

Courthouse Connection

Newsletter of the U.S. Courts, Western Missouri

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March 2012

Featured Article

New CM/ECF Password Reset Feature



On March 6, 2012, the District and Bankruptcy Courts went live with a new CM/ECF password reset feature. This new feature allows users to reset their password without having to contact the court for assistance. **Full Story Page 2**

New District Judge Beth Phillips



After receiving her commission from the President, former U.S. Attorney Beth Phillips was sworn in as a U.S. district judge for the Western District of Missouri on March 23, 2012. This was a small, informal ceremony to allow the judge to begin her official duties — a formal Investiture ceremony and enrobing will be held this summer. **Full Story Page 3**

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April 4—Inn of Court CLE Luncheon

April 25—Open Doors of Justice, Jefferson City

May 1—FCAS Luncheon, KCMBA Headquarters

May 31—Bankruptcy Spring Social

June 1—Koger Bankruptcy Symposium

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June 29—D. Brook Bartlett Lectures

Aug. 8-10—8th Circuit Judicial Conference

Aug. 9—8th Circuit Judicial Conf. Reception, Kauffman Center

Oct. 3—FCAS Bench & Bar Dialogue

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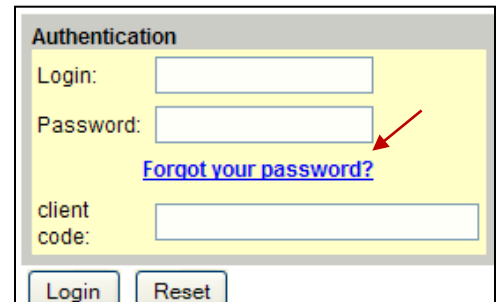
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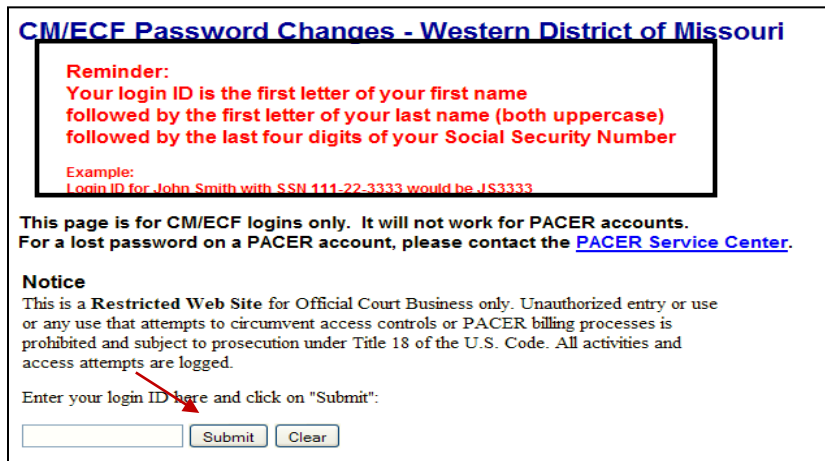
New CM/ECF Password Reset Feature

On March 6, 2012, the District and Bankruptcy Courts went live with a new CM/ECF password reset feature. This new feature allows users to reset their password without having to contact the court for assistance. **This feature does not reset PACER passwords.** To reset a PACER password, please contact the PACER Service Center at 1-800-676-6856 or visit its website at www.pacer.gov/psco/cgi-bin/reqpswd.pl.

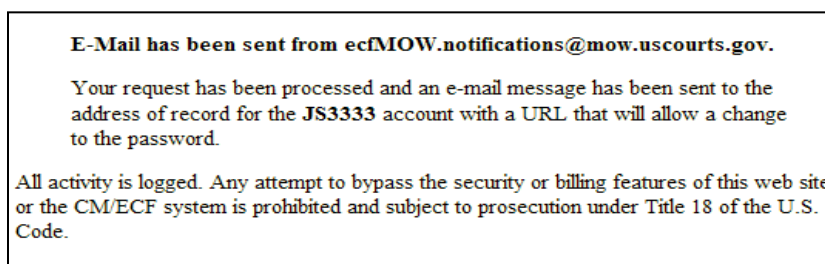
To request a CM/ECF password reset, click on the [Forgot your password?](#) link on the CM/ECF login screen.



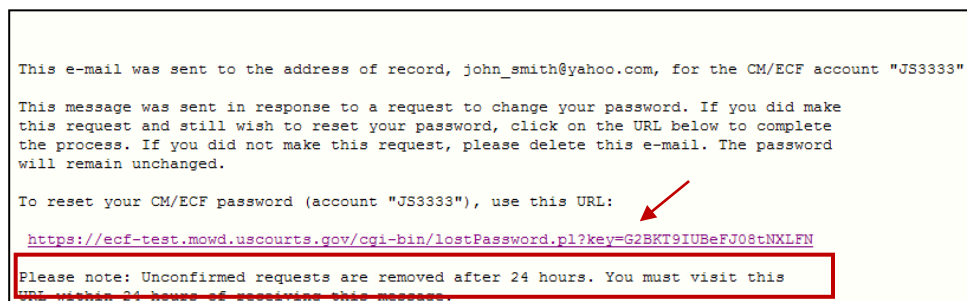
A CM/ECF password request screen will appear, and the user will be prompted to enter his or her CM/ECF login in the box provided. The login is the user's first and last initials in capital letters followed by the last four digits of the user's Social Security number.



A message will confirm that an email has been sent to the address listed in the user's CM/ECF account.



When the email message is received, the user must click on the link provided in the message to reset the password. **Please note that the link in the email message will expire after 24 hours, so passwords should be reset promptly after the message is received.**



Clicking on the link provided in the email will open a page that instructs the user to enter his or her login ID and create a new password. The password must contain a minimum of eight characters, include at least one uppercase and lowercase letter, and include at least one digit or special character. After entering the login and new password, click the *Submit* button.

Passwords must have at least 8 characters, both uppercase and lowercase letters and at least one digit or special character (e.g., @, %, &)

Enter your login ID and new password here then click on "Submit":

ECF ID:

Password:

A confirmation message that the password has been reset will appear and will include a link that will take the user to the CM/ECF login screen.

Updating your password....
Your password has been changed and the new password is now active.
You can now login by [clicking here](#).

If you are unable to reset your password using this method, please contact the CM/ECF Help Line at 1-800-466-9302 for assistance.

We hope this new feature will reduce the delay in accessing the ECF databases when there are unanticipated password problems.

New District Judge Beth Phillips

After receiving her commission from the President, former U.S. Attorney Beth Phillips was sworn in as a U.S. district judge for the Western District of Missouri on March 23, 2012. This was a small, informal ceremony to allow the judge to begin her official duties — a formal Investiture ceremony and enrobing will be held this summer.

Judge Phillips was confirmed by a full vote of the U.S. Senate on March 6, 2012. She will preside in courtroom 7A in the Whittaker courthouse. WDMO welcomes its new judge as she moves to the "other side of the bench."



Beth Phillips is sworn in by U.S. District Judge Ortrie D. Smith with her husband Circuit Judge W. Brent Powell



Federman Appointed as Chief Bankruptcy Judge

On January 1, 2012, Bankruptcy Judge Arthur B. Federman became the chief bankruptcy judge for the Western District of Missouri.

Judge Federman was born in 1951 in Kansas City. He graduated from the University of Kansas (1973), and with distinction from the University of Missouri—Kansas City School of Law (1976). At UMKC he was elected to the Order of the Bench and Robe, and was Associate Editor of the Law Review. Upon graduation from law school, he worked as a trial attorney in the Antitrust Division of the Department of Justice, in Washington, D.C. From 1979 to 1989 he was in private practice in Kansas City, and served as a member of the Panel Trustees for the Western District of Missouri. While in private practice, in addition to being a Trustee, he represented debtors, creditors, and creditor committees in cases under Chapters 7, 11, 12 and 13 of the Code. He was appointed as a Bankruptcy Judge for the Western District of Missouri on December 18, 1989, and reappointed in 2003. He currently serves as a member of the Bankruptcy Appellate Panel for the Eighth Circuit, and as a member of the Committee on Codes of Conduct of the Judicial Conference of the United States. He became a fellow in the American College of Bankruptcy in 2003.



2012 Annual Dues Deadline

WDMO attorney annual dues of \$20 are due by March 31, 2012. This fee is payable through our online DISTRICT CM/ECF filing site. Active District Court and Bankruptcy Court attorneys are required to pay this fee in order to maintain their active status with our bar. Pro hac vice attorneys and federal government attorneys do not owe this fee.

Please attempt to log into the ECF system in advance of the March 31 deadline to ensure that you can have access to the site. If you know your login information but not your password, you may reset your password at the ECF login screen by clicking the "Forget Your Password?" link. If you have other problems logging on or have forgotten your login and password, please email the court at jcgen@mow.uscourts.gov.

If you did not receive an email and need another copy of the instructions, please email jcgen@mow.uscourts.gov or call 573-636-4015.

Questions regarding attorney admissions should be directed to Jeri Russel, attorney admissions clerk, at 573-636-4015.

Bond U.S. Court House Tours

Over the past 15 years, the Western District of Missouri Courts in Kansas City has had the privilege of conducting educational tours for individuals throughout Missouri and Kansas.

With the new addition of the Christopher S. Bond U.S. Court House in the Central Division, the court is pleased to announce the same outreach opportunity in Jefferson City.

Groups that might be interested in this opportunity may range from students starting in the fourth grade through college, Boy and Girl Scouts, senior citizen groups, civic organizations, law firms and special summer camps, to name a few.



The tours are designed to help people better understand how cases get to federal court and to also learn about the different agencies that participate in the judicial process. The speakers gear their presentations to accommodate the particular age group. With each speaker, time is allowed for a question and answer period. Groups of all sizes are welcome.



Tony Centobie, IT professional, demonstrates courtroom technology for tour participants.

The tours may include presentations from:

- Clerk's Office of the U.S. District Court
- Investigative Agencies (ATF, FBI, DEA, ICE or Secret Service)
- U.S. Attorney's Office
- U.S. Probation and Pretrial Services
- Federal Public Defender
- U.S. Marshal's Office
- And a visit with a judge in his/her courtroom

A visual walk-through of the courthouse will also be conducted.

There is no charge for these tours, but they do require approximately one month's advance notice and are usually held on Tuesday or Thursday. Typically these tours begin at 10 a.m. or 2 p.m. and will last approximately two hours. Participants should arrive at least 15 minutes ahead of the requested start time. Cellphones are not permitted inside the courthouse.

We are certain you will find these tours both educational and enlightening. To learn more about the Bond Court House, visit the court's website at http://www.mow.uscourts.gov/bond_courthouse.html. For further information or to schedule a tour, please contact Cheryl LaBrecque at 573-659-7036 or by email: cheryl_labrecque@mow.uscourts.gov.

To learn more about tour opportunities at the Whittaker Courthouse in Kansas City, visit the court's website at <http://www.mow.uscourts.gov/tours.html>.

Internet Safety—Suggestions From the U.S. Attorney's Office

Provided by Matthew Wolesky of the U.S. Attorney's Office



Your biggest threat to your online security is yourself.

This may come as a surprise (and you may not want to hear it), but it is probably true. It does not make as good a movie as having some malicious, yet talented, hacker targeting your accounts, your business or your identity. However, it is far more likely that you have made yourself a vulnerable target.

Similar to how we know we need to eat healthier, get more sleep and work out more—we also know how to be safe online. Do we actually do it? That is the question. We need to, and here are a few reminders that are every bit as obvious as "sleep more" but are every bit as neglected as well.

-
1. **Passwords.** How safe are your passwords? Your kids' names and your birth date are easy to remember, but really? Discussing password strength is not new ground in protecting yourself online, but have you done it? If not, why not? And probably equally important, have you made sure those around you—i.e., spouse, kids, secretary—have, too?

Do you use the same password for Facebook or your email that you use for your credit cards or banking?

Not choosing secure passwords is the technological equivalent of locking the door with the key left under the front doormat. You know you should not do it. Don't.

2. **Public Wi-Fi.** What are you doing online while using public Wi-Fi? Reading the news, OK. Logging into and sending email, not OK. Checking your bank account ... please. You get the picture.

Oversimplification, of course. But are you thinking about it? Probably not all the time. So you are careful at your neighborhood Starbucks. How about your hotel Wi-Fi or the airport? Public Wi-Fi is *public*. So unless you are comfortable reading your bank account user name and password aloud while standing in line for coffee, do not send it over public Wi-Fi.

3. **E-mail.** You get spam email because economics support it. People actually click the links in those emails and are duped into buying things or sending money, or into downloading viruses on to their computers. Do not do that.

I am not stranded in a foreign country emailing you for money. I do not have \$20,000 that I just need to find someone to put in the bank for me. I am not your bank, and it did not just switch to a new system that requires you to re-enter all of your personal information.

We live in the Midwest. We are polite. We trust people. Sorry, but you must stop it when reading those emails.

Thankfully, most of the major email providers are good at stopping those messages from getting through. Simply put, if it sounds too good to be true, it is. If you really are concerned or are worried that something is wrong, verify it outside of the email. Do not click the link in the email. It is too easy to use fake websites and fake URLs in messages. Get out of your email, and call your bank or go to your bank's website directly.

4. **Your data.** Finally, the security of your accounts and your personal information is important, and there is plenty of ground to cover there. But do not neglect the security of your data. As more of us rely on digital devices to store our documents, photos and video, it is essential to think through a backup plan.

I know. I just told you to eat more vegetables.

But do it. How are you backing up the photos on your phone? If your laptop or iPad crashed today, what would you do? I am not even talking about work — for which you should already have a plan. I am talking about you. Your photos. Your personal data.

If you do not know what you would do without your laptop, iPad or cellphone, then you better be sure you have thought through how you are backing up your device. Fortunately, this is getting easier, but it still requires planning. It is important, and it needs your attention.

These are obvious tips, but that is the point. You know what you need to do. The problem is you are probably not doing it as well as you know you need to. You are also probably relying upon digital devices and the Internet more than you have previously, and now the cost of not following simple safety tips is getting higher.

You are the biggest threat to yourself. So start there. Protect yourself, and change your own habits.

The problem with this advice is that even if I have convinced you to eat your vegetables, now you have to get your kids to do that, too.

And if you know how to do that, I am all ears.

FCAS Bench & Bar Dialogues Recap

On Feb. 8, 2012, the Federal Court Advocates Section of the Kansas City Metropolitan Bar Association hosted one of its Bench & Bar Dialogues sessions on "*Twombly* and *Iqbal*: The practical effects of the Supreme Court's recent decisions regarding pleading requirements." An overflow crowd of federal court practitioners and judges attended and participated in roundtable discussion that was designed as an open dialogue on the impact of *Twombly* and *Iqbal* to date, and the potential impact in the future.

Individual tables discussed topics ranging from the level of specificity necessary to survive a motion to dismiss, to how *Twombly* and *Iqbal* should be applied, if at all, to affirmative defenses. After a period of lively discussion at the individual tables, each table had an opportunity to share their discussion and conclusions with the entire group.



District Court Judge Greg Kays and attendee Casey Tourtillott

District Court Highlights

Springfield Magistrate Judge Vacancy

The Judicial Conference of the United States has authorized the appointment of a full-time United States Magistrate Judge for the Western District of Missouri at Springfield to fill the vacancy created by the planned retirement of Judge James C. England.

The current annual salary of the position is \$160,080, and the term of office is eight years. The appointment will be effective after November 30, 2012.

A full public notice for the magistrate judge position and the application form are available on the Court's website at http://www.mow.uscourts.gov/announce/sp_mag_vacancy.html.

Interested persons should visit the website or contact the Clerk of Court, Ann Thompson, Whittaker Courthouse, 400 E. 9th Street, Kansas City, Missouri 64106 for additional information.

Application packets must be submitted only by applicants personally and must be received by March 30, 2012.

Courtroom Changes for Judges Smith and Kays

Please note that courtroom assignments have changed for Judge Ortrie D. Smith and Judge Greg Kays.

Judge Greg Kays	Courtroom 8C
Judge Ortrie D. Smith	Courtroom 8E

Bankruptcy Court Highlights

Verification by Debtors—New Local Form

The Western District of Missouri Bankruptcy Court has created a new local form (Verification by Debtors) to replace two existing forms (Verification of Schedules and Verification of Matrix). The new form uses a check-box approach and is designed to be used to meet the new signature requirements contained in the recent amendments to Local Rule 1009-1 adopted by the 2011 general order of the court, which took effect on Jan. 1, 2012.

A link to the PDF version of the form is shown below. The second link takes you to the main bankruptcy forms page where Word and WordPerfect versions of the form are also available.

http://www.mow.uscourts.gov/bankruptcy/forms/vef_by_debtors.pdf | <http://www.mow.uscourts.gov/forms.html#bankruptcy>

If you have any questions, please contact Roberta Kostrow via email at roberta_kostrow@mow.uscourts.gov.

Brown Bag Luncheons Engage Practitioners

Two times a year, Bankruptcy Judge Dennis R. Dow hosts an open forum in Jefferson City to advise bankruptcy practitioners about new rules, procedures and developments of interest. The judge and his staff work collaboratively with the U.S. trustee, chapter 13 trustee and panel trustees to coordinate topics and issues of interest. The format provides for an open dialogue where topics range from formal presentations to general questions posed by attorneys to the judge.

Each brown bag session generally opens up for questions or comments about practice and procedure following any planned agenda items. Judge Dow believes the format serves as a way to keeping people informed and gives them the opportunity to express concerns in an informal atmosphere. The forum may also be used as an opportunity to address concerns about things the judge would like to see change.

Lunches are typically held in March and September at the Bond Court House in Jefferson City. Invitations are sent via email two weeks prior to the event.

“My goal is to remain in touch with practitioners and to find what is of concern to them and give them an opportunity to ask questions, making them more likely to be able to achieve the results they need for their clients and to be successful.”

—Judge Dennis R. Dow



Judge Dow hosts a brown bag luncheon in Jefferson City on March 15, 2012.

Nominations Accepted for the Next Generation Program

A group of 40 up-and-coming bankruptcy attorneys will have the unique opportunity to participate in exciting and new features of the Next Generation program at the 2012 NCBJ (National Conference of Bankruptcy Judges) annual meeting in San Diego (Oct. 24-27, 2012). The program will offer three events solely for program participants, including a private gathering with bankruptcy judges, a guided tour of the historic courthouse and a networking reception of peers. Law firms, government agencies and bankruptcy judges are invited to nominate as program participants attorneys under their supervision who deserve special recognition for their professional accomplishments to date, and who show the potential to distinguish themselves in future years as highly respected members of the bankruptcy bar.

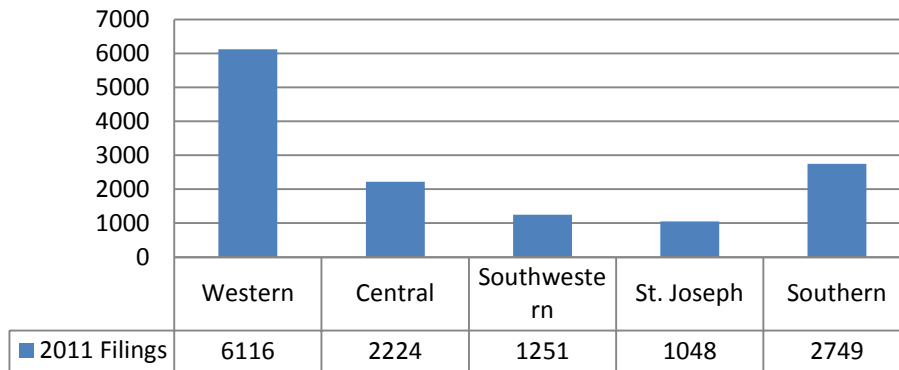


To be nominated, the prospective program participant must:

- a. have five to 10 years of experience practicing law;
- b. devote at least 50 percent of his/her practice to bankruptcy cases;
- c. demonstrate legal excellence in the practice of bankruptcy law;
- d. display a serious commitment to principles of civility, ethics and professionalism; and
- e. demonstrate commitment to the continued educational development of bankruptcy professionals and to professional activities that will benefit the public, members of the bar and the court system.

For more information about how to nominate a candidate and about the three special events for the *Next Generation Program* participants (judicial roundtable, guided tour of the historical courthouse and a networking reception), visit the NCBJ website at http://www.ncbj.org/documents/2012_NCBJ_Next_Generation_Program.pdf.

Total Filings in 2011



At the Circuit Level

8th Circuit Panel Hears Arguments

Eighth Circuit panels of judges visited Kansas City twice this year—once during the week of Feb. 13-17 and again from March 12-16.

Feb. 13-17

The February panel was composed of Judges James B. Loken (MN), Kermit E. Bye (ND) and Michael J. Melloy (IA). There were many interesting issues that week, and the Western District of Missouri was well-represented, including arguments on the following three cases:



Judges Kermit E. Bye, James B. Loken and Michael J. Melloy

1. *Bridget Raswaw, et al. v. United Consumers Credit Union; Michael J. Knight v. Central Communications Credit Union; Bernard W. Moran v. Missouri Central Credit Union*

Three credit unions participated in a subprime motor vehicle lending program administered by Centrix Financial, LLC. Centrix provided financing for the purchase of motor vehicles and took a security interest, and the loans were purchased by the credit unions, but Centrix continued to service the loans. After the loans were defaulted, the cars were repossessed. The pre-sale notifications sent by Centrix on behalf of the credit unions did not comply with the Uniform Commercial Code, and when the credit unions became aware of the defective notices, the credit unions sent out new notices—also defective. Car owners brought suit against three participating credit unions in three separate actions alleging violations of the UCC and the Missouri Merchandising Practices Act, and conversion. In each case, the District Court dismissed the UCC and conversion claims as time-barred and concluded the MMPA did not apply to credit unions. The car owners appealed, arguing the District Court erred by applying the incorrect statute of limitations, in concluding the claims for damages were not claims for penalties and forfeitures for purposes of the applicable statute of limitations, and in concluding credit unions were exempt from the MMPA.

2. *Crystal Henley v. Kansas City Missouri Board of Police Commissioners, et al.*

Crystal Henley enrolled in the Kansas City MO Police Academy. She claimed that during her field training course, instructors engaged in a series of actions to make her quit, including sexually harassing her, invading her privacy, degrading and humiliating her, physically assaulting her, and injuring her. Henley brought a civil rights action alleging gender discrimination and sexual harassment under the Equal Protection Clause and the Due Process Clause. The District Court dismissed the action against certain defendants, concluding that Henley failed to exhaust her administrative remedies. On appeal, Henley argues the District Court erred in concluding that the exhaustion requirement in Title VII is required in civil rights actions.

3. *Government of Ghana v. ProEnergy Services, LLC, et al.*

The government of Ghana filed an ex-parte application for discovery in a foreign proceeding pursuant to 28 U.S.C. § 1782, relating to information from a lawsuit between ProEnergy Services and Balkan Energy Co. in WDMO. Ghana had a pending dispute in The Hague and in the High Court in Ghana against Balkan Energy Limited (Ghana) over a Power Purchase Agreement. The District Court initially granted Ghana's application in February 2011. Balkan Energy Limited was allowed to intervene and moved for reconsideration of the application for discovery. ProEnergy filed a motion for protective order, contending the information includes trade secrets, and proprietary and confidential information. The District Court denied the motion for reconsideration and directed counsel for ProEnergy and Ghana to confer over the discovery requested. After a telephone conference, the District Court ruled that ProEnergy need not produce documents relating to the settlement of the Balkan/ProEnergy litigation. On appeal, the government of Ghana argues the District Court abused its discretion in denying the discovery documents relating to the settlement.

March 12-17

In March, the 8th Circuit panel sitting on Tuesday and Wednesday was composed of Judges Roger L. Wollman (SD), Stephen M. Colloton (IA) and Duane Benton (MO). Tuesday's arguments were held at UMKC School of Law, and two of the three cases originated in the courts of our northern neighbor, Iowa. Tuesday's cases at UMKC involved the Telecommunications Act of 1996, a Bankruptcy Appellate Panel appeal from the Bankruptcy Court for the Western District of Missouri, and wrongful termination. (*Sprint Communications Co. v. Robert Berntsen; Joseph Terry v. Standard Insurance Company; and David Fesler v. Whelen Engineering Company*)

On Wednesday, issues included the Family Medical Leave Act, the Americans with Disabilities Act, immigration and the Equal Pay Act, as well as a case involving the estate of the president of the Elvis Presley Fan Club and the disposition of his extensive collection of Elvis memorabilia.

On Thursday and Friday, Judges Wollman and Colloton welcomed to their panel newly appointed Western District of Arkansas Judge Susan O. Hickey. The panel heard arguments on Sentencing Guidelines, distribution and possession of meth, and bank fraud. Two additional arguments are outlined below:

1. *United States v. Carl Deon Shinn*

An officer in the Iowa Internet Crimes Against Children Task Force, posing as a 14-year-old girl, engaged in an extended exchange with Carl Shinn over the course of several months. When Shinn agreed to meet her at a Motel 6 for sex, Shinn was arrested and found to have three cameras and nine condoms in his vehicle. At trial, Shinn presented an entrapment defense and requested an entrapment instruction, which the District Court denied. Shinn was convicted and sentenced to 63 months. On appeal, Shinn asserts the court erred in rejecting his entrapment defense and instruction, insufficient evidence, and an unreasonable sentence.

2. *United States v. Robert Green*

An appeal from the Western District involved a convicted bank robber, Robert Green, who challenged the Terry stop, and the upward departure in sentencing based on the Green's past criminal history (bank robbery).

Court News & Notes

UMKC Hosts Trial Competition at the Whittaker Courthouse

On Feb. 16, 2012, the Court welcomed teams from Drake University, Hamline University, St. Louis University, the University of Iowa, the University of Minnesota, the University of Missouri—Columbia, the University of Missouri—Kansas City, the University of St. Thomas, the University of Wisconsin and Washington University a national trial competition and regional tournament.



The finals were held on Feb. 18, 2012, and four teams competed. Washington University and St. Louis University won, and they will compete at the National Competition in Austin, Texas, on March 21-25, 2012. The University of Missouri—Kansas City finished a close third and graciously hosted the tournament.

The competition was a great success, and competitors, judges and witnesses alike expressed tremendous praise about the welcoming atmosphere of the court and those assisting with the event. The event brought considerable talent and enthusiasm for the law to the courthouse and provided a preview of the Midwest's future trial lawyers.

Courtroom Assistance for Hearing Impaired

The court has sound-amplifying headphones available for use during hearings. If you or your client needs hearing assistance while in the courtroom, please contact the courtroom deputy prior to the hearing so that she can have the necessary equipment ready.

PACER Fees to Increase April 1



In September 2011, the Judicial Conference of the United States authorized an increase in the judiciary's electronic public access fee in response to increasing costs for maintaining and enhancing the electronic public access system. The increase in the electronic public access (EPA) fee, from 8 cents to 10 cents per page, will take effect on April 1, 2012. The change is needed to continue to support and improve the Public Access to Court Electronic Records (PACER) system, and to develop and implement the next generation of the judiciary's Case Management/Electronic Case Filing system.

The EPA fee has not been increased since 2005. As mandated by Congress, the EPA program is funded entirely through user fees set by the conference.

The conference was mindful of the impact such an increase could have on other public entities and on public users accessing the system to obtain information on a particular case. For this reason, local, state and federal government agencies will be exempted from the increase for three years. Moreover, PACER users who do not accrue charges of more than \$15 in a quarterly billing cycle would not be charged a fee. (The current exemption is \$10 per quarter.) The expanded exemption means that 75 to 80 percent of all users will still pay no fees. The 30 page cap on reports and case-related documents (excluding transcripts) will remain in effect for a maximum charge of \$3. View the updated PACER fee schedule at <http://www.mow.uscourts.gov/district/rules.html>.

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