Spring 2021 Newsletter

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Welcome to the Faculty of Federal Advocates
Spring 2021 Electronic Newsletter
www.facultyfederaladvocates.org

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.

Learning on the Job—Magistrate Judges Crews and Neureiter Assess Their First Two Years on the Bench

By Christine A. Samsel

The Faculty of Federal Advocates presented a CLE entitled "Learning on the Job – Magistrate Judges Crews and Neureiter Assess Their First Two Years on the Bench." It was, as usual, very entertaining and informative. United States Magistrate Judges Crews and Neureiter offered several key takeaways for practitioners, including many derived from the anonymous evaluations they receive from those who practice in their courtrooms. A sampling of those takeaways follows:

- ***Virtual Courtroom Conduct:*** Even though court appearances are currently primarily virtual, counsel should be punctual and dressed for court. Virtual appearances should be taken as seriously as live court appearances.
- ***Role as an Educator:*** Lawyers would be well-served to look at their role in the courtroom as that of a teacher. Judges may not have the same specialized knowledge of an area of the law that the attorneys on the case have, and definitely don't have the same in-depth knowledge of the facts of the particular case.

Who We Are

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,

- ***Focus on Key Issues and Facts:*** To assist judges in moving things along expeditiously and making timely rulings, attorneys should stay focused in briefs and at hearings on what's really pertinent to the determination to be made. This includes streamlining written and verbal presentations (including highlighting relevant portions of submitted exhibits) to help the judge hone in on the key issues and facts. Counsel should also answer the court's questions directly, and refrain from attacks on the opposing party and counsel. Attorneys should keep in mind that judges often use hearings to get a better handle on the contested issues in order to move cases along more quickly.
- ***Tailor Discovery Requests and Protective Orders:*** Practitioners should endeavor to draft focused discovery requests in order to minimize discovery disputes that must be brought to the court. State court pattern interrogatories don't generally work in federal court as drafted, because they're not sufficiently tailored to the case. Counsel should ensure that discovery requests are directed to the specific information at issue in the case, identifying and asking for exactly what is needed. Likewise, counsel should ensure that they've thought through the implications of a blanket protective order, including how the standard form language will impact the particular case and how it might need to be tailored to meet the needs of the case (e.g., what information needs to be shared with the client to determine whether it is relevant to the prosecution or defense of the action). In particular, consider whether "attorneys' eyes only" language in protective orders will actually work under the circumstances—for example, in a trade secret case where the customer list is designated "attorneys' eyes only," but the receiving attorney will need to share it with the client to see if it support or rebuts the case. Counsel also should consider whether the definition of "confidential information" in the proposed protective order is overbroad. In addition, counsel should always ensure that they have properly conferred to narrow the issues and determine what's in dispute before bringing discovery issues to the court.
- ***Pretrial Conference and Final Pretrial Order:*** Regarding the pretrial conference and proposed order, counsel should use the bracketed instructions on the template as guidelines and follow them. For instance, counsel should specify whether witnesses are "may calls" or "will calls." If there are sections on the form that don't apply, counsel should leave those sections in the proposed order and indicate "not applicable" or "none" (e.g., witnesses to be presented at trial through deposition testimony). With respect to trial exhibits, counsel should expressly identify exhibits which will be stipulated into evidence, and identify all exhibits with specificity (for instance, stating generally "medical records from ABC Hospital" or an individual's "personnel file," versus identifying the portions thereof to be submitted).
- ***Respect Court Clerks:*** Judges rely on and value their clerks, many of whom are experienced lawyers. Counsel should show clerks the same deference and respect shown to judges.

professionalism, and the integrity of practice.

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

Become a member or learn more at our website: facultyfederaladvocates.org

Quick Links

Join the Faculty of Federal Advocates Here!

U. S. Supreme Court

U. S. Court of Appeals 10th Circuit

U. S. District Court District of Colorado

U.S. Bankruptcy Court, District of Colorado

U. S. Attorney's Office Colorado

Federal Public Defender Colorado/ Wyoming

Colorado State Courts

Our Courts

A Review of Election Law: Hindsight is 2020

By Reagan Larkin

Can we trust technology in connection with elections? Are there consistent standards in voting systems locally and nationally? Have we lost faith in the electoral process? On February 25, 2021, the FFA welcomed Chief Judge Timothy Tymkovich of the United States Court of Appeals for the Tenth Circuit, who moderated a panel of practitioners who addressed these important questions and discussed hot topics in election law, including the pros and cons of mail balloting. The esteemed panelists included Martha Tierney, LeeAnn Morrill, Christopher Murray, and John Walsh.

To begin the discussion, Ms. Tierney addressed mail-in balloting. The benefits of mail-in balloting include increased voter turnout; convenience for voters; security in that mail-in ballots create a permanent, non-hackable record; reduced costs of elections in that less physical poling locations and staff are required; cleaner voting roles with less outdated voter addresses; numerous options for submission of ballots; and ballot tracking that allows voters to receive updates on the location and confirmation of the count of their votes. The cons of mail-in balloting include reliance on the United States Postal Service (USPS), potential voter influence that a voter in a private voting booth would otherwise not experience, voter rolls may not be updated, potential fraud, and counterfeit ballots. Ms. Tierney noted that there is no statistically significant evidence of fraud or counterfeit ballots in Colorado.

According to Ms. Tierney, Colorado has the "gold standard" in mail-in balloting systems. Colorado has a statewide voter registration system with automatic registration through the Department of Motor Vehicles. Colorado uses a national change-of-address database to keep its voter rolls updated—a voter's address is automatically updated upon submission of a change of address with the USPS. Colorado also allows for same-day and online voter registration, preventing voter disenfranchisement. Colorado strives to make voting a convenient, easy process with multiple means by which to return ballots—through the mail, to one of the 400+ drop boxes across the State, or at a voting center. Electronic updates are sent to voters regarding their ballot. And Colorado accepts up to seven forms of identification and allows voters to cure ballots up to eight days following the election. The convenience and efficiency of Colorado's voting system is evidenced by a stunning 86% voter turnout in 2020. Colorado's voter turnout rate was second only to Minnesota's.

Colorado has also implemented strong protections in its voting system. Colorado requires ballots to be signed. A voter's signature is compared with other signatures that the applicable county clerk has on file for the voter. To accommodate such process, Colorado begins counting votes before election day. Importantly, Colorado has a risk-auditing process to assure the accuracy of elections. Given the signature verification process, clean voter rolls, and audits, there are very few vulnerabilities in Colorado's voting system.

Ms. Morrill, Mr. Walsh, and Mr. Murray discussed various legal challenges immediately preceding and following the 2020 election. Ms. Morrill discussed two cases that were filed in Colorado prior to the 2020 election. The first was a lawsuit filed by the Colorado Attorney General's office to prevent the USPS from sending false and confusing notices to voters. The Attorney General's office was concerned that the

notices would prevent votes from being counted and prevent people from voting. The Attorney General's office prevailed. The United States District Court for the District of Colorado agreed that the notices contained false and misleading instructions and failed to give voters information about alternative ways to vote.

The second case described by Ms. Morrill involved the collection of in-person signatures in support of adding political candidates to the ballot. A candidate for United States Senate, Michelle Ferrigno Warren, argued that Covid-19 had stymied her efforts to collect the required number of signatures and sought an order from the trial court excusing compliance with the requirement. She argued that the number of signatures she had collected should be deemed to be substantially in compliance with the Colorado Constitution. The Denver District Court granted Ms. Warren relief and ordered the Secretary of State to add Ms. Warren to the primary ballot. The Secretary of State appealed. The Colorado Supreme Court reversed the ruling and held that the signature requirements of the Colorado Constitution must be strictly complied with. Because Ms. Warren had not complied with those requirements, the Secretary of State was not required to add her to the ballot.

While Mr. Walsh expected to encounter litigation prior to election day in 2020 involving organized attempts of voter intimidation, such reported attempts were rare and scattered. Instead, Mr. Walsh was heavily involved in post-2020 election litigation. Mr. Walsh described the "whack-a-mole" tactics used by the attorneys challenging election results, including voluntarily dismissing their own lawsuits immediately after motions to dismiss were filed by defendants and the use of recycled affidavits. In one particular lawsuit filed by Sydney Powell, 200 affidavits were filed in the case, all of which were also filed in previous lawsuits. Mr. Walsh noted that the plaintiffs in the lawsuits in which he was involved presented no credible evidence supporting the overturning of election results. Mr. Walsh thought the aim of such lawsuits was to create enough doubt and confusion about how the election had been conducted to prevent certification of the vote. If a state failed to certify its vote, the election would have been contested and the United States Supreme Court would have had to decide the result. However, that aim failed.

Mr. Murray discussed when a challenge to election laws is most effective. A legal challenge may be worth pursuing in close elections with good evidence. He echoed Mr. Walsh's sentiments regarding the necessity of credible evidence in cases involving election fraud allegations. He also noted that litigation filed in non-election years can be more effective and provide governments and citizens time to adapt to any changes that may result.

Ms. Tierney informed the attendees that there is an onslaught of legislation seeking to disenfranchise voters. As of February 12, 2021, 253 bills had been introduced nationwide that appeared to have that aim in mind, including bills to curb election day registration, curb early voting, curb vote drop off, restrict student voting, and restrict cure periods. A number of similar bills have been introduced in Colorado during the current legislative session. Senate Bill 21-007 sought to eliminate the automatic mail-in ballot system and require voters to request mail-in ballots. It also sought to reduce early voting and prohibit counting votes after election day (which would have adversely affected overseas military members, among others). Senate Bill 21-010 sought to address voters that need assistance voting, including the disability

community. The bill sought to require witnesses to provide their voter identification number on the ballot for the voter requiring assistance and require the county clerk to verify the signature of the witness. House Bill 21-1086 would require proof of citizenship at the voting polls. All three of those bills have been killed or postponed indefinitely.

Chief Judge Tymkovich wrapped up the session by asking each of the panelists about their predictions regarding the future of election law and the biggest lessons learned from 2020. The panelists predicted that election law litigation will increase in the future, although several panelists hope that the lawsuits filed in 2020 and 2021 will be unique. The panelists agreed that attorneys need to be cautious in litigating election law issues. The panel warned attendees that they have ethical obligations and should avoid executing complaints in cases in which there is no credible evidence or facts to support the claims. Mr. Walsh noted that there are outstanding ethical grievances and sanctions sought against some of the attorneys that filed lawsuits in 2020 seeking to overturn election results. The panelists agreed that education and civic engagement in these areas is critical. Ms. Morrill also encouraged attendees to become election judges. Although the panelists noted that they had concerns that the courts were being used to legitimize unsubstantiated claims about election fraud in 2020, they agreed that the courts conducted their business with integrity and avoided politics in their rulings.

Many thanks to Chief Judge Tymkovich, Ms. Morrill, Mr. Murray, Ms. Tierney, and Mr. Walsh for their insightful presentation.

Best Deposition Practices from the Perspective of the Court Reporter

By Ariel DeFazio

On April 7, members of the FFA heard from three experienced court reporters: Judy Stevens, Bonnie Carpenter, and Mary George. Ms. Stevens, Ms. Carpenter, and Ms. George shared several invaluable tips that they have gleaned during their careers to help attorneys collaborate better with court reporters.

Tell the agency at the time you schedule the court reporter if you will need a rough draft, expedited transcript, or real time services. Also let the reporting agency know if you need a translator; they can usually provide a reliable referral.

Before a deposition, trial, or hearing, consider providing the court reporter with a list of witnesses, acronyms, and special spellings. This is helpful in most cases, but especially if it is a technical or patent case, or a case involving foreign places or words.

When giving instructions to deponents, attorneys often advise deponents to avoid “uh huh” and “uh uh” because these cannot be transcribed. That is actually not the case; these utterances *can* be transcribed, but they often prove not to be terribly helpful in a transcript. A more accurate instruction would be to say that an answer like “uh huh” is not clear for the record, so you will ask the deponent to clarify such a response. Since court reporters cannot interpret or transcribe gestures, it is entirely appropriate to instruct deponents to avoid responding by nodding, shaking their heads, or pointing, as any such response would not be reflected in the record. Attorneys will often let deponents know that they are free to request a break whenever they

need it—provided that they answer any pending question—but also be sure to ask your court reporter if they need a break every one to two hours.

If you request that the court reporter read back a question or answer or if you provide the court reporter with an exhibit to mark, give the reporter time to transition back to their stenotype machine before you resume speaking; just a few seconds will suffice.

As attorneys all understand, court reporters take down *everything* that is said during a deposition or other proceeding. For some attorneys, this has meant an uncomfortable realization about their use of fillers and other verbal tics, like beginning nearly every question with “ok” or “all right” or gratuitous use of “so” or “like.” As much as attorneys would like court reporters to edit out those words, they will not, so be mindful of your own questions and speech patterns. In that vein, note that clear and concise questions lead to clear and concise answers, which lead to a clear and concise transcript.

The court reporter needs the acknowledgment of all attorneys present before going *off* the record. The same is not the case for going back *on* the record; that can occur solely at the direction of the questioning attorney.

It is also critical to be clear about when an entire transcript or a portion of a transcript needs to be designated as confidential or attorney eyes only. Court reporters will not be familiar with court orders or existing agreements between the parties about the treatment of confidential documents and information. As a result, unless the parties note otherwise, the reporter will not mark a transcript confidential.

State your objections clearly for all to hear and prepare your client who is being deposed for how objections work during a deposition. Regarding the latter, include the fact that you will need a moment after the question to pose your objection and the circumstances under which the deponent should and should not proceed to answer.

The presenters provided several tips to make an attorney’s use of exhibits more effective. When reading from exhibits, read them verbatim and slowly, as people have a natural tendency to speak faster when they are reading. If you are taking the deposition remotely, consider sharing your screen with the exhibit to ensure that everyone is referencing the same excerpt. During a trial or hearing, be clear about the exhibit number, page number, and paragraph, so that the jury can follow along when you are questioning a witness.

Court reporters pride themselves on their neutrality. Accordingly, please refrain from asking court reporters for their thoughts on a witness’s testimony, demeanor, or truthfulness. In addition, a court reporter will not read back testimony, unless they do the same for opposing counsel.

For transcripts of trials and court proceedings, note that the United States District Court for the District of Colorado has a specific procedure that you must follow to request redactions, including filing a motion requesting that certain information be redacted, e.g., the name of a child or victim or a social security number. Where possible, the best practice is simply to not say the confidential information during the proceeding, which will obviate the need to request a redaction later.

As more trials and proceedings occur in-person with individuals wearing masks, it is even more important to speak slowly, loudly, and succinctly. And regardless of whether you are in-person or remote, test your equipment before a conference or hearing.

The presenters had a number of tips for remote depositions and hearings, including:

- Turn off your e-mail and text notifications;
- Use a headset, as it will make you more clear and easier to hear;
- Connect to the internet via an ethernet cord rather than WiFi, if possible;
- Familiarize yourself with any necessary software programs, like screen share and exhibit share, prior to the deposition; and
- Sign on about 15 minutes before the start of a proceeding to check your connection, microphone, and screen sharing. Although court reporters may be able to assist with some issues, they are not technology experts, so you want to allow yourself time to consult with your own IT staff if an issue arises.

Finally, the presenters emphasized that the most important tip to remember is to speak slowly if there is a court reporter making a record.

Many thanks to Ms. Stevens, Ms. Carpenter, and Ms. George for sharing their insights, which will undoubtedly result in depositions, hearings, and trials that go more smoothly and successfully.

Out-of-Court Resolutions: Best Practices in a Post-Pandemic World

By Janice Orr

On April 20, the Faculty of Federal Advocates hosted a webinar on best practices for mediations, with particular focus on challenges presented during the pandemic and the post-pandemic world will look like for practitioners. The panel included Judge Elizabeth Starrs, Doug Tumminello, and Wesley Parks. The moderator of this auspicious group was Magistrate Judge Nina Y. Wang of the United States District Court for the District of Colorado.

Preparation

All members of the panel agreed that preparation is key to a successful mediation. This includes not only preparation and submission of materials to the mediator, but also preparing your client. It was suggested that talking about settlement with the client early in the representation helps to prepare the client when the time arises. The differences between mediation and litigation should be stressed, *i.e.*, that mediation is not meant to be confrontational, but rather is an effort to work together to reach a satisfactory result. Having these discussions early can help keep the client from becoming entrenched in a fighting mode. The confidentiality of the process should also be stressed to make clients more comfortable, but also to make sure that people are not listening to undermine that confidentiality.

Pre-mediation conferences were discussed. This is a call between the attorney and the mediator during which the case and the client's position are discussed. These calls are important, as they give the attorney the opportunity to frankly discuss the case, including weaknesses and client proclivities, without having to do so in front of

the client. A pre-mediation call can also be extremely helpful for the mediator to determine who influences the litigant and who does not.

Mediation Process

Different panelists handle the logistics of a remote mediation in different ways. Mr. Tumminello prefers each participant to have his own screen but to be in the same room. This necessitates the use of headphones, which can be difficult for some. Mr. Parks prefers different rooms, but a communication system has to be worked out. Judge Starrs has found that the client having his/her own screen makes it easier than if the attorney and client are sharing a screen.

As to whether to have everyone together in the beginning, the panelists also differed. Mr. Parks does start with a joint conference and finds this to be helpful. Judge Starrs does not do a joint conference, as she has found them to be unhelpful because the parties are generally not too fond of each other and the lawyers want to control the conference. Mr. Tumminello's experience has been to not have a conference at the start due to the nature of the issues he has dealt with, but he indicated that it could be helpful in some cases.

Judge Starrs also made clear that it was important for the mediator to have a way to communicate with the attorney alone, without the client, during the mediation so that difficulties can be discussed and hopefully resolved. It was suggested that text or a phone call is best, which can be set up in the pre-mediation conference.

Attorney's Role: Litigator v. Counselor

Magistrate Judge Wang made the excellent point that an attorney must switch roles from being an advocate to being a counselor. She elicited comments on how the panelists believe this can best be accomplished.

Mr. Parks suggested a needs-based analysis of the case to ascertain if there is a common need among the parties. If one can be identified, that should be made known up front. He also suggested discussing the strengths and weaknesses of all sides of the case before the mediation.

Judge Starrs similarly suggested finding out what is really important to the client, which may be non-monetary. When the true import to the individual client is ascertained, it is more likely that a successful resolution can be reached.

Mr. Tumminello believes that the needs and goals of the client need to be discussed with the client early and often.

Mandatory ADR

Magistrate Judge Wang requested comments on whether mandatory ADR was beneficial. The District Court is no longer requiring it. Judge Starrs commented that, while courts can require mediation, they cannot require settlement. However, she believes that it can be beneficial if the parties are unwilling to be the first to "blink." Mr. Tumminello believes that a requirement for mediation is not useful and the court's requirement of a statement of settlement efforts should suffice. Mr. Parks questions whether a requirement of mediation leads to a good faith effort to mediate. He, too, did not think the requirement was beneficial.

What Will the Future of Mediation Look Like?

All of the panelists agreed that virtual ADR is here to stay. Mr. Tumminello stressed the need to discuss the benefits and risks with the

client. Mr. Parks believes that contracts should have a provision regarding virtual ADR. Judge Starrs emphasized the need to keep the activity and focus of the parties just as high for a virtual session as for an in-person one.

All agreed that the time and money expended on mediation is greatly reduced by using a virtual platform. Magistrate Judge Wang pointed out that the huge case backlog which has been created by the pandemic could result in an increase in the cases settled out of court, a percentage which is already high.

It seems that the kinks of virtual mediations and other court-related matters are pretty well worked out. However, the import of lawyers making sure that their knowledge of the process is up to speed and that their equipment is functioning properly was emphasized by all.

Of Note from the U.S. District Court,
District of Colorado

1. **Attention U.S. District Court Bar Members and Staff:** the upgrade to NextGen CM/ECF will occur on August 2, 2021. For more information regarding this upgrade, including the steps attorneys must take as part of the NextGen implementation, please visit the U.S. District Court's NextGen page on its website HERE.

2. **The Advisory Committee on the Local Rules** will be reviewing new comments and suggestions for the local rules this year, and invites new comments/suggestions, but the deadline is June 1. Comments should be e-mailed to LocalRule_Comments@cod.uscourts.gov.

3. **General Order 2021-1: FILING OF HIGHLY SENSITIVE DOCUMENTS**
   In response to recent disclosures of widespread breaches of both private sector and government computer systems, federal courts are adding new security procedures to protect highly sensitive documents filed with the courts. General Order 2021-1 outlines the procedures this Court has adopted for the filing of certain highly sensitive documents. The full text of General Order 2021-1 is available here.

Pro Se Bankruptcy Clinic Begins Serving Colorado
By Matt Skeen

Access to justice: it is a phrase heard often in legal circles and the idea has become a priority for lawyers, legal reformers, activists, judges and many others involved in the legal system. The Colorado Bar Association (CBA) has adopted *access to justice* as one of its strategic goals, stating that the CBA aims to "facilitate access to justice by continuing pro bono coordination and advocacy efforts and by continuing emerging programs to promote and educate members on

methods to feasibly serve people of modest means." In furtherance of this goal, in 2018 the CBA accepted a grant to operate and staff the Federal Pro Se Clinic, which offers limited scope legal representation to civil pro se litigants in United States District Court for the District of Colorado. Based on the ongoing success of that program, the CBA recently accepted an additional grant to create a related pro se clinic in the United States Bankruptcy Court for the District of Colorado.

The Pro Se Bankruptcy Clinic offers free, limited scope legal advice via an appointment with a bankruptcy lawyer. Currently the Clinic is only helping people with chapter 7 cases but plans to branch out to chapter 13 cases at a future date. The Clinic is available to people who find themselves in any stage of the chapter 7 process except adversary proceedings, from contemplating whether or not to file to issues that may emerge after a case has been closed for years. The Clinic attorney may give advice regarding eligibility for bankruptcy, required paperwork, deficient filings, complying with court orders, and responding to requests by the bankruptcy trustee. The attorney may also help individuals prepare for the meeting of creditors and explain the client's duties while in bankruptcy and what to expect at different stages of the process.

A key element of *access to justice* is access to information. This is especially true in bankruptcy. Without a basic understanding of the bankruptcy process, unrepresented parties often have no idea where to start. Even non-bankruptcy lawyers are often hesitant when bankruptcy issues arise. Bankruptcy contains many traps for the unwary. Trustees are given extraordinary power to unwind pre-petition transfers and transactions, especially between family and friends. What may have been intended as a simple estate planning procedure could turn out to have unintended consequences once a bankruptcy is filed. In chapter 7, unlike chapter 13, there is no absolute right to dismiss one's case. A debtor who unadvisedly files a chapter 7 case only to discover unintended adverse consequences may find himself stuck in a case because a dismissal is not in the best interest of creditors.

It can be hard to find the answers to even some of the most basic questions. What kind of bankruptcy should I file? Am I eligible for bankruptcy? What state should I file in? When should I file? Will I lose my house? What property can I keep? Do I have to include all the creditors in the bankruptcy? These are common, fundamental questions whose answers may not be clear to an unrepresented party. The answers often require legal advice, something the clerks at the bankruptcy court, often the first and only contact that pro se individuals have with the court, are not allowed to provide. The Clinic is designed to answer these and more complex questions that may arise during a bankruptcy case.

The grant for the Clinic is funded by a biennial fee charged to federal court practitioners. Clinic staff screen individuals seeking help to ensure they are eligible. Once screened, each individual and the CBA will enter into a Limited Scope Legal Service Agreement in which the

CBA will agree to provide limited scope legal advice for free, and the individual will agree that the scope of legal services is limited to things like advice on bankruptcy eligibility, preparation of documents, Bankruptcy Court rules and procedure, and preparation for the meeting of creditors.

The Clinic's scope of representation is quite limited. It does not represent individuals, draft documents, investigate claims, or monitor cases. The individuals remain unrepresented and solely responsible for all aspects of their cases. To allow the Clinic's lawyers to provide limited scope representation to debtors in different stages of their bankruptcy case, the U.S. Bankruptcy Court issued an administrative order amending Local Bankruptcy Rule 9010-01(c)(3), which previously only allowed limited scope representation to pro se parties who were *anticipating* the filing of a bankruptcy petition. The Rule now allows attorneys to "provide pro bono services and advice under a nonprofit organization or Court-approved program to an individual without signing any document, entering an appearance or providing ongoing representation of the individual in the bankruptcy case. Local Bankruptcy Rule 9010-1(c)(3) (as amended by Administrative Order of the Chief Judge 2020-3, May 28, 2020).

After receiving a signed agreement, a Clinic staff member follows up with the individual and, if appropriate, schedules an appointment. The initial interview gives the attorney an idea about what kind of help the individual is looking for. The actual appointment consists of a 30- to 60-minute consultation. Follow-up appointments may be available, but not more than one every three weeks. The Clinic is currently remote, operating via telephone and Zoom appointments, but plans are in place to open a physical space in the United States Custom House as early as this fall. Once the program is established, it will begin recruiting volunteers to assist as well.

The Clinic is structured to help in different ways than the Pro Bono Bankruptcy Program run by the Faculty of Federal Advocates. Whereas the pro bono program attempts to find lawyers to represent debtors in adversary proceedings, the Clinic does not help with adversary proceedings and its lawyers do not enter an appearance in the case. In this way, the two programs complement each other and may provide a source of mutual referrals for individuals in need.

Unrepresented individuals who may benefit from the Pro Se Bankruptcy Clinic should be referred to the Clinic website where they can follow a link to initiate the intake process: https://cobar.org/bankruptcy. For further information, contact Matt Skeen at the Pro Se Bankruptcy Clinic: 720-633-8866.

The FFA's Diversity & Inclusivity Committee
By Kirstin Jahn

The FFA's Diversity and Inclusivity (D & I) Committee was established in January 2020. It grew out of a memorable and well-attended half-

day FFA Forum event entitled *Multiculturalism and the Dynamics of Powe*r in May 2019, featuring a presentation by Dr. Dwinita "Nita" Mosby Tyler from The Equity Project. The event included participation from a variety of bar associations, including the Colorado Women's Bar Association, the Sam Cary Bar Association, the LGBTQ Bar Association, and the Colorado Hispanic Bar Association. Prior to his passing, United States District Court Judge Wiley Y. Daniel worked with the FFA on the planning of this successful event with a vision of continued focus on diversity awareness and initiatives between and among the District and federal practitioners. To continue with Judge Daniel's vision, Chief Judge Philip A. Brimmer hosted a follow-up meeting with interested Forum attendees and Dr. Mosby Tyler. While the pandemic has stalled our ability to continue to hold live events, the D & I Committee has made significant progress toward its goals by constituting three subcommittees, Legal Education, Outreach, and Pipeline, and taking full advantage of conference call and Zoom technology to harness the energy of its members.

Although the Committee is so new that it doesn't yet have a link on the committees page of the FFA site, we developed a clear, concise diversity and inclusivity statement for the FFA's web site that describes the FFA's commitment to serve members by promoting all forms of diversity, including member background, firm size, firm location, and type of practice.

The Legal Education subcommittee presents seminars and programs with a focus on promoting consciousness of diversity, equity and inclusivity issues. We organized and presented two seminars in 2020. On March 11, Karen Steinhauser, presented *Implicit Bias in the Legal Profession, Workplace and the Community*. On September 24, Colorado 8th Judicial District Judge Juan Villaseñor, Erica Grossman, and Kathryn Starnella presented *Qualified Immunity in the Post-George Floyd Era.*

The Outreach subcommittee does exactly that, promoting diversity and inclusivity among several constituencies. Diversifying the FFA's general membership, as well as membership within all of its committees, is a primary goal. To that end, the subcommittee has developed a survey that FFA members should expect early this spring that will give us a snapshot of the demographics of current FFA membership in order to identify gaps in our membership's diversity. The subcommittee participates in the Colorado Bar Association / Colorado Judicial Institute Diversity on the Bench Coalition to add a federal court perspective to the Coalition's diversity work. The subcommittee also reaches out to specialty and minority bar associations to encourage their active participation in the FFA.

The Pipeline subcommittee more specifically seeks to create partnerships with future attorneys from diverse backgrounds in an effort to remedy the underrepresentation of diverse populations in the profession, and has reached out to student leaders at the University of Denver Sturm College of Law to join the FFA as student members. Uchechukwu "Emeka" Eze and Andre Martin, student members of the subcommittee and members of D.U.'s chapter of the Black Law Students Association, are leading the effort, with the subcommittee's assistance, to organize a tour of the district court and United States Court of Appeals for the Tenth Circuit courthouses in Denver, which is planned for September 10, 2021. The tour will include meet-and-greets with judicial officers. Members of the counterpart organization at the University of Colorado School of Law will be invited to participate. The

subcommittee is also pursuing efforts to expand internship and externship opportunities for law students with federal court judicial officers and law firms of all sizes with a focus on federal practice.

In addition to the student members, the D & I Committee members are Lisi Owen and Kirstin Jahn (Co-Chairs), Ryan Bergsieker, LeeAnn Morrill, Marilyn Chappell, Kathy Chaney, Ruth Moore, Dave Lichtenstein, CiCi Cheng, Katie Shen, Anna Martinez, Deborah Yim and Dan Graham. We welcome additional members. If you're interested in joining, please contact Dana Collier at dana@facultyfederaladvocates.org, 720-667-6049, or any committee member.

Amendments and Revisions to the Bylaws for the Faculty of Federal Advocates

By Russell Stewart

The Board of Directors of the Faculty of Federal Advocates recently approved changes to the FFA's bylaws. The revised and amended bylaws are posted on the FFA website. Highlights of the changes include:

Members

- Students enrolled in accredited law schools may now become non-voting members of the FFA and serve on advisory committees and task forces.

- Regular and Special Member meetings may now be held electronically by Zoom, Team, Webex or similar platform. Members can vote by mail or electronic means on any matter that could be considered at the annual meeting.

- Schedule for election of members

    1. Ninety days before the annual meeting, the Secretary determines the number of open seats (including members seeking a second term) and invites nomination from members.

    2. Sixty days before the annual meeting, self-nominations must be delivered to the Secretary.

    3. Forty-five days before the annual meeting, the Nominating Committee delivers a proposed slate to the Secretary. Any member not selected by the Nominating Committee may seek election as a write-in candidate.

    4. Thirty days before the annual meeting, paper or electronic ballots are distributed to Members.

    5. Seven days before the annual meeting, completed ballots must be delivered to the Secretary.

    Results of the election are announced at the annual meeting.

Directors

- Term-limited and former Members of the Board may now continue to serve as non-voting Emeritus Directors so long as they maintain regular meeting attendance. Emeritus Directors are entitled to participate in Board discussions and serve on advisory committees.

- Regular and Special Board of Director meetings may now be held electronically by Zoom, Team, Webex or similar platform.

- The bylaws create five permanent standing committees: The Executive Committee, Nominating Committee, Finance Committee, Civil Pro Bono Committee and the Continuing Legal Education Committee. All other committees and task forces are advisory and are limited to making recommendations to the Board.

Officers

- An executive committee comprised of the President, President-elect, immediate Past-President, Treasurer, and Secretary has been created to exercise powers of the FFA when necessary between Board Meetings.

- The bylaws authorize the Board to appoint an Executive Director to serve as the chief operating officer of the FFA.

The FFA encourages all Members to consider serving on the Board of Directors. When evaluating candidates and recommending a slate of nominees, the Nominating Committee, considers the following factors relevant to mission of the FFA:

a. demonstrated commitment to the FFA's mission to improve the quality of legal practice in the federal courts in Colorado by enhancing advocacy skills, professionalism, and integrity;

b. demonstrated support for and involvement in FFA committees and activities;

c. diversity of federal court professional practice, so that the Board of Directors may reflect a geographic diversity and the views of attorneys in various types of practices, including those with large firms, small firms, and solo practices; public interest firms; and government entities;

d. support for the FFA's commitment to improving diversity and inclusivity in the practice of law in Colorado with respect to all types and forms of diversity;

e. experience with federal court trials, hearings, and motions practice; other relevant associations; and interactions with the United States District Court and staff; and

f. teaching and speaking experience, including law school, mock trials, and/or continuing legal education classes.

Members should contact any of the 18 Board Members for more information.

FACULTY OF FEDERAL ADVOCATES

UPCOMING WEBINARS

Sign-up on our website at **www.facultyfederaladvocates.org.**

Thursday, May 13, 2021
12 noon-1:15 p.m.

"Stress Hardiness in Uncertain Times"

AMY KINGERY
Assistant Director, COLAP

FREE WEBINAR BUT REGISTRATION IS REQUIRED

Attorneys and legal professionals are at risk for compassion fatigue, secondary trauma, and burnout under pandemic conditions due to exposure to the fear, grief, anger, and overwhelm of so many people, including clients, family, friends, and colleagues. Many have felt the impact of these unforeseen periods of extreme change in our work and personal lives, coupled with often simultaneous feelings of isolation and feeling trapped regardless of one's living situation. This presentation will help you understand the neurobiology and neurophysiology of stress and provide tools for building resiliency and managing stress during these difficult and changing times. You will also learn about free and confidential assistance available to you through the Colorado Lawyer Assistance Program (COLAP) along with other resources that are available to support the emotional wellbeing of you, your colleagues and your organization as you adapt to the ever-changing work environment.

2 general/1.5 ethics CLE credits approved.

Click **HERE** to register for the May 13, 2021 program.

Wednesday, May 19, 2021
12 noon-1:15 p.m.

"Trial Techniques: Storytelling in Litigation"

MARCI G. LABRANCHE, ESQ.
Stimson Stancil LaBranche Hubbard, LLC

MARY V. BUTTERTON, ESQ.
Office of the Federal Public Defender,
District of Colorado

WEBINAR

Effective litigation of a case requires a mastery of the ability to tell the story of your client who may be an individual criminal defendant, a

corporation in a civil action, or an individual plaintiff. The role of storytelling begins early in motions practice and proceeds through sentencing or judgment. This CLE will focus on how to best tell your client's story to reach the most favorable outcome in your case.

2 general CLE credits approved.

Click **HERE** to register for the May 19, 2021 program.

Friday, June 18, 2021
12 noon-1:15 p.m.

"Much Ado About Rule 30(b)(6) Depositions"

MAGISTRATE JUDGE S. KATO CREWS
U.S. District Court for the District of Colorado

JESSAMYN L. JONES, ESQ.
3i LAW

WEBINAR

Depositions under Rule 30(b)(6) offer plenty of fodder for discovery disputes and consternation between counsel. From describing the matters for examination with particularity, to adequately preparing one or more designees, to the conduct of the deposition itself, there is much ado with Rule 30(b)(6) depositions. This program will focus on best practices associated with these depositions to avoid discovery

disputes and allow these depositions to run smoothly, and will highlight the December 2020 amendment to Rule 30(b)(6).

2 general CLE credits approved.

Click HERE to register for the June 18, 2021 program.

Watch the FFA website and your inbox for program and registration information.

FFA Contact Information
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