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Domenico  Federal Pro Se Bankruptcy Clinic – Job Opportunity  2020 New Board Members**  **FFA Upcoming Events** |  |  | | --- | |  |  |  | | --- | | [**Who We Are**](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJmUzbchJGHm4dogv7JOf8niw0Nr4P17-TxqbQ_-uGySddFVUxb7qgk0E4-721TFyqFrnDHMJZS0QPhIAxld3L-srVb-uoyBMHRLpvDYWsokB528ZL1TQ0upFX42xFrHW8xSKIj3t1vDrNj44Wp117mQ==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==) | | **Board of Directors**  Marilyn Chappell  **President**  Russell Stewart  **President-Elect**  Ryan Bergsieker  **Treasurer**  Daniel Graham  **Secretary**    Benjamin Strawn  **Immediate Past President**  Aaron Conrardy  Hetal Doshi  Nathan Foster  Kirstin Jahn  Danielle Jefferis  Joshua Lee  LeeAnn Morrill  Elisabeth Owen Christine Samsel  Karl Schock  Daniel Shaffer Wendy Shea  Anne Sherwood  Dana Collier Smith **Executive Director** |  |  | | --- | |  |  |  | | --- | | **Mission of the Faculty of Federal Advocates**  **The Faculty of Federal Advocates  (FFA)** is an organization of attorneys dedicated to improving the quality of legal practice in the federal courts in Colorado by enhancing advocacy skills, professionalism, and the integrity of practice.  The FFA provides continuing legal education classes, mentoring and pro bono opportuni-  ties, and other support services to foster and demonstrate commitment to the highest standards of advocacy and professional and ethical conduct. The FFA pro-motes support, mentorship, education, and camaraderie for federal court practitioners.  Become a member or learn more at our website:  [facultyfederaladvocates.org](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpNQ6Gfdm_tv7-f-NrdMjGAVrTjSm9RUcpBzXEutKxY_kE2K6zgsD-JxHgCR_08-4TRC2bHp8pZEgs8fTTTP7z_q_F8RlmniIImFiZ6kToAiXmd3w4H-hgJNLa-2H5QtMfebNRqEmXz53_4-UoskphX3zYmWTDNRfXg==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==) | |  |  |  | | --- | | **Quick Links**  [**Join the Faculty of Federal Advocates Here!**](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpMorO1PxACWFn2Z8TcE1KqdlGqV9lz7eXjAvJzCQ1My-9kLkd10rCSyDI7Ullkk2E8yhHGv11mZJgyJjlv2OABcajsEGzs2lcIuj8JkaTDWHQP52JtX2KtlENjjWnmfBdQ2Bghad2QaK7T7mMwelwMIukxXo3sPWaw==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==)  [U. S. Supreme Court](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJ_t_Pu7YObAHKGHjkEbgfwax1gj52SgorD3rnvj3EzVBBCk89FZAwbHehkkvRar3Fvdor03IvYX8_IWzdxNjkNZpRBVnESjwI4MjHljxbFSHZRrGSUt5tpA==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==)  [U. S. Court of Appeals 10th Circuit](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJ48DZIFpQt1dp4KVqZwe7cagDt3i4YnqpP9zF2avsNxJUSkeIgi1om2hjRmMfi7fHgg0AqabpJzx5sJsvx2LA4aUr22XyvXcNz9680JYd3gt0_Zk_vJHyGw==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==)  [U. S. District Court  District of Colorado](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJ3kp7isoGQ1LO4SsA1gIqrJpjXi1cD4U3zUG2MPMqybPb7Tkx4Q_f1XUXS9rUwiyDuk8v4Uwpp4-yFQtKBk3ulZL2UI0s25v9w0s0uG7Y0zPMfpX1knoIjw==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==" \t "_blank)  [U.S. Bankruptcy Court, District of Colorado](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpCJt3nXIOuoKjfo9Vi9Ssy3JbxYrW5Eyr4VCtZvtLD1wVlM6CXSRYOyFtomkd16D66g2n4xnSKha68RvwqJTL-ezKHwA0IGM-StkzmcNyOmqL5qFFIFB1bBGjXofs8mWxw==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==)  [U. S. Attorney’s Office Colorado](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJAMAZ_Z_HXfCEi0OpM-BwK3KnI_8fGGfP1vkd-2PdYYXpysOIABeOKqBkz4_bQUbyxR2Pl41W78D1HNvPZonFj3nyemF7qjqURaKQ_sCtep9543-kqIIo6Q==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==)  [Federal Public Defender Colorado/ Wyoming](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJ1LbLmyckJi7L_Ag3-cpRLm85knu9za49PhbLOCUWC83QJ4ZBlWETbzKBmeJKfPy8Dm_7OnUX3NkOR0TAJPOROuO95nRO5RGQyY9kX18Hr_k=&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==)  [Colorado State Courts](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJuChqJfe_yVTKz3CaMGFq8ORzxR3oDxkvseXalrctStJLLLTZfRHOiykprS-Fg43NLxXQ1PGIqYEF331JPokaz4XO0jv3TG7Hiep_DtiUjgAGvznRiyRZXQ==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==)  [*Our Courts*](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJAPLupWAArzJtX3p0oCyE1KQ2czk-18P7nMnT0tcZfuQwyI5JW8UmjCnRWt7M1zhm-6izzPbZhMrKZkPikpPos0sxLUEsbgVbLWmdFjo7F3Ap-hbmRaWG1g==&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==) | |  | | | |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | | |  |  |  | | --- | --- | --- | | **Issue: 2020/2** | **Fall 2020** |  |  |  | | --- | | **Welcome to the Faculty of Federal Advocates**  **Fall 2020 Electronic Newsletter**  [www.facultyfederaladvocates.org](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJYzXf5Mody-bmIgWMdZntxFy0MyVQgL7eztlBMaptoUUyNBO97aZhItiT58A0VEcQLhxMOYKQTMsv6GAahsQeeYaSF1p4aRbguurPUHHBW-q0cbGPxi8bvfAFQdJtb0lm&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==)  The Newsletter brings you news about FFA events and CLE programs along with useful information for federal practitioners, including links to relevant websites.  The FFA welcomes contributions to our Newsletter from our membership. Newer attorneys, experienced attorneys, and law students are all encouraged to submit articles. If you are interested in submitting an article to be considered for publication, please contact the FFA by emailing: [dana@facultyfederaladvocates.org](mailto:dana@facultyfederaladvocates.org).    **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |      |  |  | | --- | --- | | **FFA VIRTUAL RECEPTION WITH MAGISTRATE JUDGE KRISTEN L. MIX RECOGNIZING THE USDC CIVIL PRO BONO PANEL**  **AND  FFA ANNUAL MEETING  Thursday, December 3, 2020 5:00-5:45 p.m.**  Please join the FFA and Magistrate Judge Mix at a virtual reception recognizing 2020 participants in the Civil Pro Bono Panel of the U.S. District  Court for the District of Colorado.  The FFA will announce newly-elected Board members and acknowledge outgoing Board members at the FFA Annual Meeting to follow.  This is a free event but you do need to register in advance so you may be provided with the Zoom login link. To register, please click [**HERE**](https://www.facultyfederaladvocates.org/event-3874379).  We hope you can join us for this annual event—this year from the comfort of your office or home.  If you aren’t an FFA member but would like to join, please click [**HERE**](https://www.facultyfederaladvocates.org/Join-the-FFA)**.** We are currently offering a promotion of "14 for the price of 12." Join now, pay the 2021 dues, and your membership will start immediately and go through December 31, 2021.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  E-Discovery: working cooperatively  to avoid the e-discovery sideshow  By V. William Scarpato III[[1]](#footnote-1)  On January 8th, 2020, the FFA welcomed Magistrate Judge Kristen L. Mix of the United States District Court for the District of Colorado, along with practitioners Nicole Quintana, Martine Wells, and Kelly Twigger, for a presentation on e-discovery. Over the course of the hour, the panel gave helpful insights on the discovery process, developments in e-discovery practices, and broader case strategies and ethical considerations in the discovery context.  The presentation began with several statistics that underline the importance of e‑discovery to the practice of law today. By 2020, the panel noted, there will be at least 44 trillion gigabytes of data in the digital universe. And at an average of 60,000 pages and 1,500 hours of attorney time per gigabyte, it can cost approximately $60,000 to review just one gigabyte of information. No wonder, then, that e-discovery is a significant driver of litigation costs these days.  The panel’s solution to these costs is to approach litigation with civility, and to take the necessary time to define the issues at the outset of the case. Ms. Twigger suggested starting with any relevant jury instructions and working backwards to establish just what types of documents, which custodians, and what date ranges are likely to tell the story. After all, judges typically decide discovery disputes by focusing on what the information at issue is and, critically, why it is necessary to the case. Magistrate Judge Mix agreed and added a jurist’s perspective. Lawyers, she said, frequently lose track of the story they *need* to tell in pursuit of documents or information that merely bears a chance, however slight, of bringing some unexplained insight. Maintaining focus is critical.  After these preliminary insights, the panel presented a case study based on a lawsuit between an individual plaintiff and a corporate defendant. The panel used the case study to frame a number of lessons about how to confer effectively on common e-discovery issues.  The panel agreed that counsel for a large, corporate client will typically have an information advantage about how the client maintains its information. As a result, the first step to address that advantage is to establish rapport in initial conversations with opposing counsel. Those conversations will need to establish, among other things: (i) the data repositories that house potentially relevant data; (ii) the individuals who are most knowledgeable about those repositories, including potential Rule 30(b)(6) witnesses; (iii) what the applicable retention policies are; (iv) whether there is a preferred e-discovery vendor or platform that needs to be taken into account; and, not least important, (v) whether the court has any practice standards that bear on discovery procedures.  At the same time, the panel explained that it is critical to communicate early and often with the client about its preservation obligations. In the first conversations with the client, the lawyer should discuss a legal hold and preservation notices to all potential parties, third-party witnesses, and vendors. The lawyer should ensure that they are identifying relevant data during this process, or working with a knowledgeable person to ensure that this happens. The lawyer should also ensure that they educate likely custodians about their obligations to preserve data. The District Court has published guidelines that can assist in the process, available here:  <http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/ElectronicDiscoveryGuidelinesandChecklist.aspx>.  Magistrate Judge Mix added that it pays to view skeptically the client’s own story about what information is available and where. She opined that many corporate counsel have an overly idealistic understanding of how their organizations actually maintains data in practice.  Ms. Twigger noted that, to the extent text messages may be relevant and must be preserved, they are typically only saved locally on the sender’s and receiver’s phones, *not* on any wireless carrier’s system. To preserve a cell phone, it should be placed in airplane mode, which will interrupt send and receive functions that could change the data on the phone. Screen shots and low-cost apps (such as iMazing) can facilitate the capture process.  Scope is another early discovery issue. The value of the case will help decide appropriate discovery boundaries, as well as important retention policy decisions. From a plaintiff’s perspective, the law firm’s budget and resources will often decide the scope of discovery, which should be as narrow as possible while still getting the information necessary to tell the story. The panel also explained that sampling can be a very effective tool to help determine scope, i.e., conducting a preliminary search of likely data sources and custodians to see what potentially relevant information may exist. Magistrate Judge Mix agreed and added that sampling can be very effective advocacy—it shows rather than tells what potential discovery will bring. She also noted that, while the amount in controversy is a consideration, it is frequently not dispositive. Otherwise, there would be no way to ensure that many individual plaintiffs or those with low-dollar claims would be able to obtain necessary discovery.  The panel concluded with their thoughts on Rule 26(f) conferral and how to approach litigation generally. It always helps to prepare for the conference in advance by establishing what needs to be discussed and what information the party needs. It is worthwhile (at least in the absence of a pandemic) to have the conference in person; doing so humanizes the conversation, and leads to a more collaborative, efficient approach. And it is also an opportunity to set expectations about preservation and scope from early on.  One helpful practice pointer is that Magistrate Judge Mix typically sets scheduling conferences for a 30-minute block. If after conferral the parties think they will need help resolving any early issues, she encourages them to let chambers know in advance so she can reserve more time.  Magistrate Judge Mix finished the day with general thoughts about civility and litigation. The rule of law, she said, is what makes our society run smoothly. Lawyers and judges have the most input into what the rule of law looks like and how strong it is, and professionalism and civility are fundamental to that goal. This is as true in discovery as it is in all other parts of the practice of law. We should all take the time to reflect on the matter before us, big or small, and decide how our approach to it will help our client and help our profession to serve justice.  Many thanks to Magistrate Judge Mix, Ms. Quintana, Ms. Wells, and Ms. Twigger for their very insightful presentation!  The panel encourages FFA members to refer to additional materials available by clicking [**HERE**](https://facultyfederaladvocates.org/event-3614428).  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **REMARKS FROM THE BENCH: U.S. DISTRICT COURT JUDGE DANIEL D. DOMENICO**  By Aurora Randolph  On January 20, 2020, Judge Daniel D. Domenico of the United States District Court for the District of Colorado gave a presentation at a continuing legal education program sponsored by the FFA. Judge Domenico spoke about the judicial confirmation process and offered the following practice pointers and reflections on his initial experience on the bench:   1. **Importance of the entire U.S. District Court team**: The entire team around a U.S. District Court Judge—including law clerks, the Clerk’s Office, courtroom deputies, and the Magistrate Judges—is crucial to the success of the process. Practitioners should treat all officials of the Court as they would treat a District Judge. 2. **Value of and reliance on Magistrate Judges**: Magistrate Judges help U.S. District Court Judges immensely. Upon being confirmed to the U.S. District Court, Judge Domenico inherited cases in a variety of stages from different judges and decided to leave the previous referrals to the Magistrate Judges as they were to see what type of referral style worked best for him. Judge Domenico generally refrains from referring dispositive motions to Magistrate Judges in cases with represented parties. Most discovery issues will be referred to Magistrate Judges, and Judge Domenico encourages parties to use Magistrate Judges for mediation. 3. **Credible and focused advocacy**: Judge Domenico reflected that he has been surprised about how few obvious and easy cases there are in front of him. He noted that when a lawyer litigates their case, they are often convinced they should prevail. But he warned against falling into the trap of believing that your position is the only reasonable result possible. Judges are frustrated when they are asked to resolve a dispute between lawyers rather than a legal dispute. Practitioners should take a step back from fights with opposing counsel and be mindful of their advocacy to avoid distracting from the case. 4. **Perspective on jury trials**: Judge Domenico stated that his perspective on jury trials is that the witnesses and evidence should push the case forward, and the judge should generally stay out of the way and let practitioners present their case. But, he noted, practitioners should limit their drama and antics during trials. Judge Domenico sets trials after dates for dispositive motions are set. Trials are generally longer than they need to be and that can have the detrimental effect of overwhelming people. 5. **Importance of jury instructions**: Practitioners do not give enough attention to jury instructions. At very early stages of the case, practitioners should consider what instructions will be needed and resolve issues about them earlier rather than later. 6. **Technology in the courtroom**: Technology in the courtroom can be very useful, but practitioners need to know how to use these resources before they attempt to do so in court. Judge Domenico requires coordination with the courtroom deputy before technology is used in his courtroom. 7. **Sentencing in criminal cases**: Judge Domenico remarked that sentencing is the hardest part about his criminal cases. The sentencing guidelines are a good start in considering an appropriate sentence, but it would be helpful to have more creative sentencing options, too. Lawyers can make a significant difference at the sentencing stage of these cases. 8. **Dispositive motions**: Dispositive motions are helpful in defining the issues actually in dispute in a case. Judge Domenico encourages motions for partial summary judgment, where appropriate. Generally, pro se dispositive motions are referred to the Magistrate Judge. 9. **Litigating pro se cases**: Judge Domenico encouraged practitioners to take cases from the District of Colorado’s Civil Pro Bono Panel. He noted that his first argument in front of the U.S. Supreme Court was a pro se prisoner case—which, unfortunately, he ultimately lost. Taking on a pro se case is a good proposition for a practitioner as they are not expected to win and it benefits the Court greatly. 10. **Extended confirmation process**: Judge Domenico also reflected on his prolonged confirmation process. The process was stressful and hard, and took about two years; but Judge Domenico opined that such a thorough process is important and warranted for a lifetime appointment.   Judge Domenico also offered the following specific points for those practicing in front of him:   1. Practitioners should remember their audience when in court. Appearing in front of a jury is different than appearing for a motions hearing in front of a judge, and practitioners should style their presentation accordingly. 2. Judge Domenico’s general practice is to hold a single final pre-trial conference a few weeks before trial, as opposed to two pre-trial conferences. 3. Although Judge Domenico noted he was considering a change, he said that generally he does not allow exhibits or PowerPoints during opening statements. 4. Judge Domenico generally does not have hearings on motions unless it is really necessary and will normally resolve motions on their briefs, so practitioners should present their full arguments in their briefs. 5. Judge Domenico sets the deadline for Rule 702 motions earlier than some judges because he believes that, though they are not dispositive, they have big implications for a case and should be   decided sooner than right before trial.   1. Judge Domenico seats nine jurors for civil trials and 12 jurors plus one alternate for criminal trials. He does initial voir dire himself and then allows each side a short amount of time to do their own. 2. Lawyers should not wander around the courtroom when in front of a jury. And when practitioners are speaking to the Judge, they should generally speak at the podium.   The FFA thanks Judge Domenico for his insights.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **PRO SE, YOU SAY?**  **BEST PRACTICES IN PRO SE LITIGATION**  By a United States District Court Law Clerk  Based on recent statistics, approximately one-third of the filings in the United States District Court for the District of Colorado involve pro se parties. It follows then that (1) an attorney will likely have a case with a pro se party at some point in time; and (2) there is a great need for pro bono representation for litigants. So, what should attorneys do—or not do—when the other party is self-represented? And how can attorneys provide assistance to deserving pro se litigants? On February 13, 2020, United States Magistrate Judge S. Kato Crews, Leslie Kelly, Esq., and Caitlin McHugh, Esq., answered these questions, providing tips to attorneys to navigate such a case and identifying resources for providing such assistance. All with the aid of moderator Daniel Graham, Esq. Some highlights of their tips and the available resources follow.  ***Be Reasonable and Pick Your Battles.***  Magistrate Judge Crews challenges lawyers to consider this question: is this a case that requires “scorched earth” tactics or should you scale back? You know it’s the latter. Ms. McHugh points out there’s a difference between “gotcha” litigation and zealous advocacy. The former is harder and more expensive for everyone. And while the Court does not act as a pro se litigant’s advocate, it will construe his or her papers liberally and hold such papers to a less stringent standard than those drafted by attorneys.  ***No Legalese, Please.*** Who is your audience? Write and talk so pro se parties understand what you are saying and asking. They probably don’t know what interrogatories are and don’t understand how discovery works, much less what those form objections attorneys include in every discovery response mean. This also falls into the “be reasonable” category. Ms. Kelly reminds us that the majority of litigants proceed *in forma pauperis* and represent every walk of life.  ***Be Patient.*** Don’t be scary, but don’t be afraid to *talk* to them. (Remember, words may have a different effect verbally than in writing.) And please build in additional time to handle matters, especially with discovery. That being said, you don’t want to give pro se litigants legal advice or to have them mistakenly believe you are representing them. Thus, some suggestions: (1) preface your words with an admonition that “I’m not going to give you legal advice”; (2) refer them to the Federal Pro Se Clinic for advice; and (3) send a written confirmation (e.g., email) to the litigant, reiterating that you don’t represent him or her.  ***Ask for Assistance, But Please Help the Court.*** The Magistrate Judges in this District are often on the front line with pro se parties. Don’t be afraid to ask for their help in moving the case forward or if the case spirals out of control and off track. Request a status conference, or an early neutral evaluation, settlement conference, or mediation. Generally, earlier is better, before parties are wedged into their positions, to reign in unreasonable demands, and to allow the pro se litigant to be heard. While it is generally the pro se litigant who requests the appointment of pro bono counsel, the Court may, on its own, determine that appointment of counsel is warranted.  Please also ask for help if you encounter a disappearing pro se plaintiff; the plaintiff may be overwhelmed by the case, especially by scorched earth discovery. What can an attorney do? First, attorneys should keep good records of their efforts to confer or communicate with the plaintiff, and of the plaintiff’s non-responsiveness. Next, attorneys may file a status report or notice with the Court, explaining that they are unable to communicate with the plaintiff and requesting a status conference. If supported by the record, attorneys may move to dismiss the case for failure to prosecute or failure to comply with applicable rules. The Court may issue an order to show cause as to why the case should not be dismissed.  Finally, if in doubt, file a response. For example, if a pro se party files something and you don’t understand, you may file a response to the effect that you “don’t know what it is/what the party is seeking, but you oppose it.”  ***Helpful Resources, and How to Be Helpful.*** There are at least three resources you should consider: the Federal Pro Se Clinic; the Pro Bono Mediation Panel; and the Federal Limited Appearance Program (“FLAP”).  The Federal Pro Se Clinic was established in 2018 by the Colorado Bar Association (“CBA”) in coordination with the Court. The Clinic is located on the first floor of the Alfred A. Arraj Courthouse. Staff and volunteer lawyers provide limited scope legal representation by appointment to civil, non-appellate, non-prisoner, pro se parties. *See* D.C.COLO.LAttyR 2(c). For more information, and to volunteer, please visit: <http://www.cobar.org/fpsc/> and <http://www.cod.uscourts.gov/AttorneyInformation/CivilProBonoPanel-Details,andAvailableCases.aspx>. The Court frequently directs pro se litigants to the Clinic for assistance.  The federal Pro Bono Mediation Panel was developed to assist the lawyers on the Court’s Civil Pro Bono Panel with a means to resolve their pro bono cases, using professional pro bono mediation services of a group of experienced volunteers. The service is available for non-prisoner and (represented and non-represented) prisoner Panel cases. There is no charge for this service. The appointment of a Panel Mediator is an informal process, but you do need to obtain a court order. For more information, please contact Ed Butler, Legal Officer, at 303-335-2042, or by email at:  [COD\_ProBonoPanel@cod.uscourts.gov](mailto:COD_ProBonoPanel@cod.uscourts.gov).  Finally, the CBA’s Young Lawyers Division has partnered with Magistrate Judge Crews in developing FLAP, which, if implemented, will operate as a subgroup of the Pro Bono Panel and will provide limited, in-court representation of pro se litigants on non-dispositive matters. The CBA YLD is promoting this program as a win-win for young lawyers and pro se litigants. Young lawyers will be afforded the opportunity to appear before the Court, gaining valuable on-your-feet experience, while pro se litigants will obtain limited representation on legal matters. FLAP is slated for presentation to the Court in upcoming months. For more information, please contact Alan Schindler of the law firm Timmins, LLC at [as@timminslaw.com](mailto:as@timminslaw.com).  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **IMPLICIT BIAS IN THE LEGAL PROFESSION, THE WORKPLACE, AND THE COMMUNITY—RECOGNIZING IT AND INTERRUPTING IT IN OURSELVES AND OTHERS**  By Barry Boughman  Attorney, professor, and former prosecutor Karen Steinhauser gave an interesting seminar on implicit bias on March 11, 2020, shortly before the pandemic shut everything down.  Bias is an inclination of temperament or outlook, especially a personal and sometimes unreasoned judgment or prejudice. *See* Merriam-Webster Dictionary. Bias can be either explicit or implicit.  Explicit bias occurs on a conscious level, meaning that the speaker is aware of his or her particular prejudice. “I don’t trust any [fill in the blank].” “All [fill in the blank] fans are jerks.” Explicit biases are easy to spot and confront.  Implicit biases are trickier animals. Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. One expert, Cheryl Ingram, CEO of Diverse City LLC, describes it as a prejudice that turns into unconscious action—you don’t realize that you are doing it. Everyone has implicit biases, which can be both positive (giving the benefit of the doubt to a person who attended the same university) and negative (criminal defendants never tell the truth when testifying). An implicit bias can become an explicit bias, but an explicit bias cannot become an implicit bias.  Ms. Steinhauser explained that her job was to make the group feel uncomfortable because people who perceive themselves as unbiased are at greater risk of a blind spot. She encouraged the group to recognize their own biases and learn how to interrupt them. She also discussed recognizing biases in others and confronting those biases as well.  Example One: two attorneys, a woman and a man, appear in court on behalf of a client. Many people are implicitly more likely to assume that the man is the client’s lawyer even when the woman is the senior attorney on the team. Example Two: Ms. Steinhauser spoke of an African American defense attorney who described being repeatedly mistaken as someone other than a lawyer upon entering courtrooms. These things happen all the time and they happen to everyone.  Ms. Steinhauser noted that signals indicative of implicit biases include facial expressions; dismissing one person’s idea only to embrace the same idea when offered by another; leaving someone off a group email or text message; pronouncing names incorrectly or assigning thoughtless nicknames; discounting an opinion because of an unusual accent; and mixing up individuals of the same race, ethnicity, or gender with another of the same race, ethnicity, or gender.  One way implicit biases can be revealed and evaluated is by taking the Harvard Implicit Association Tests. These tests measure the strength of associations between concepts (e.g., black people, gay people), evaluations (e.g., good, bad), and stereotypes (e.g., athletic, clumsy). The tests address numerous categories including Age (Young/Old), Arab-Muslim/Other People, Asian/European American, Disabled/Abled, Gender-Career, Gender-Science, Native/White American, Presidential Popularity, Race (Black/White), Religions, Sexuality (Gay/Straight), Skin-Tone (Light/Dark), Transgender People/Cisgender People, Weapons/Harmless Objects, and Weight (Fat/Thin). The tests are available at [implicit.harvard.edu/implicit/takeatest.html](mailto:implicit.harvard.edu/implicit/takeatest.html).  Ms. Steinhauser presented a video from the ABA, entitled Hidden Injustice: Bias on the Bench. There, several judicial officers from around the country discuss the discovery of their own implicit biases and ways to address them in order to render fairer decisions.  Karen Steinhauser offered three primary takeaways.  First, it can be humbling to learn that we aren’t as unbiased as we think we are. Accept the facts that nobody is perfect and that everyone has implicit biases. Recognizing their existence can be more important than the fact that the biases exist.  Second, train yourself to slow down. As lawyers, we tend to rely on gut reactions in evaluating a juror, a witness, an opponent, or a judge. Avoid jumping to conclusions and learn to ask questions.  Third, try to be internally motivated to be fair and square. Learn how to recognize implicit bias in yourself and interrupt it when you do. Watch for implicit biases in others and call it out when appropriate. In short, recognize, understand, interrupt, and confront. And slow down.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**    **DISTRICT COURT JUDGE DANIEL D. DOMENICO**  By Laura Mullendore and Peter Krumholz  District Judge Daniel Domenico assumed his position on the United States District Court for the District of Colorado in May 2019. He received his undergraduate degree from Georgetown University, *magna cum laude*, and his law degree from the University of Virginia School of Law, where he was inducted into the Order of the Coif and served as an Editor of the *Virginia Law Review* and the Executive Editor of the *Journal of Sports and Law*.  Judge Domenico practiced as an attorney for nineteen years. He started his career as an associate at Hogan & Hartson, where he spent three years before leaving to serve as a law clerk to now-Chief Judge Timothy Tymkovich of the Tenth Circuit Court of Appeals. But Judge Domenico was not just any law clerk—he was Judge Tymkovich’s very first law clerk on his very first day on the bench in 2003. Following his time at the Tenth Circuit, Judge Domenico became counsel to John Thune’s ultimately successful campaign for U.S. Senate. In 2005, Judge Domenico reentered public service, where he served as a Special Assistant to the Solicitor of the United States Department of the Interior.  In 2006, at the age of 33, he was appointed to the position of Colorado Solicitor General, becoming the youngest state Solicitor General in the country. He served as the Solicitor General of Colorado for nine years under Attorney General John Suthers, who is now the mayor of Colorado Springs. As Solicitor General, Judge Domenico oversaw major litigation for the State in state and federal courts, and appeared multiple times before the Colorado Supreme Court and the United States Supreme Court. He was the longest-serving Solicitor General in Colorado history and represented governors from both the Democratic and Republican parties (Bill Owens, Bill Ritter, and John Hickenlooper) during his service. In 2015, Judge Domenico founded his own law firm, Kittredge, LLC, where he focused his practice on serving clients with high-stakes legal needs in matters intersecting with public policy and government or public involvement.  Judge Domenico has received numerous awards and recognition for his professional accomplishments, including receiving the Supreme Court Best Brief Award from the National Association of Attorneys General and being named National Appellate Lawyer of the Week by the National Law Journal during his time as Solicitor General. He has served as an adjunct professor of constitutional law and natural resources law at the University of Denver Sturm College of Law.  At the District Court, Judge Domenico serves on the Standing Committee on Pro Se Litigation, which oversees the Civil Pro Bono Program for the District. He is a native Coloradan, born and raised in Boulder. Judge Domenico played a pretty good game of baseball in high school (and one of his coaches, John Mozeliak, later became the general manager of the St. Louis Cardinals). Judge Domenico also is an aspiring vintner.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**    **FEDERAL PRO SE BANKRUPTCY CLINIC – PROJECT ATTORNEY**  The Colorado Bar Association is seeking a part-time (20 hours) bankruptcy attorney to provide limited scope advice to Ch. 7 and Ch. 13 self-represented individuals and conduct the day-to-day operations of a new clinic at the U.S. Bankruptcy Court. Position requires a J.D. degree from an ABA accredited law school, a minimum of five years advising clients on filing for Chapter 7 and Chapter 13 bankruptcy protection, admission to practice law in Colorado, and no pending or actual censure, suspension, or disbarment in any jurisdiction. Send cover letter and resume to [lkelly@cobar.org](mailto:lkelly@cobar.org). Click [HERE](https://facultyoffederaladvocates44.wildapricot.org/resources/Documents/CBA%20Job%20%20Description%20for%20Bankruptcy%20Attorney.pdf) for the job description.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **2020 NEW BOARD MEMBERS**  **Nathan D. Foster** – Equal Employment Opportunity Commission First admitted to practice in 2010 in Colorado, Nathan’s current practice is as a trial attorney for the EEOC’s Denver Field Office. He previously clerked for U.S. District Court Judges William Martinez and Marcia Krieger. On his application, Nathan wrote, “As a litigator who has handled varied matters in the District Court for many years, and as a former employee of the District Court, I feel both personally and professionally invested in helping the federal courts to do their best. This means, in part, being an active part of a vibrant bar community and continuing that community’s efforts to learn and improve.” On the application, he stated, “I would remain part of efforts to make concrete goals of diversity, inclusion, and equity a part of the FFA’s work.” Board term is 2020-2022.  **LeeAnn Morrill** – Colorado Attorney General’s Office, Public Officials Unit  After being admitted to practice in Illinois in 2002, LeeAnn relocated to and was admitted in Colorado in 2007. Since joining the Public Officials Unit in 2010, she has garnered significant federal trial court and appellate experience defending Colorado’s legislative and constitutional enactments against facial and as-applied challenges. On her application, LeeAnn wrote, “My skills as an advocate have grown tremendously due to the rigors of practicing before Colorado’s federal courts, and I would like to give back to that community by directly supporting the development of other federal court practitioners.” And, “I would advance the FFA’s mission of enhancing advocacy skills, professionalism, and the integrity of practice by increasing the reach of the organization and its membership throughout the state government attorney level.” From 2010 to 2020, LeeAnn served on the Board of Directors of the Focus Points Family Resource Center, whose mission is to build better communities by strengthening families. Board term is 2020-2022.  **Ann Zellner Sherwood** – Lead Assistant General Counsel, Xcel Energy  After being admitted to practice in Illinois in 2006, Anne came to Colorado and was admitted in 2012. Responding to a question about her federal court experience, Anne wrote, “I have had multiple other federal court matters that have resolved prior to trial. Given that there aren’t many opportunities to appear in federal court outside of a trial context, I do attempt to increase that regularity by requesting oral argument on motions and responses to motions.” She also commented, “I (also) believe that the opportunities to gain experience by working on cases pro bono are incomparable, especially given the mentorship provided and funds made available.” And, “I have learned something new at each CLE I attended (whether as a panelist or an audience member)... .” Anne currently serves on the Associate Board of the Alliance for Choice in Education, which provides low-income families the opportunity to choose the school for their children, with the assistance of a scholarship. Anne has been active on the 2019 CLE Committee and in the FFA generally. In May 2020, Anne went in-house and became the Lead Assistant General Counsel, Regulatory for Xcel Energy.  She looks forward to finding ways the FFA can connect with in-house counsel who are federal court practitioners. Board term is 2020-2022.    **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **GUIDE TO BILLS OF COSTS**    The U.S. District Court Attorney Services Division has produced a *Guide to Bills of Costs* that is available for counsel and unrepresented parties to refer to before filing bills of costs, and also before appearing in the bill of costs hearings that the Division conducts.    The Guide is available on the [Forms / Civil](http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/Forms.aspx#Civil) page, and is also available on a new [Bills of Costs – Guide and FAQs](http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/BillsofCosts-GuideandFAQs.aspx) page on the website, under the Court Operations / Rules and Procedures tab on the menu bar of the website, as shown below.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |  |                        |  |  | | --- | --- | | **“14 Months for the Price of 12” Membership Promotion**  Through November 30th, non-members may join the FFA, pay the 2021 dues and your membership will start immediately, effective until December 31, 2021. If you’d like to take advantage of this great deal, please go to [www.facultyfederaladvocates.org/join-the-ffa](http://www.facultyfederaladvocates.org/join-the-ffa) and register.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **FACULTY OF FEDERAL ADVOCATES**  **UPCOMING WEBINARS**   Sign-up on our website at **[www.facultyfederaladvocates.org.](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJYzXf5Mody-bmIgWMdZntxFy0MyVQgL7eztlBMaptoUUyNBO97aZhItiT58A0VEcQLhxMOYKQTMsv6GAahsQeeYaSF1p4aRbguurPUHHBW-q0cbGPxi8bvfAFQdJtb0lm&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==" \t "_blank)**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Thursday, November 19, 2020 12 noon-1:15 p.m.  “The Practitioner Perspective: Presentation of Evidence  in a Virtual Environment”**  **Jane Bobet, Esq**.,U.S. Attorney’s Office **Anna Martinez, Esq**.,Franklin D. Azar & Associates, PC **Marissa Ronk, Esq**., Wheeler Trigg O’Donnell, LLP  Please join us for the next installment of the FFA's new "Litigation in the Time of COVID-19" series. In this CLE, you'll hear from practitioners who have conducted virtual hearings and arguments that required the presentation of evidence. They'll describe best practices, pitfalls, and considerations as you plan for your next virtual courtroom appearance.  2 general CLE credits approved.  Click [**HERE**](https://www.facultyfederaladvocates.org/event-4015927)to register for the November 19, 2020 program.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Friday, December 4, 2020 12 noon-1:15 p.m.  “The Augmented Lawyer: Technology Competence**  **in the Age of Artificial Intelligence”  Nathaniel H. Nesbitt, Esq. Marisa Hesse, Esq. Mark Noel,** Technology Assisted Review & Analytics Hogan Lovells US, LLP  The ABA Model Rules of Professional Conduct require attorneys to “keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.”  This engaging program will help attorneys to navigate the ethical and practical pitfalls inherent in practicing law in the age of technology.  The program will address both the technologies lawyers use in the day-to-day practice of law (e.g., data security), as well as the use of disruptive technologies such as document automation, predictive analytics, machine learning and other artificial intelligence technologies.  The program focuses in particular on attorneys’ ethical duty of technological competence, and will offer ideas and strategies for successfully deploying technology to better serve clients.  2 general/.5 ethics CLE credits requested.  Click [**HERE**](https://www.facultyfederaladvocates.org/event-4047677) to register for the December 4, 2020 program.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Friday, December 11, 2020 12 noon-1:15 p.m.**  **"Legal Writing: Striving for Clarity”**  **Hon. Robert E. Bacharach**  Tenth Circuit Court of Appeals  All legal writers want to express themselves clearly. But how do we do that? How did accomplished orators, like FDR and JFK, capture us by their oratory? And how do skilled advocates express complex ideas so clearly? What characteristics do these orators and advocates share? And what is it about these communicators’ methods that allow us to process and remember their messages so well? Come hear Judge Bacharach, a judge on the Tenth Circuit Court of Appeals, share his perspective on these questions from his recently published book, Legal Writing: A Judge’s Perspective on the Science and Rhetoric of the Written Word.  2 general CLE credits requested.  Click  [**HERE**](https://www.facultyfederaladvocates.org/event-4047534) to register for the December 11, 2020 program.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **ON-DEMAND VIDEO REPLAY  “Jury Trials in the Time of COVID-19”  Hon. R. Brooke Jackson** U.S. District Court for the District of Colorado  Judge Jackson recently presided over several civil jury trials and shared his perspective on how COVID-19 has impacted courtroom presentations. This CLE was originally presented on October 9, 2020 via webinar and is available for a limited time in a video replay.  2 general CLE credits approved.  Click [**HERE**](https://www.facultyfederaladvocates.org/event-4027538) to register for the on-demand Video Replay.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Watch the FFA website and your inbox for program and registration information.  **\_\_\_\_\_\_\_\_\_\_\_\_\_** |  | | | |  | | --- | | **FFA Contact Information**  [**Faculty of Federal Advocates**](http://r20.rs6.net/tn.jsp?f=001z9tZg0nCULmYCVz73p3-xAR9moP0_0NmFtRc6-ANeR06lpou4VBLpGcz1iwng1hJYzXf5Mody-bmIgWMdZntxFy0MyVQgL7eztlBMaptoUUyNBO97aZhItiT58A0VEcQLhxMOYKQTMsv6GAahsQeeYaSF1p4aRbguurPUHHBW-q0cbGPxi8bvfAFQdJtb0lm&c=tID4TZ_X7a5iPAVyXTDoqA6-I0Oqc5ET6QqG5AY9Jy7CZMWTaO6_7w==&ch=y-DzzmxaKG-aDEWYsUzH7SOYjhknLbi1Qrvfo1_lGhy0J7p4BOvvJA==)  **3700 Quebec Street #100-389**  **Denver, CO 80207-1639**  **720-667-6049** [**dana@facultyfederaladvocates.org**](mailto:dana@facultyfederaladvocates.org) | | |

1. This article is written in Mr. Scarpato’s personal capacity and does not necessarily reflect the views of his employer. [↑](#footnote-ref-1)