 2010, with a naturalization ceremony held at the Harry S. Truman Library and Museum in Independence. The Honorable John T. Maughmer, U.S. magistrate judge, presided over this event. The auditorium in the Harry S. Truman Library and Museum was the backdrop for the 50 applicants, from 31 countries, who took the Oath of Allegiance and became citizens.



In addition to the typical fanfare of the naturalization ceremony, the new citizens and their friends and family were treated to a performance by the Blue and Gold singers from William Chrisman High School, who sang "The Star-Spangled Banner" and "America the Beautiful," directed by Dr. Ron Patch, director of vocal music.

The Independence Pioneers Chapter of the National Society Daughters of the American Revolution sponsored the event along with the U.S. Citizenship and Immigration Service. The NSDAR provided a reception following the ceremony honoring the new citizens and their families, and the Missouri Society Sons of the American Revolution acted as color guard.

Speakers included Dr. Michael Devine, director of the Harry S. Truman Library, Don Reimal, the mayor of Independence, and Joann Linebaugh Walker, regent, NSDAR. Juliette Kayyem, assistant secretary of the Intergovernmental Affairs Department of Homeland Security, Washington, D.C., gave welcome remark.

What is Constitution Day?

Most Americans know that July Fourth is our nation's birthday. Far fewer Americans know that Sept. 17 is the birthday of our government, the date in 1787 on which delegates to the Philadelphia Convention completed and signed the U.S. Constitution.

DISTRICT COURT HIGHLIGHTS

Local Rule Revisions

The District Court has posted Revised Local Rules with comments accepted through Sept. 30, 2010. While many of the proposed revisions simply acknowledge the advent of electronic filing and communications, members of the bar may wish to note a few of the more substantive changes.

- Rule 56.1 - Changing the response time for suggestions in opposition to summary judgment to 21 days from 30 days in accord with recent changes to Fed. R. Civ. P. 56.
- Rule 79.2 - Codifying current practice of attorney retention as to custody of exhibits after trial.
- Rule 83.8 - Simplifying the procedure for an appearance before the court by a law student or intern/summer associate.

View detailed changes at http://www.mow.uscourts.gov/announce/lr_changes_9_2010.pdf .

Time Moves Forward—Civil Accelerated Docket Ends

The Federal Judicial Center featured the WDMO civil accelerated docket in a 1985 publication regarding innovations in court administration. The FJC noted that our civil accelerated docket (AD) was one of the finest case management tools in the federal judiciary. One portion of the calendar, known on the street as the “rocket docket,” was highlighted.

As taken from the publication: “One of the widely accepted tenets of case management is that a firm trial date is the key element in moving a case to prompt disposition. Firm trial dates are meaningless, however, if they are not supported by adequate judicial resources.”

The publication also noted: “It was the cooperation of members of the WDMO bench and bar that made the semi-annual civil accelerated docket one of the most successful case management tools of its time.”

During the past 25 years, an average of approximately 75 percent of cases placed on the AD were removed from the court's docket by one of the following: continuation for reason, dismissal, settlement or trial. During the height of AD participation, as many as 80-plus cases would begin on the three-week docket.

As we bid farewell to the WDMO civil accelerated docket, extra congratulations should be given to all those attorneys who ever endured two trials in that three-week period of time, to those judges who were in trial for three weeks straight and to the court staff who managed the organized chaos.

BANKRUPTCY COURT HIGHLIGHTS

Bussing Receives Award



Kathryn B. Bussing, a Kansas City, Mo., attorney, has been chosen to receive the 2010 Michael R. Roser Excellence in Bankruptcy Award from the Commercial Law Committee of the Missouri Bar. Bussing is well respected in the legal community for her high professional standards of practice. The award will be presented to Bussing at the annual meeting of the Missouri Bar/Missouri Judicial Conference in Columbia, Mo., on Oct. 1, 2010. The Western District of Missouri congratulates Bussing on her achievement.

View more at <http://www.mobar.org/data/am2010/awards.htm> .

Updated Administrative Procedures

The Western District of Missouri Bankruptcy Court has updated its ECF administrative procedures. The procedures have been modified to clarify requirements when parties submit proposed orders or request orders with specific language or text.

A redline version of the updated procedures has been posted to http://www.mow.uscourts.gov/bankruptcy/rules/bk_ecf_procedures_redlined_07_2010.pdf.

View the non-redline version at http://www.mow.uscourts.gov/bankruptcy/rules/bk_ecf_procedures.pdf.

Electronic Bankruptcy Noticing

The U.S. Bankruptcy Courts encourage the bankruptcy community to use Electronic Bankruptcy Noticing (EBN). EBN is a free service that allows court notices to be transmitted electronically, delivering them faster and more conveniently. Some of the advantages to electronic noticing are:

- Court notices are sent the same day they are produced by the court.
- You can access your court notices 24/7.
- Court notices traditionally mailed to multiple locations can be routed to a centralized electronic address.
- Storing court notices to your computer means you never lose a paper copy.
- Court notices can be easily forwarded around the office or to your attorney.

For more information and to register for this service, please go to ebn.uscourts.gov. You may also contact EBN Customer Service at 1-877-837-3424 or ebn@baesystems.com. Note: If you are an attorney who already receives your notices via CM/ECF notice of electronic filing, then you do not need to register for this service. However, if you are a creditor's attorney, you may want to consider providing this information to your clients so they may use this service.

Bankruptcy Attorney Advisory Group

The Bankruptcy Attorney Advisory Group will be meeting on Oct. 25. If you have any ideas or concerns that you would like addressed, please contact one of the attorneys on the following list:

Steven M. Leigh	816-221-1430	sml@mllfpc.com
Jeffrey L. Wagoner	816-756-1144	jeffwagoner@wagonergroup.com
Connie Montgomery	417-886-6500	cmontgomery@smithmontgomery.com
Jerald S. Enslein	816-822-8100	jsenslein@gallas-schultz.com
Rachel Foley	816-472-4357	foley@kcbankruptcy.com
Sherri Wattenbarger, Chair	816-512-1948	sherri.wattenbarger@usdoj.gov
Thomas J. O'Neal	417-829-3801	toneal@stklaw.com
Jill D. Olsen	816-521-8811	jill@olsenlawkc.com
David R. Barlow	816-842-9009	dave@kclawinfo.com
Wendee N. Elliott-Clement	913-663-7600 x167	wendee.elliott-clement@southlaw.com
Harry D. Boul	573-443-7000	hboul@earthlink.net
Robert D. Maher	816-421-0596	robert.maher@husch.com
Jere L. Loyd	816-364-3020	loydpc@swbell.net
Jason C. Amerine	816-842-6200 x228	jamerine@castlelaw-kc.com

http://www.mow.uscourts.gov/bankruptcy/rules/ad_hoc_adv.pdf

AT THE CIRCUIT LEVEL

8th Circuit Conference

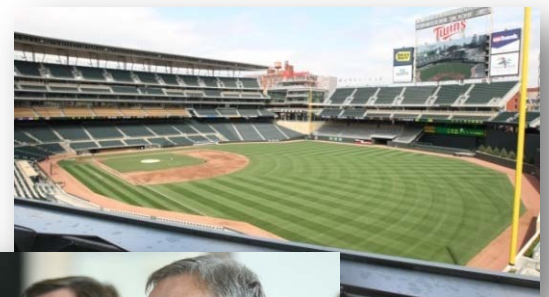
During the week of Aug. 11, lawyers and judges from the 8th Circuit met in Minneapolis for the annual Judicial Conference—focusing on “Lawyering in the 21st Century.” The Western District was well represented by judges, private practitioners and representatives from the U.S. Attorney’s and the Federal Public Defender’s offices. Attendees converged on the twin cities for education, social interaction, discussion about the current state of lawyering and, of course, a little baseball. Judge Michael J. Davis of the District of Minnesota chaired the conference, and it provided an opportunity for lawyers to meet the new chief judge, The Honorable William Jay Riley. Highlights of the conference included:

- resolutions honoring retiring judges, including our own Magistrate William Knox, who continues to serve the district in recall capacity;
- educational sessions on: social networking and jury trials, evidence in the 21st century, recent Supreme Court decisions, persuading judges, the sentencing guidelines and juror implicit bias;
- a presentation of the American Inns of Court Award to Judge Stephen N. Limbaugh Sr.;
- a panel discussion featuring Justice Samuel A. Alito Jr., who shared observations about no longer being the junior justice; and
- a trip to the new Target field for a session featuring a variety of baseball authorities who intertwined information about the league’s integration with legal topics and old-fashioned story-telling.

As with most conferences, the true benefit was the dialogue between judges and their colleagues, and between the judges and the lawyers who practice before them. This sharing continues to produce a “best practices” mentality for all those who work for and with the federal courts. Unfortunately, as law firms reduce expenses in these economic times, it becomes harder for practitioners to attend the conferences—missing out on the benefits of in-person information exchange. But the good news is that the Western District will be hosting the event in August 2012. This should give Kansas City lawyers a great chance not only to participate, but also to contribute to both educational and social event planning.



Justice Samuel A. Alito Jr. answers questions from the audience



Judges Dow and Kays at Target Field



Judge Benton shares stories at the WDMO breakfast



Judge Hendren from Arkansas and Judge Gaitan with Justice Alito at his reception

Judges Wright and Knox Receive Recognition at Jury Instruction Committee Annual Meeting

The members of the 8th Circuit Jury Instruction Committee and Civil and Criminal Subcommittees held their annual meetings on Aug. 9 and 10 at the 8th Circuit Judicial Conference in Minneapolis. At the conclusion of the meetings, Senior U.S. District Judge Bill Wilson, Eastern District of Arkansas, and the chairman of the 8th Circuit Jury Instruction Committee, gave special recognition to Senior District Judge Scott O. Wright and Magistrate Judge William A. Knox. Judge Wright was the founder of the Jury Instruction Committee and had been chairman from 1986 until 2009. Judge Knox had served as a member of the committee and was chairman of the Civil and Criminal Jury Instruction Subcommittees from 1986 until August 2010. Both Judge Wright and Judge Knox were recognized and thanked for their many years of dedicated service and hard work on the 8th Circuit Jury Instruction Committee and Subcommittees. They also each received a very nice hand-carved leather belt as a gift from Judge Wilson.

Replacing Judge Knox as chairs of the Civil and Criminal Subcommittees are Magistrate Judge Beth Deere, Eastern District of Arkansas, who was appointed by the Jury Instruction Committee as the new chair of the Civil Subcommittee, and Magistrate Judge Matt Whitworth of the WDMO, who was appointed to be chair of the Criminal Subcommittee.

The Jury Instruction Committee consists of district judges from throughout the 8th Circuit. District Judge Nanette K. Laughrey also serves as a member of the committee. Magistrate Judge Whitworth will also serve as a member of the committee, since he is chair of the Criminal Subcommittee.

Other Criminal Subcommittee members from Western Missouri are James R. Wyrsh, Wyrsh Hobbs and Mirakian PC, Assistant Federal Public Defender Troy Stabenow, Jefferson City, and Assistant U.S. Attorneys Gene Porter and Linda Marshall.

Civil Subcommittee members from Western Missouri are Daniel Boatright and Denise Drake of Littler Mendelson PC, Dennis Egan of the Popham Law Firm PC, Ann Maloney of Holman Schiavone LLC, Marty Meyers of the Meyers Law Firm LC, Larry Schumaker, of the Schumaker Center for Employment Law, and Magistrate Judge Whitworth.

The members of the committee and subcommittees work throughout the year to draft new and modify existing model jury instructions consistent with changes in the law. The subcommittee members typically meet in either St. Louis or Kansas City on a monthly basis. Once the members of the subcommittee complete their work on recommended new jury instructions or changes in existing instructions, the proposals are then presented, debated and voted upon by the members of the committee. When the committee completes its work and approves or disapproves the proposed instructions, the changes are posted on the 8th Circuit Model Jury Instructions website and are later sent to West Publishing for publication. Both the proposals and the later approved instructions can be viewed at any time on the 8th Circuit Model Jury Instructions website hosted by the WDMO.

Members of the committee and the civil and criminal subcommittees will all be devoting significant time to a “plain language” review of the 8th Circuit’s Model Jury Instructions during 2010-11. The members of the committee and subcommittees volunteer their time to work on the model jury instructions.

8th Circuit e-Filing to Change

Beginning Oct. 1, 2010, some changes will be made to the way you e-file your documents in the 8th U.S. Circuit Court of Appeals. Specifically, changes are being made to Rules 25A, 25B and 28A.

These new rules will:

- require attorneys to file the electronic copy of a brief first—file paper copy *only* after an OK from the clerk’s office;
- require attorneys to file electronic versions of the addenda to briefs, along with paper copies; and
- pro se litigants will no longer have to serve defendants with paper copies of pleadings if opposing parties use the electronic case filing system.

To learn more, view the new rules at <http://www.ca8.uscourts.gov/files/rulesOct2010.pdf>.

CASE MANAGEMENT/ELECTRONIC CASE FILES

The Next Generation of CM/ECF

Over the past decade, the federal judiciary's Case Management/Electronic Case Files (CM/ECF) system has dramatically streamlined and simplified federal court case filing, management and access. Now a group consisting of federal judges and court staff is thinking about the future of that system and asking: "If we could change CM/ECF in any way, what would we want the next generation system to look like?"



Fifteen years ago, the courts were under considerable pressure to replace a slew of deteriorating legacy systems. "Those antiquated systems were held together with bandages and bubble gum, and we replaced them with CM/ECF—with great success," said Noel Augustyn, assistant director of the Office of Court Administration at the Administrative Office (AO). By 1996, a prototype CM/ECF system was being tested and rolled out in waves to district courts, bankruptcy courts and now to the appellate courts. Today, all district and bankruptcy courts, and 10 of the 12 geographically-based courts of appeals have implemented CM/ECF.

CM/ECF essentially opens the clerk's office 24/7 to everyone, down the street or around the world. If you're a member of the public who is viewing case documents from home, an attorney filing a case from his or her office, a judge accessing case files remotely, or a clerk of court whose dockets now include electronic documents filed by attorneys and the court, you know what the CM/ECF system's electronic filing and docket management system can do—and how it has revolutionized the federal court system. Some 33 million case files currently are on CM/ECF systems, and more than 400,000 attorneys and others have filed documents using it.

Today, the AO, with the assistance of the courts, is developing the next generation of CM/ECF. Judges, chambers staff, clerks of court and clerk's office staff are examining court processes and procedures to develop functional requirements for the judiciary's future case management system.

Broad input is being solicited from those who have hands-on experience. The Judicial Conference committees are asking users:

- How do judges and law clerks envision the next generation of CM/ECF?
- What bells and whistles would make life easier for clerks of courts?
- What about CM/ECF's external stakeholders, such as consumer groups, attorneys, filers and government agencies?
- What changes in CM/ECF would they like to see?

Surveys and focus groups are answering these questions.

Work on defining the functional requirements of the district and bankruptcy courts is already several months along. Several ideas already are on the drawing board. For the appellate courts, it's a new case management tool for judges and chambers staff and easier access to the original case record in district court systems. On the district and bankruptcy side, ease of use is one of the biggest requirements. There's talk of a streamlined CM/ECF user interface accessed by iPhone or BlackBerry smartphones. "Most important," adds William McCool, clerk of court for the U.S. District Court for the Northern District of Florida, "is to make any system simple for judges and staff and our external audience to use, and to make it efficient and effective. That is, one that minimizes keystrokes to navigate between screens. If we do that, judges will use it to create text orders and other means to quickly dispose of matters, enhancing the administration of justice by speeding up the processing of cases—and thereby reducing the cost of litigation."

Please assist the federal courts (district and bankruptcy) by providing your comments and suggestions for the next generation system for federal court case filing. Contact Bill Terry with the district court at bill_tery@mow.uscourts.gov or Roberta Kostrow with the bankruptcy court at roberta_kostrow@mow.uscourts.gov with any comments or questions.

For more information, visit http://www.mow.uscourts.gov/announce/next_gen_anno_ecf.pdf.

Electronic Filing Transitions from PDF to PDF/A

The court's electronic case management and filing system (CM/ECF) has required documents to be filed in portable document format (PDF) since its inception. As technology evolves, the federal judiciary recognizes a need to move toward a more controlled standard to provide for enhanced security and improve archiving and preservation of electronic case documents.

Although CM/ECF accepts PDF and PDF/A documents today, upcoming enhancements to our system will require that all documents be filed in PDF/A format. At this time, we anticipate this requirement will take effect sometime in 2011. As the court prepares for this transition, our plan includes awareness and training components for the legal community.

Electronic Public Access in the Federal Courts

Bankruptcy Judge J. Rich Leonard—an original member of the Judiciary's Electronic Public Access Working Group and chair of the Next Generation CM/ECF Additional Stakeholder Functional Requirements Group—was featured in the August 2010 issue of *The Third Branch* about his role in the Electronic Public Access Program.

When asked about the findings of a recently conducted assessment of the Electronic Public Access program, including PACER, Judge Leonard found the most reassuring thing "was a remarkably high level of satisfaction" and how users "couldn't practice law in remote locations . . . without it."

Judge Leonard went on to say that "the assessment produced a great deal of information about what various user groups like and don't like about our services...so changes to CM/ECF will be required to implement some of the key findings from the assessment."

He concluded: "National implementation of the digital audio initiative will, quite literally, bring the courtroom to a user's desktop or MP3 player."

Read the interview in its entirety at http://www.uscourts.gov/News/TheThirdBranch/10-08-01/A_Look_at_Electronic_Public_Access_in_the_Federal_Courts.aspx.

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CLERK'S CORNER

Attorney Password Issue

On Aug. 30, the court went live with a new version of CM/ECF, our electronic case filing system. This was a routine upgrade issued by the Administrative Office of the U.S. Courts. Normally, these minor upgrades have no detrimental effect on attorney usage and are most often implementing improvements. In this case, however, we discovered that a small percentage of attorneys received messages that their login or passwords were incorrect when they attempted to file documents. The clerk's office reset passwords for the attorneys who were affected, but some members of our bar may still encounter problems. If you do, please contact the court at 816-512-5000 for a password reset. **If you do not identify this problem until after hours, remember that we have emergency contact numbers listed on our website at mow.uscourts.gov under "Phone Directory" or "Contact Us."** We apologize for any inconvenience this has caused, and we have alerted the judges' chambers so that they are aware of this technical difficulty beyond attorney control.



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COURT NEWS AND NOTES

FCAS Presents: Bench & Bar Dialogue

Members of the KCMBA Federal Court Advocates Section are invited to join the WDMO judges for lunch on Oct. 6, 2010, from 12:00 noon to 1:30 p.m. The discussion topic will be hearings on discovery and dispositive motions.

- Need for hearings/oral argument
- Types of discovery and dispositive motions that should be heard
- Collateral benefits of hearing where all counsel and court meet in person
- Effective argument at hearings on motions

The event will be held at the Whittaker Courthouse, and free Missouri and Kansas CLE credits are available. To learn more about joining FCAS and registering for this event, contact Bob Thomas at (816) 474-4322. Both KCMBA and non-KCMBA members are welcome. The annual membership fee is \$15 and \$25, respectively.

Jurors' Use of Social Media

In this day and age of ever changing technology, it is not surprising that the use of social media tools—i.e., Facebook, MySpace, blogs and Twitter—has caused concern for the courts. Most recently, a Michigan woman, while serving as a trial juror in a criminal case, posted on her Facebook account that she was looking forward to finding the defendant guilty. This personal comment caused her to be held in contempt of court. The judge in this case ordered her to pay a fine of \$250 and to write a six-page essay on the Sixth Amendment.



Such use of social media is happening nationwide, resulting in mistrials and reversals, as well as the aforementioned contempt charges. In January 2010, the Judicial Conference of the United States issued "Twitter instructions" to all federal judges, suggesting they be read to jurors when the trial begins and again before deliberations begin. Some of the language in those instructions include "do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog or website such as Facebook, MySpace, YouTube or Twitter, or any other way to communicate to anyone any information about this case."

This matter is gaining attention with the federal judges in the Western District of Missouri. U.S. District Judge Greg Kays states, "The A.O. (Administrative Office of the U.S. Courts) has made trial judges very aware of the potential problems related to the use of social media in our court system." Judge Kays intends to incorporate instructions regarding the use of social media into his own jury instructions.

U. S. Magistrate William A. Knox, chairman of the Sub-Committee on Model Criminal and Civil Jury Instructions for use in the 8th Circuit, says the committee is currently revising the instructions to take the social media issue into account. The working draft of the revised instructions is available from any member of the sub-committee. To contact a sub-committee member, or to review the instructions, you may visit the 8th Circuit Model Jury Instructions website at <http://www.juryinstructions.ca8.uscourts.gov>.

Jury Administrator Speaks at Missouri Clerk's College

Kelsee Pierce, jury administrator, represented the Western District of Missouri at the Missouri Clerk's College bi-annual conference on Sept. 9, 2010, in Osage Beach, Mo. The bi-annual conference is held each spring and fall and is sponsored by the Office of the State Courts Administrator. Pierce was invited to make a presentation in response to her being instrumental in creating the Missouri Jury Organization (MOJO).

Although many topics presented during the conference pertained to all facets of the court system, the majority relate to the Missouri State Courts and are directed to court clerks statewide. More often than not, state court personnel are unfamiliar with the federal process. Therefore, Pierce was called upon to present information relating to the federal court system. Her presentation covered the following areas:

- Differences between state and federal courts.
- Jury management practices in the federal court.
- Overview of the Missouri jury organization.
- Best requests to be excused from jury service.

Pierce's innovativeness in creating MOJO has earned her recognition among colleagues and has put the WDMO in the forefront of the jury arena.

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