

Save the Date

June 23, 2014

Federal Practice Committee CLE
Springfield; MSU Alumni Center
11:00 a.m.

June 26, 2014

Federal Practitioner's Summer Social
Kansas City; KCMBA
5:00 p.m.

June 27, 2014

D. Brook Bartlett Lectures
Kansas City; Jury Assembly Room

August 6-8, 2014

8th Circuit Judicial Conference
Omaha, NE

August 15, 2014

FPD/CJA CLE
Kansas City; 4th Floor Conf. Room
11:30 a.m.

September 4, 2014

FCAS Fall Program & Reception
District of Kansas
3:00 p.m.

September 12, 2014

MAP CLE for Outside Mediators
Kansas City; Jury Assembly Room
9:30 a.m.

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Courthouse Connection

Newsletter for the United States Courts
for the Western District of Missouri

Volume 5, Issue 3

June 2014

Harpool Investiture



Judge Harpool is sworn in by Chief Judge Greg Kays.

The Western District celebrated the investiture of District Judge Doug Harpool on May 29, 2014, in Springfield. MSU's Plaster Student Union theater was filled to capacity as family, friends and colleagues joined the court in officially welcoming Judge Harpool to the bench.

Bob Bilyeu, Judge Harpool's mentor and former debate coach at Parkview High, along with brothers Dan and David Harpool, shared anecdotes about the judge's early years and his lifelong commitment to public service. Attorney Gary Cunningham of Lathrop & Gage spoke about Judge

[Continued on Page 2](#)

2014 Koger Symposium

More than 230 bankruptcy practitioners enjoyed this year's Koger Bankruptcy Symposium, featuring Chief Bankruptcy Judge Barbara J. Houser from the Northern District of Texas and Professor Lois R. Lupica from the University of Maine School of Law.

Judge Houser opened the program with a tutorial on confirmation issues in small business and individual debtor Chapter 11 cases. Professor Lupica followed with an ethics presentation based on a report by the American Bankruptcy Institute's National Ethics Task Force. The report examined the question of whether there is a need for national ethics rules and standards, specifically in the bankruptcy context. The professor shared examples of how traditional state ethics rules do not always align with the realities of bankruptcy practice.



Attendees savored BBQ from Jack Stack.

The symposium concluded as Larry Frazen moderated a panel discussion with the guest speakers, Western District Bankruptcy Judges Arthur Federman, Dennis Dow and Cynthia Norton, Assistant U.S. Trustee Dan Casamatta, and standing Chapter 13 Trustee Rick Fink.

Harpool Investiture (contd.)

Harpool's skill as a practicing attorney and about the things he has learned from his good friend.

After presentation to the court by U.S. Senator Claire McCaskill, Chief Judge Greg Kays administered the oath, and Judge Harpool was then "enrobed" by his eldest children, Ashley, Justin and Tyler.

In his own remarks, Judge Harpool described his parents' commitment to education and to giving their children opportunities to succeed and to serve. He recognized neighbors, teachers, classmates, law partners and his close group of friends from the Missouri Legislature — all of whom helped prepare him to become a federal judge.

Judge Harpool shared his thoughts on the ceremony and performing his new duties:

My investiture was a special day for me, my friends and family. While it included far more information about me than anyone should have to endure, I am hopeful it brought back fond memories for those who helped me along the way.

I want to express my appreciation for all the kindness extended to me and my chambers staff. The tips and helping hands we received made our transition to the bench and our new jobs much easier.

I recognize that serving as a United States district judge is a special honor. However, I am mindful it is also a solemn responsibility. Our courts must earn the respect of the people we serve through evenhanded application of the laws of the land we love. I will always do my best to not only read and listen to the words of litigants, but also to try and understand their arguments, perspectives and points of view. Those who appear before me should know the rules will apply equally to all.



Judge Harpool with Senator McCaskill and family members



From left: Judge Harpool, Dan Harpool, Dr. David Harpool and Bob Bilyeu



Judge Harpool addresses his guests and the Court en banc.

Dorr Portrait Ceremony

On May 8, 2014, members of the bar, and friends, family and colleagues of the late Richard E. Dorr gathered to share stories of how the judge educated, mentored and inspired them. The ceremony marked the unveiling and dedication of **Judge Dorr's official court portrait.**

Attorneys Brian Malkmus and John Phillips and Judge Gary Fenner shared memories of Judge Dorr, with examples of his unflinching work ethic, his professionalism and honor, his sense of humor, and even his debates with friends over the book "Atlas Shrugged." Malkmus remarked:

I think that Dick was both a mentor to young attorneys and a role model for us as we became more experienced in our craft. Not only in his words, but by his example, he taught us to approach issues, our clients and our colleagues in a manner that showed thorough preparation, fierce dedication and consummate respect for the court and its officers. Anything less simply was not enough.



From left: Chief Judge Greg Kays, Scott Dorr, Brian Malkmus, Judge Gary Fenner, Barbara Dorr and John Phillips

The official portrait will hang in the ceremonial courtroom at the Whittaker Courthouse in Kansas City, and a replica will be displayed at the Springfield courthouse.

Editor's Note: Mrs. Dorr wishes to express her thanks to all those in the legal community who have extended their kindness during the past year.

Dorr Memorial Scholarship Recipient

Also at the portrait ceremony, Jami Peebles of Central Trust and Investment Co. announced Yelena Bosovik from the University of Missouri as the first recipient of the Dorr Memorial Scholarship. Scholarship winners must be first- or second-year law students who graduated from a Springfield or Jefferson City high school. Ms. Bosovik shares her appreciation and her story below:



Judge Gary Fenner presents Barbara and Scott Dorr with a replica of Judge Dorr's plaque from the Bell Room.

My family immigrated to the United States from Ukraine when I was 8 years old to escape religious persecution. The last three generations of my family served time in Soviet prisons, not for something they said or did, but because of what they believed.

My great-grandfather served a 15-year sentence in a Siberian prison camp. My grandfather, a pastor of a large Pentecostal church for 40 years, underwent several public, citywide trials for his faith. My father got the lighter end of the deal, serving only three days in a local jail on trumped-up charges.

Seeking a better future for my nine siblings and me,

[*Continued on Page 4*](#)

Dorr Memorial Scholarship Recipient (contd.)

my parents packed up their worldly possessions in six carry-on bags and moved to the United States. My family's story and the sacrifices my parents have made are my greatest motivation.

All through college at Drury University, I was determined to go into the business field, so law school was never even a possibility. Coming from a family who for generations lived under corrupt governments in the Soviet Union, the legal profession seemed daunting and intimidating.

I took the LSAT for the first time on a whim, somehow trying to prove to myself that I could do it, while at the same time applying for jobs after graduation with banks. But as graduation drew near, I looked back over my life and saw all the people, experiences and opportunities that led me to law school. I realized that I was blessed with an extraordinary chance to make a difference – not for myself, but for those who might

not have a voice or the opportunities that I have had.

This first year of law school has been the most challenging thing I have ever experienced. However, I've loved every moment of it. Even after all these months, I still have "pinch me" moments every morning when I walk through the doors of Hulston Hall.

On the first day of orientation, they told us that being a lawyer isn't just a job or a profession – it's a lifestyle. The more I learn about the law, the more I realize how true that is. It's because of people like Judge Dorr, who dedicated their lives to the pursuit of justice, that I am humbled to be able to play even the smallest role in the greatest justice and legal system in the world.

New Mediator Search Feature on ECF

The court's Mediation and Assessment Program (MAP) rolled out its newest feature this week. Rather than looking through an alphabetical list of more than 180 outside mediators, attorneys can now search by areas of mediator expertise.

To access the new tool, a user simply logs into CM/ECF, clicks the "Reports" tab and selects the link "Mediators by Self-Identified Practice Areas." From there, lawyers may select one or more mediator practice areas, such as antitrust, ERISA or copyright-IT. Click "Submit," and the system populates a list of MAP outside mediators identifying with those substantive areas. The search results organize the mediators by category in an easy-to-read chart, including contact information and the mediator's hourly rate.

Stay tuned for other new developments and resources from the MAP office.

The screenshot shows the ECF Reports page. The 'Reports' tab is selected in the top navigation. Under 'Local Reports', the link 'Mediators by Self-Identified Practice Areas' is highlighted. Below this, the 'MAP MEDIATORS BY EXPERTISE' section is visible. A dropdown menu is open, showing a list of practice areas with 'Antitrust' selected. At the bottom of the dropdown, the 'Submit' button is highlighted. To the right, a table titled 'LIST OF OUTSIDE MEDIATORS BY SELF-IDENTIFIED PRACTICE AREA' displays search results for Antitrust mediators.

LIST OF OUTSIDE MEDIATORS BY SELF-IDENTIFIED PRACTICE AREA	
June 5, 2014	
The hourly rate of mediators on this list are \$	
Antitrust	
Atwell, Charles E.	Foland Wickens Eisfelder Roper & Hofer
5300	911 Main Street, 10th Fl Kansas City, MO 64105
Bower, Brandee B.	The Bower Law Firm
6200	9218 W. 82nd Terrace Overland Park, KS 66204
Feldmiller, George E.	Law Office of George E. Feldmiller
6250	6203 Shepherd Rd. Overland Park, KS 66204

Sealed Document Procedures

What topic generates the most questions for the Clerk's Office? "Sealed documents" is the answer by a landslide.

The process can be confusing, and if the appropriate procedures are not followed, delays may occur.

Due to the importance of keeping sealed documents confidential and the complicated nature of the process, the court offers the following guidelines:

1. Sealed documents are to be filed in CM/ECF, with access restricted to the judge and authorized staff, unless otherwise ordered by the court.
2. Unless they are being filed pursuant to a previously entered protective order, users wishing to file sealed documents must seek permission from the court.
3. To file a sealed document, the user should first file a Motion for Leave to File Document, indicating the desire to file a document under seal and the reason for the request.
4. The proposed sealed document along with a proposed order should be emailed to the courtroom deputy who is assigned to the judge from whom you seek leave to file under seal. **Do not attach the proposed sealed document to the Motion for Leave to File.**
5. If Leave to File a Sealed Document is granted, the user should file the document using the corresponding sealed document event (e.g., Motion for Order (Sealed), Suggestions in Support (Sealed) or Suggestions in Opposition (Sealed)).
6. The CM/ECF system will send notification of the filing of a sealed document, but the document cannot be accessed by others, so you **MUST mail opposing counsel a copy of your filing.**

[**CLICK HERE**](#)

to access the CM/ECF Civil and Criminal Administrative Procedures Manual containing more information on filing sealed documents.

The Passing of Circuit Judge John R. Gibson



On April 19, 2014, at age 88, the Honorable John R. Gibson passed away in Reading, Mass.

John Gibson began his legal career in Kansas City after graduating from the University of Missouri. Prior to taking the bench, he served as vice president of the Board of Police Commissioners for Kansas City and president of the Missouri Bar.

His appointment to the District Court by President Ronald Reagan would be brief. After five months, Gibson was appointed to the 8th U.S. Circuit Court of Appeals, where he became a mainstay for years.

When not on the bench, Gibson pursued his love of reading and photography. Active in facilities planning as an 8th Circuit judge, he was instrumental in the design and construction of the Whittaker Courthouse.

The 8th Circuit will hold a special session of court in his honor in the fall.

The Passing of Magistrate Judge Calvin K. Hamilton



The Honorable Calvin K. Hamilton passed away on April 25, 2014. Born on September 28, 1924, he was the oldest of five children to Lena and Neva Hamilton.

Cal Hamilton often identified himself as "The Cedar County Flash" to reflect his Southwest Missouri roots. He spent his youth on a farm, playing practical jokes and baseball, and later served in World War II and the Korean War.

After graduating at the top of his law school class at Kansas City University, he served at the Missouri Attorney General's Office and as the U.S. attorney for the Western District of Missouri.

In 1971, he became the district's first chief U.S. magistrate judge and was dedicated to developing procedures to expedite the handling of criminal cases. His booming, gravelly voice and feigned irascibility sometimes concealed his innate kindness and devotion to fairness for all.

Cardarella Sworn in as FPD

Madeline (Laine) Cardarella was sworn in by Magistrate Judge Rob Larsen as the federal public defender for the Western District of Missouri on April 21, 2014. She assumes her new role following the retirement of Ray Conrad.

After graduating from St. Louis University and from the University of Kansas School of Law, Cardarella interned with the Wyandotte County District Attorney's Office. **“That experience was invaluable,” she explained, “as I realized that my passion is helping people, not trying to put them in jail.”** Cardarella served with the Missouri State Public Defender in Cass and Jackson Counties before joining the Federal Public Defender's Office in 1998.

When asked about her vision for the next four years, Cardarella responded:

I am honored to be given the opportunity to continue to serve the indigent accused in the Western District of Missouri, while now also serving the members of the Federal Public Defender's Office. We share an unqualified commitment to protecting the rights of the indigent accused. As we move forward, one focus of the office will be training for both defenders and CJA panel members, so that high-quality representation remains the standard in the district.



Magistrate Judge Robert Larsen administers the oath to Laine Cardarella with the assistance of husband Anthony.



Magistrate Judge Larsen and the Cardarella family with District Judges Scott Wright and Ortrie Smith.



Cardarella with Magistrate Judge Larsen and the members of the FPD's Office.

As we move forward, one focus of the office will be training for both defenders and CJA panel members, so that high-quality representation remains the standard in the district.

Advice from the Koger Panel

The 2014 Koger Symposium featured the traditional panel Q&A session with the Western District Bankruptcy judges and the symposium speakers. The panelists offered the following practice notes:

- As with all cases, pay close attention to deadlines.** For a small business Chapter 11 case, the exclusivity period for filing and confirming a plan is set by *11 USC Section 1121(e)* at 180 days (versus 120 days in a typical Chapter 11 case). The deadline can be extended, but the code requires that (i) the debtor demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time; (ii) the court impose a new deadline when it grants the extension; and (iii) the order extending time is signed before the existing deadline has expired.
- Trouble proving actual damages under 11 USC Section 362(k)(1) for a stay violation.** It is difficult to show emotional distress damages for stay violations based on continued collection calls. Counsel should consider the cost of **changing debtor's telephone number or service** when drafting contempt/sanctions motions.
- Case filings are down nationally and in the Western District.** Advice for practitioners: Use this time to review, improve and document internal procedures and processes, and to develop staff. If you take the time now to become well organized and efficient, you will be in a better position later to continue providing high-quality legal services when case filings increase.
- Must the underlying case be reopened when filing a dischargeability complaint?** In *In re Diamond*, ___ B.R. ___, 2014 WL 1593090 (B.A.P. 8th Cir. April 22, 2014), the 8th U.S. Circuit Bankruptcy Appellate panel provided that "opening a case to initiate a dischargeability proceeding is little more than a



Chief Bankruptcy Judge
Barbara J. Houser, Northern
District of Texas

Professor Lois R. Lupica,
University of Maine School of
Law

managerial act and has no immediate impact on the substance of the underlying bankruptcy case. Reopening a case allows the court file to be **resurrected from the court's records and also** allows the clerk to orderly administer the case. While important, the convenience of the clerk is not a proper reason for refusing to docket a complaint. The filing of an adversary proceeding creates an entirely new docket, anyway. For these reasons, we hold that reopening a case is not a prerequisite to filing a dischargeability complaint."

- Student loan reform.** See the [expanded income-based repayment plan](#) for students enrolling in 2014 or later.
- More on student loans.** Adversary proceeding filed three years after discharge allowed; student loans discharged as an undue hardship under 11 USC Section 523(a)(8) based on post-discharge change of financial circumstance. See *Walker v. Sallie Mae Servicing Corp. (In re Walker)*, 427 B.R. 471 (B.A.P. 8th Cir. 2010).
- Need a motion practice refresher?** See [Judge Dow's motion practice guidelines](#) located on the court's website.

Notice of Chapter 13 Local Form Amendment

Changes have been made to the court's local bankruptcy forms regarding the Motion for Entry of Chapter 13 Discharge and the Motion for Entry of Chapter 13 Hardship Discharge. These changes were prompted by discussion at a recent Attorney Advisory Group (AAG) meeting. Based on Rule 1007(b)(7), the new forms simply remove the implication that the Financial Management Course Certificate must be filed only by the debtor now that course providers have the authority to file on behalf of the debtor. More information is available on the court's website.

[Click here for the Motion for Entry of Chapter 13 Discharge](#)

[Click here for the Motion of Entry of Chapter 13 Hardship Discharge](#)



Chapter 13 Attorney Fee Increase

The Bankruptcy Court has adopted an amendment to Local Rule 2016-1D, increasing allowable Chapter 13 attorney's fees from \$3,000 to \$3,500 in above median family income cases.

The WDMO Bankruptcy Court judges considered this fee increase proposal at the recent AAG meeting and approved it, recognizing the extra work required for above median family income Chapter 13 cases. The amendment was effective May 14, 2014, and the general order may be accessed by [clicking here](#).

If you have any questions, concerns or suggestions regarding bankruptcy practice in WDMO, please contact one of the AAG members or [email Rob Lawson](mailto:Rob.Lawson@wmdmo.uscourts.gov), Bankruptcy Court operations manager.

[Click here to view the roster of current AAG members.](#)

Bankruptcy Court Fee Increases Effective June 1, 2014

At its March 2014 session, the Judicial Conference of the United States approved amendments to the Bankruptcy Court Miscellaneous Fee Schedule. The changes go into effect on June 1, 2014, and are summarized as follows:

- ◆ The adversary proceeding filing fee increases to \$350, which is a \$57 increase from the current fee of \$293.
- ◆ The administrative fee assessed at the filing of Chapters 7, 12 and 13 bankruptcy petitions increases to \$75, which is a \$29 increase from the current fee of \$46. The fee to deconsolidate joint cases increases by the same amount.
- ◆ The administrative fee assessed at the filing of Chapters 9, 11 and 15 bankruptcy petitions increases to \$550, which is a \$504 increase from the current fee of \$46. The administrative fee to deconsolidate joint cases increases by the same amount.

Action	Filing Fee / Administrative Fee Breakdown	Total Fee as of 6/1/2014
Chapter 7 Petition	\$245 / \$75 \$15 (Chapter 7 Surcharge)	\$335.00
Chapter 9 Petition	\$1,167 / \$550	\$1,717.00
Chapter 11 Petition	\$1,167 / \$550	\$1,717.00
Chapter 12 Petition	\$200 / \$75	\$275.00
Chapter 13 Petition	\$235 / \$75	\$310.00
Chapter 15 Petition	\$1,167 / \$550	\$1,717.00

A copy of the complete fee schedule can be found on the court's website by [clicking here](#).

Bankruptcy Offerings at the 2014 Judicial Conference

The 2014 8th Circuit Judicial Conference will be held in Omaha, Neb., from August 6 - 8. Traditionally, this conference provides premium CLE programming for those practicing in federal court. This year, organizers offer new incentive for bankruptcy attorneys to attend.

The conference will feature a full bankruptcy track, including Bankruptcy Ethics with Nancy Rapoport from the William S. Boyd School of Law, Bankruptcy Tips for Lawyers with the Honorable Terrence L. Michael from the Northern District of Oklahoma, and more!

[Register Online Today!](#)



[Click here](#) for a complete conference schedule and session list.

New Bankruptcy Operations Manager

The Western District welcomed Robert “Rob” Lawson to the court family in May as its new Bankruptcy operations manager. Lawson succeeds Roberta Kostrow, who retired in February after 24 years of service to the court.

Rob, a U.S. Air Force veteran who served as an explosive ordnance disposal technician and space operations officer, completed his undergraduate degree at the University of Maryland and earned his MBA from the University of LaVerne (California) while on active duty. He left the Air Force to attend law school at the University of Missouri – Kansas City, where he completed his JD and LLM (taxation).

Rob most recently comes to the court from a private consumer bankruptcy law practice in the St. Louis area. He previously served as the operations manager for the Chapter 13 trustee in Kansas City.

When asked about the most exciting aspect of

his new position, Rob said that he “is honored to be part of the judiciary” and “will strive to continue the tradition of excellence demonstrated by Roberta and the other fine staff of the court.”

Rob may be reached at 816-512-1818 or via email at Rob_Lawson@mow.uscourts.gov.



Rob Lawson being sworn in by Chief Bankruptcy Judge Arthur Federman.