



## Fall/Winter 2022 Newsletter

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Fall/Winter 2022

### Welcome to the Faculty of Federal Advocates

#### Fall/Winter 2022 Electronic Newsletter

[www.facultyfederaladvocates.org](http://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 Executive Director Dana Collier at:

[dana@facultyfederaladvocates.org](mailto:dana@facultyfederaladvocates.org).

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**PLEASE JOIN US VIRTUALLY!**

**FFA ANNUAL BUSINESS MEETING**

**WEDNESDAY, DECEMBER 14, 2022, 5 – 5:45 P.M.**

Please join the FFA at a virtual reception recognizing 2021 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 can be provided with the Zoom login link for December 14.

We hope you can join us for this annual event--again this year from the comfort of your office or home.

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## Who We Are

### Board of Directors

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## The Art and Technique of Effective Opening Statements and Closing Arguments

Katherine Ross

On April 7, the FFA offered a CLE summarizing lessons "from the trial trenches" to help attorneys present effective opening statements and closing arguments. The panel consisted of three veteran litigators: Megan Downing of Recht Kornfield; Kenzo Kawanabe of Davis Graham & Stubbs; and Kathryn Stimson of Stimson LaBranche and Hubbard, who explained how they prepare and execute these key pieces of trial advocacy.

### Opening Statements

Ms. Downing began with the observation that, when she was a new public defender teaming with more senior lawyers for trial, they would ask her to prepare the opening statement. The implication was that even an inexperienced lawyer can't mess up an opening. Contrast this with the startling fact that—according to a University of Chicago study—80% of jurors make up their minds after the opening statement.

Every opening should highlight the three "legs" of a case: a persuasive theme; a factual theory; and a legal theory. It takes time to get these right.

- **Theme** is "the grabber," i.e., a catchphrase. It's the essence of your case summed up in a word, phrase, or short sentence. Weave it throughout the case. If jurors remember nothing else, they should remember this.
- **Theory** is the "why"—the legal reason the jury should decide in your client's favor.

Ideally, theme and theory reinforce each other. For example, the theme "kill or be killed" pairs with the theory that the defendant is not guilty because she acted in self-defense.

Ms. Stimson followed this introduction with a discussion of the importance of story in the opening statement. Stories activate chemical responses in our brains. Cortisol helps us form memories. Dopamine keeps us engaged. And oxytocin triggers empathy. These chemical responses are triggered by effective opening statements and help jurors listen, remember, and feel for your client. Step out of your role as a lawyer, she advised, and into your role as a storyteller. Tips to help do this include:

- Think of your case in terms of the elements of a story: theme, characters, setting, plot, conflict, point of view, and style. Most importantly, highlight the moral of your story.
- Consider "storyboarding" your opening. Use free online resources, e.g., storyboardthat.com. Think about how to use your posture, voice, and movement to mark transitions and create drama.
- Structure your opening as a narrative, with exposition, conflict, rising action, climax, falling action, and resolution.

### 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 opportunities, 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://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](#)

- Show, don't tell. Keep PowerPoint text to a minimum. Use images (from exhibits) to underscore key facts. This can be photographs, snips from documentary records, screenshots of text messages, etc.

Mr. Kawanabe agreed that story is key and noted that effective themes can be found even in a relatively dry contract case like, "A deal is a deal." He followed with some practical advice about how to engage with jurors.

- Don't overstate your case. Avoid hyperbole and emotion. You don't have a license to get on the soapbox.
- Test your opening. Try it out with your client, with colleagues, with consultants if warranted.
- Be ethical. Only cite evidence that you believe in good faith will be admitted. Don't argue; don't comment on the law; and don't make statements of personal belief. Follow the Golden Rule.
- Be judicious in making and responding to objections during opening. Only object if opposing counsel cites evidence that is inadmissible or unfairly prejudicial; argues improperly; or offers a discourse on the law. If the other side objects during your opening, don't argue—adjust. For example, preface assertions with "the evidence will show . . ."

## Closing Arguments

The panelists agreed that closing is the time to bring it all home. The jury is comfortable with you now. Remind them that you delivered on what you told them in the opening. Weave together the facts and the law by reminding them of key evidence, revisiting demonstratives, and linking documents and testimony to each legal element. Now is the time to argue. Use stronger language, point out the flaws in the other side's case, and motivate the jury to side with you.

Panelists had a number of tips for closing in both civil and criminal trials, including:

- Keep two notebooks, one for regular notes and one for closing. When there is testimony that is especially vivid, write it down in the closing notebook so you can repeat it to the jury.
- For criminal trials, lawyers can have a formula for closing. Ms. Stimson reminds jurors of the definition of reasonable doubt: a doubt that would cause a prudent person to hesitate to act in matters of importance to themselves. She asks the jury to consider whether they have cause to hesitate based on the evidence, and then presents the images that reflect the best evidence for the defense.
- Incorporate the jury instructions into your closing statement. Display them, and then literally tick the boxes that favor your client. If you are defending a civil case, write in "\$0" for compensatory damages and draw a big red X over punitive damages. If you have successfully impeached a witness's testimony, emphasize the credibility instruction.

[Federal Public  
Defender Colorado/  
Wyoming](#)

[Colorado State Courts](#)

[Our Courts](#)

- Always end with a bang. In a criminal case, end with the words “not guilty.” Reiterate your theme. “This was kill or be killed. That’s why she’s not guilty.” And then look at the jury for a while to let it sink in.

Click [HERE](#) for the written materials from this program.

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### **Remarks by Federal Public Defender and United States Attorney**

Martha H. Eskesen and Thomas E. Goodreid

Federal Public Defender (“FPD”) Virginia Grady and United States Attorney (“USA”) Cole Finegan discussed several topics of interest to Faculty of Federal Advocates members on April 28, 2022, in an open forum moderated by Assistant Federal Public Defender Mary Butterton and Assistant United States Attorney Lauren Dickey.

The presentation began with a discussion of their respective backgrounds. Virginia Grady is the Federal Public Defender for the Districts of Colorado and Wyoming. She has had a 39-year career in defense work. She originally intended to go into television news but decided to go to law school instead. Through connections in law school, she was introduced to Bryan Morgan of Haddon, Morgan and Foreman, and she relocated to Colorado from the East Coast and went to work at the Colorado State Public Defender’s Office.

Cole Finegan was appointed by President Biden after a career in the private and public sectors, including private practice at a global law firm, where he served as the Regional Managing Partner for the Americas, as well as the Denver Managing Partner. Previously, he served as Chief of Staff for the Denver Mayor as well as the Denver City Attorney, positions he held simultaneously. He has also served as Chief Legal Counsel in the Office of Governor Roy Romer.

The speakers then addressed the priorities of their respective offices. FPD Grady stressed zealous advocacy and protecting the rights of the accused, while maintaining credibility with the court. USA Finegan stressed goals of protecting the security of our citizens, ensuring that the civil rights of all Americans are protected, and restoring faith of the American people in the Department of Justice. Issues the U.S. Attorney’s Office is dealing with are the rise of violent crime in Colorado, the increased prevalence of fentanyl, and asset recovery.

Each of the presenters spoke of their pride in their respective offices’ achievements. FPD Grady recounted the strides that her Office has made in diversity, equity, and inclusion, and how her Office has changed under her tenure by increasing the number of women lawyers and the number of lawyers from other diverse populations. USA Finegan noted that his Office has also made strides to make in this area. Gender diversity has improved, and he is committed to doing more.

FPD Grady also noted the limitations faced by her office including underfunding, the public perceptions of public defenders, and the lack of compensation parity of court-appointed private lawyers with lawyers in the private sector. Despite these limitations, Assistant Federal Public Defenders and the court-appointed private lawyers in Colorado and Wyoming step up and meet the challenges with which they are faced.

The presenters also discussed practicing with professionalism and civility. They emphasized the importance of meeting in person with opposing counsel and having

verbal communications as opposed to electronic communications. Both agreed that email and texting should be used only as a last resort.

Click [HERE](#), [HERE](#), [HERE](#) and [HERE](#) for the written materials from this program.

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## **The Art of Trial Objections**

Adam O'Brien

The Faculty of Federal Advocates welcomed United States District Court Judge Robert E. Blackburn and attorneys Jeffrey K. Graves, Timothy P. O'Hara, and Gina Rossi to present The Art of Trial Objections on July 12, 2022. The presentation provided invaluable insight into the experienced panel's views on a variety of evidentiary topics, including motions *in limine*, misused and underutilized objections, preserving the record on appeal, and strategy for objection during opening statements and closing arguments.

Judge Blackburn expressed his disdain for most motions *in limine* and discussed his view that most requests for pretrial evidentiary rulings are of little value unless the evidentiary issue presented will be exactly the same during trial. Further, most evidentiary rulings must be made in the context of trial during particular testimony. If a party anticipates that an important evidentiary issue will arise at trial, Judge Blackburn prefers that the parties raise the issue in a trial brief.

The panel also offered insight into trial strategy, advocating a cautious approach to objections. Counsel should consider limiting objections unless the objection is truly necessary, such as to preserve an appellate issue. Further, practitioners should be careful not to overuse objections (even when a meritorious objection could be made) when an objection is not necessary to protect a witness or make a key point with the judge or jury. Jurors tend to dislike numerous objections that interrupt testimony and may speculate about what the attorney wanted to hide. Jurors may also speculate about what the witness would have testified to in any event. The panel agreed that objections during openings and closings should be used sparingly. For example, rather than object during an opening statement, the better practice may be to use opposing counsel's overpromise in opening against them in closing. The panel also stressed that advocates should be careful not to overuse leading and compound questions at trial.

Judge Blackburn also commented on bench conferences reminding practitioners that a bench conference should only be requested if absolutely necessary. A more thorough record or offer of proof may be made, if necessary, outside the presence of the jury. Judge Blackburn also reminded attendees about Rule 611, which gives judges broad discretion to exercise reasonable control over the mode and order of examining witnesses and presenting evidence.

Judge Blackburn also provided valuable guidance on overused objections, including relevancy under Rule 401. Rule 401 is liberal and grants the judge discretion to allow evidence that has "any tendency" to make a fact of consequence more or less probably. Further, Judge Blackburn finds that many Rule 401 objections are better made under Rule 403. However, advocates must remember that Rule 403 requires the probative value of the evidence to be "substantially" outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. For example, "Objection, prejudicial under 403" is technically improper as it does not track the requirement of the rule. Most

objections that relate to relevancy or prejudice should be made under both 401 and 403

In terms of underused objections, Judge Blackburn explained that advocates sometimes fail to object to lay witnesses offering expert testimony under Rules 701 and 702. Rule 701 limits opinion testimony by lay witnesses to opinions that are: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. In addition, opinions may also be objectionable if they were not properly disclosed under Rule 26 prior to trial.

Attendees were provided with Judge Blackburn's Ten Commandments of Evidence and the other panelists' "Civil Practice Do's and Don'ts of Trial Objections," "Should I Object" flowchart, and "Character Evidence Cheat Sheet." These handouts provide concrete examples and will assist federal advocates in working through the art of trial objections.

In sum, practitioners in the United States District for the District of Colorado must have a command of the Federal Rules of Evidence and anticipate evidentiary issues that may arise at trial. However, practitioners should also evaluate how trial objections fit within with their overall trial strategy and goals.

Click [HERE](#) for the written materials from this program.

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**The Psychology of Lawyering:  
A Discussion of What It Means to Be a Mentally Healthy Lawyer**  
Dan Weiss

On August 17, 2022, FFA welcomed Holland & Hart partners Elizabeth Titus and Andrew Lillie, along with lawyer/executive coach Laura Groen of Novus Global, to give a CLE on the Psychology of Lawyering. A thought-provoking discussion ensued about what it means to be a mentally healthy lawyer.

The discussion began with some common mental constructs that lawyers adopt as true without much thought. Lawyers are ultimately storytellers, and we like to tell ourselves stories about our chosen profession, like "I have no control over my schedule," or "there is no room for mistakes." We tell ourselves that "Passion = Naïveté" or "Busy = Important."

While these stories contain some kernels of truth, perhaps, Laura suggested that we take a moment to interrogate them. At their essence, she explained, these stories are self-limiting myths that get in the way of our efforts to become better lawyers.

Liz explained that the "Busy = Important" story resonated particularly well, given some unexpected down time she had during COVID when her oil and gas business dried up. Previously an avid climber of the high performers' ladder, Liz initially struggled with pandemic-enforced time off because, as the story goes, she could not be "important" anymore because she was no longer "busy" at work. Liz explained that she had to essentially rewire her brain, replacing the "Busy = Important" story with a much healthier perspective, that her COVID break was instead a welcome opportunity to think long and hard about why she was on the ladder in the first place.

Laura pointed out that these self-told lawyer stories are, to a degree, a cost of doing business. Indeed, we are in the business of risk-identification and risk-avoidance; our



sixth sense for risk mitigation often serves our clients well. However, bringing that kind of thinking “home,” in the literal or symbolic sense, can stifle creativity and personal growth.

The CLE then turned to an entertaining discussion of how the “Cave Man” brain works. As Andy explained, human beings have lived in one of three mental states since we crawled out of the proverbial slime. The first, both a baseline and an ideal state, is characterized by the curiosity, compassion, and grounded-ness of the Green Zone.

In times of stress or danger, though, human brains and lawyer brains often run in the Red Zone. This is the zone of fight or flight, where we are entirely reactive and often some combination of angry and afraid. As Andy explained, this kind of thinking no doubt saved a Cave Man or two from being eaten by a leopard. Liz added that the Red Zone, in moderation, is useful to the lawyer writing a difficult brief on a tight deadline.

But the panel agreed that these types of emergencies are a lot less common than lawyers think they are. We do not need to run in the Red Zone nearly as much as we do. In fact, too much time in the Red Zone can easily degenerate into Blue Zone paralysis, where a hopelessly overwhelmed lawyer has lost the ability to effectively advocate for their client.

Laura, Liz and Andy agreed that lawyers simply do not have to live this way. In fact, we have ethical obligations to live as much as possible in the Green Zone, perhaps with occasional and reasonably timed stints in the Red Zone. To that end, the panel and audience gave several helpful suggestions to help us all make progress towards the ideal of the “mentally healthy lawyer.”

- **Slow Down:** Take three long and deep breaths. As Andy pointed out, this kind of deliberate slowness is not something our Cave Man ancestors could have possibly done while fleeing a leopard, so it can be a good way to force ourselves back into Green Zone-style thinking.
- **Visioning:** While lawyers often struggle finding time to do the hard work of visioning, this strategic thinking about our professional selves is necessary to change the story.
- **Moderation:** An audience member brought up the tendency of many lawyers to deal with Red/Blue Zone thinking by drinking to excess. The panel agreed that while booze may offer some temporary stress relief, the effect won't last and can actively get in the way of other tactics offering more sustainable relief.
- **More Positive Feedback:** A teacher-turned-lawyer in the audience suggested that the culture of positive feedback, common to good classrooms across the country, could also work with lawyers. Why not call out more good things and fewer bad things?
- **Vacation Like We're on Vacation:** Why not openly discuss our upcoming vacations, so our colleagues and clients take the hint and save calls or emails about pseudo-emergencies for *after* we get back from the beach?
- **Therapy:** Get professional help if you need it, or perhaps even if you don't! Therapy is not a dirty word; it can provide invaluable time, space, and the sounding board we need to reinvigorate our sense of purpose and rediscover our passion for the law.

Click [HERE](#) for the written materials from this program.

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## **The Perils and Pitfalls of Wearing Two Hats**

Jordan Lipp

On August 30, 2022, Kendra Beckwith, Kati Rothgery, and Dave Stark presented “The Perils and Pitfalls of Wearing Two Hats.” The presenters divided this fascinating issue into three broad questions. The first question is can you (and should you) engage in a joint representation? The second question is what is necessary in order to jointly engage two clients? The third question is what happens when a conflict arises? These topics were addressed in turn by the panel.

First, the panel addressed whether a practitioner should engage in a joint representation. By way of background, joint representation in the context of the panel discussion and this article refers to attorneys representing more than one client in the same or related litigation.

In a joint representation situation, as the panel explained, attorneys owe a duty of loyalty to each client. Much like a parent cannot love one child more than another child, an attorney cannot prefer one client to another client. Similarly, in a joint representation situation, all clients are under the same privilege tent—so while they can maintain attorney-client privilege vis-à-vis third parties, they do not maintain privilege between themselves.

In considering a joint representation situation, the attorney should consider both whether they can engage in the joint representation in light of Rule of Professional Conduct 1.7, and how conflicts might arise at a later date (for example, during settlement negotiations).

Second, the panel discussed what is necessary to engage in joint representation. At the outset, it behooves attorneys to provide the clients with information about the nature of the joint representation and the possibility of conflicts, as well as obtaining informed consent. While Colorado only requires that the conflict issues be confirmed in writing, it is usually best practice to ask the clients for their signature as this can be helpful should issues arise in the future and is required in some other jurisdictions.

The panel compared the commencement of joint representation to a wedding. The joint parties are happy and harmonious at the outset. However, later in the representation, if things go wrong, the situation is more analogous to a divorce. Having the proper paperwork and informed consent at the outset assists the joint clients and their counsel address the problems and conflicts if they arise.

Third, the panel discussed what to do if a conflict arises. For example, a conflict could occur if one party wants to withhold information from another, a party withdraws consent, or one client considers making a viable claim against another. In these situations, it is often prudent for the practitioner to consult with others (though being certain not to waive the privilege), for example the law firm’s ethics counsel, the practitioner’s insurance carrier loss control team, or the bar association ethics hotline on the appropriate steps in this situation. Often, though not always, full withdrawal is required.

Practitioners should consult Rules of Professional Conduct 1.0, 1.6, 1.7, 1.8, 1.9, 1.18, Colorado Ethics Opinion 135, and ABA Ethics Opinion 492 on these issues.

Click [HERE](#) for the materials from this program.



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## Lawyers Called Forward to Represent Gender-Based Violence Survivors & Ethics Guidance About Pro Bono Representation

Stephanie K. Wood

On September 7, 2022, the FAA hosted an informative program guiding lawyers about how to dedicate crucial pro bono legal services to the epidemic of global gender-based violence affecting one in three women<sup>1</sup> that disproportionately impacts female-identifying Native Americans in Colorado.<sup>2</sup> According to the ACLU, “Native women experience the highest rates of sexual assault and violence in the United States.”<sup>3</sup> The FAA program highlighted several relevant Colorado organizations that lawyers can contact to provide pro bono legal services to Native American gender-based violence survivors and also discussed several types of arrangements that would allow limited representations, perhaps making it more feasible for more lawyers to contribute their services. Both Colo. RPC 6.1 and the ABA’s Model Rule 6.1 encourage lawyers to provide 50 hours of pro bono legal services annually.

Given its pervasiveness, gender-based violence is one of the greatest socio-economic barriers to the empowerment of individuals identifying as female. Pro bono assistance is crucial because the supply of trained lawyers willing to take on cases related to gender-based violence is far below the demand. As background, the federal Pro Bono Work to Empower and Represent Act of 2018 (“POWER Act”) authorizes each federal judicial district to host at least one public event annually to promote pro bono legal services for survivors of domestic, dating, sexual and stalking violence. Legal services are second only to medical services as the most requested need of survivors; however, only 36% of women requesting legal services actually received assistance from a lawyer according to the ABA’s 2019 Judicial Toolkit for POWER Act Implementation. To further illustrate the daily need, on a single day in September 2014, more than 10,000 requests for legal services were not met according to census data. Pub. L. 115-237, Sec. 2 (5).

Importantly, research shows that the availability of civil legal services in a community greatly reduces the likelihood of domestic violence. *Id.* Sec. 2 (7). “Legal representation increases the possibility of successfully obtaining a protective order against an attacker, which prevents further mental and physical injury to a victim and his or her family, as demonstrated by a study that found 83 percent of [survivors] represented by an attorney were able to obtain a protective order, whereas only 32 percent of [survivors] without an attorney were able to do so.” *Id.* Sec. 2 (8). In addition to obtaining protective orders, legal services can also assist gender-based violence survivors with other practical matters such as custody issues and child support. *Id.* at 11.

The ABA’s Commission on Domestic & Sexual Violence and Standing Committee on Pro Bono and Public Service can provide lawyers with technical assistance and support in pro bono representation for gender-based violence survivors. And the following Colorado-based organizations have formal programs in which lawyers may provide pro bono assistance to gender-based violence survivors: (i) Colorado Legal Services in Durango, (ii) the Denver Indian Center, (iii) the Denver Indian Center Legal

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<sup>1</sup> <https://www.unwomen.org/en/what-we-do/ending-violence-against-women>

<sup>2</sup> <https://www.aclu.org/news/racial-justice/we-need-accountability-for-those-who-commit-violence-against-native-women>

<sup>3</sup> *Id.*

Clinic of Metro Volunteer Lawyers, (iv) Sexual Assault Services Organization in Durango, (v) Southern Ute Tribe, (vi), and Ute Mountain Ute Tribe, and (vii) Ute Mountain Ute Victim Support Services.

In addition to longer-term representations and court appearances, representatives for these Colorado organizations discussed more limited pro bono opportunities such as participating in legal clinics or specialized workshops, offering short phone sessions giving advice and counsel, committing to review documents for a specific need, and helping with a 24-hour crisis hotline. The representatives further explained that the scope of current needs goes beyond family law or child custody issues. For example, the Colorado Legal Services in Durango assists clients with collection actions, predatory lending, public benefits, wills, power of attorneys and advanced medical directives, bankruptcy issues, and eviction defense. Relatedly, the Denver Indian Center hosts a general legal clinic on the first Wednesday of every month from 6-8 pm at 4407 Morrison Rd., Denver, CO 80219.

In the second half of the program, James Wilder, Assistant Regulation Counsel, Office of Attorney Regulation Counsel offered a reminder about ethical considerations when providing pro bono legal representation, such as ensuring that lawyers clearly communicate the scope of representation and when it ends and satisfy their obligations of competence, confidentiality, communication, and diligence in any

attorney-client relationship. Finally, Wilder reminded lawyers to evaluate their self-care practices and caseload to ensure that they have the emotional and practical bandwidth to commit to pro bono representation before doing so.

Click [HERE](#) for the materials from this program.

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### **2021 in Perspective: Analysis of the Business of the Federal District Court** Ariel DeFazio

On September 21, 2022, federal court practitioners were treated to Magistrate Judge Michael Hegarty's annual year in review. This year's format varied somewhat from years past. Judge Hegarty invited attendees to share their suggestions and concerns by "taking orders" from those present regarding what they would like to see from the District Court. This set the stage for a frank dialogue that covered several topics, including:

- **Alternatives to Incarceration.** The District is looking at alternatives to detention for criminal defendants whose principal risk factor is drug addiction (which often leads to other, nonviolent crime). This may include intensive supervision or intense drug rehabilitation programs. Judge Hegarty is currently gathering stakeholders for this project and invited interested individuals to contact him.
- **Commenting on Judicial Practice Standards.** There is no formal procedure for providing comments or feedback on a judge's Judicial Practice Standards. The District's Attorney Services department has, however, graciously volunteered to pass along information to judges. Send comments or feedback to [cod\\_attorneyservices@cod.uscourts.gov](mailto:cod_attorneyservices@cod.uscourts.gov). Your email will be anonymously forwarded to the judge.

- **Wifi in the Courthouse.** The rationale for not having wifi in the courthouse has evolved from security to financial. For now, the attorney lounge—accessible from the jury assembly room, using code 531—has wifi.
- **ADR.** Although settlement conferences have decreased in frequency since 2012, they are still available, and most District Judges will grant requests for the same. In fact, the number of settlement conferences held by Magistrate Judges is increasing. Early Neutral Evaluations are also an available and potentially valuable tool (see D.C.COLO.LCivR 16.6), although there has not been a single documented occurrence of one since 2018.
- **Delayed Rulings on Ripe Motions.** For those practitioners who are waiting for a ruling on a fully briefed issue, Judge Hegarty suggested requesting oral argument on the matter briefed and/or filing a request for expedited consideration, if appropriate (e.g., there has been a change in the situations of one or both parties that might merit such a request). He also suggested filing supplemental authority if appropriate.
- **Delay in the District Court Generally.** The fact remains that the District's caseload continues to be crushingly high. Active District Judges had 287 civil cases pending at the end of 2021 and each Magistrate Judge had an average of 101 civil consent cases in addition to their role as referral judges for 1,770 civil cases total. Vacancies on the bench, especially among Magistrate Judges, have exacerbated the problem. Part of the solution is legislative: the Judicial Conference has recommended that two more active District Judge positions be added to the District, but neither has been authorized by Congress to date.

As always, Judge Hegarty's written materials are a tremendous source of valuable information. Rather than provide in-depth review of Judge Hegarty's 2021 year-in-review report, a few notable trends in the District are below:

- **Civil Cases.** 3,507 civil cases were filed in 2021, 1,147 of which were filed by pro se litigants.
- **Summary Judgment Orders.** Between January 2021 and July 2022, judges in the District granted 47.8% of motions for summary judgment in their entirety and 19.7% in part and denied 32.6%. The average time from the filing of a motion for summary judgment to the ruling varied by the outcome: 8.01 months for motions that were granted; 7.48 months for motions that were granted in part; and 7.81 months for motions that were denied.
- **Civil Jury Trials.** The 2021 trial rate was 0.77% and the average duration from a complaint's filing to the first day of a jury trial was 33.21 months (34.4 months for a District Judge and 27.9 months for a Magistrate Judge). 2021 saw the lowest total volume of trials during the past ten years, except for 2020. This, in part, is due to a second COVID-19 shutdown of the Court during the first approximately 3 months of the year. The 27 civil jury trials conducted in 2021 were: employment (6), common law tort (6), insurance (6), civil rights (5), breach of contract (3), and intellectual property (1). For the first time since 2010, plaintiffs enjoyed a higher success rate than defendants with 59.26% prevailing in jury trials.

- **Civil Bench Trials.** There were 8 bench trials in 2021, which proceeded from a complaint to trial in 26.30 months. The issuance of a ruling occurred 2.32 months on average after the completion of the trial.
- **Criminal Cases.** In 2021, 426 felony cases were filed. Fourteen cases proceeded to jury trial resulting in a trial rate of 2.85% and the conviction rate dropped to 71.43% (the lowest conviction rate since 2012 when the District began recording this data). The average time from a defendant's initial appearance to trial was 21.80 months. There were two felony bench trials, which proceeded from initial appearances to trial in 16.77 and 17.03 months, only one of which resulted in a conviction.
- **Pro Bono Appointments.** The District entered 78 pro bono appointment orders for which counsel was successfully placed in 49 resulting in a pro bono placement rate of 63%.
- **Social Security Cases.** Plaintiffs filed 165 Social Security appeals in 2021.
- **ADR.** Judges held 77 settlement conferences in 2021, the lowest number since 2012. However, 2022 is on pace to have the most settlement conferences over that same period.
- **Bankruptcy.** The District has seen an 80.6% decrease in case load over the past decade.
- **Appeals.** In 2021, the Tenth Circuit saw 430 appellate matters from the District of Colorado. The average time on appeal (i.e., from notice of appeal to the last appellate opinion or final order) was 10.1 months. The Tenth Circuit's overall affirmance rate for cases from the District over the past twenty years was 81%.

We thank Magistrate Judge Hegarty for this tremendously valuable presentation.

Click [HERE](#) for the materials from this program.

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**Of Note from the United States District Court,  
District of Colorado**

**1. Biennial / Renewal Fee for Attorneys Begins Oct. 1, 2022 and ENDS Dec. 31, 2022**

All Faculty of Federal Advocates members: please be aware that the U.S. District Court's Biennial / Renewal Fee payment of \$60.00 has been due beginning Oct. 1, 2022 and that THE LAST DAY TO PAY THE FEE IS Dec. 31, 2022. The payment is made through the court's Case Management/Electronic Case Filing ("CM/ECF") system. Instructions to pay the fee are available on the court's Biennial / Renewal Fee Information page on the court's website, available [here](#). Bar members who do not pay the fee by Dec. 31, 2022 will be removed from the court's roll of attorneys, and may only practice in the U.S. District Court or Bankruptcy Court after re-admission to the District Court bar, which requires submitting an application for re-

admission, paying the full bar admission fee of \$223, and the processing of bar applications by court staff, which is not an automated, instant process.

## **2. Notice - Judicial Practice Standards (Criminal and Civil) Updates**

Please be aware that effective December 1, 2022, U.S. District Chief Judge Philip A. Brimmer, District Judge William J. Martinez, District Judge Regina M. Rodriguez, District Judge Charlotte N. Sweeney, District Judge Nina Y. Wang, and Senior District Judge Christine M. Arguello have published revised practice standards. Please note that Judges Arguello, Rodriguez, Sweeney and Wang have established Uniform Civil Practice Standards applicable for these four judges. All parties with cases before any judges with revised practice standards should review these updates. Judicial Practice Standards are available on the Judicial Officers page available [HERE](#).

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### **FACULTY OF FEDERAL ADVOCATES UPCOMING EVENTS AND CLE PROGRAMS**

Sign-up on our website at [www.facultyfederaladvocates.org](http://www.facultyfederaladvocates.org).

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**TUESDAY, DECEMBER 6, 2022  
12:00 - 1:15 P.M.**

**"CHANGING NOTIONS OF CONSENT IN SEXUAL ASSAULT CASES"**

**PROF. AYA GRUBER  
IRA C. ROTHGERBER PROFESSOR OF  
CONSTITUTIONAL LAW AND CRIMINAL JUSTICE  
UNIVERSITY OF COLORADO LAW SCHOOL**

**WEBINAR ONLY**

Professor Aya Gruber, of the University of Colorado Law School, examines the tangles created by the legal standards of "affirmative consent" (which exists in over 20 jurisdictions and in school policies), versus "ordinary consent," and how the #MeToo movement has shaped cultural views and definitions of consent of sexual activity.

2 general CLE credits approved.

Click [HERE](#) to register for this program.

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FRIDAY, DECEMBER 9, 2022  
8:30 A.M. - 1 P.M.

"REPRESENTING PRO BONO PRISONER CLIENTS IN  
FEDERAL COURT (PART 2)

DAVIS, GRAHAM & STUBBS, LLP  
1550 17TH STREET, SUITE 500, DENVER  
and WEBINAR

**There is no charge for this CLE but registration is required.**

Why take a U.S. District Court for the District of Colorado Civil Pro Bono Panel case? And how do you take such a case? This half-day seminar will cover the many great reasons for taking U.S. District Court (Colorado) Civil Pro Bono Panel cases and how to do so effectively.

It also will cover issues involved with the representation of prisoners, including: working with an in-custody client; exhaustion of administrative remedies; limited scope representation; discovery in inmate cases; and more.

Attendees will hear from local attorneys who are leaders in these fields and from attorneys who have successfully litigated Civil Pro Bono Panel cases through trials and settlements. Attorneys newer to practicing in Colorado should benefit greatly from attending and participating in the USDC Civil Pro Bono Panel.

Click [HERE](#) for information about the USDC Civil Pro Bono Panel.

5 general CLE credits approved.

Click [HERE](#) to register for this program.

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THURSDAY, JANUARY 19, 2023

"OUTSMART YOUR UNCONSCIOUS BIASES – TO MAKE BETTER DECISIONS IN  
CLIENT MATTERS AND IN YOUR WORKPLACE "

KATHLEEN B. NALTY, ESQ.  
KATHLEEN NALTY CONSULTING, LLC

12:00 - **1:30** P.M.

**WEBINAR ONLY**



The stakes couldn't be higher. If you are not highly skilled at addressing your own personal biases—both social and cognitive—you could find yourself inadvertently offending a client, judge, witness, or colleague (and potentially violating your ethical obligations). Losing a case, a client, or a valued colleague because you don't know what you don't know is completely avoidable.

Attend this session to learn about different types of unconscious cognitive biases that can hurt decision-making in all realms—in client matters, workplace situations, and trials. Participants will also learn how to uncover their implicit social biases and implement research-based behavior changes to interrupt those biases.

2 general/1.8 DEI/.4 ethics CLE credits approved.

Click [HERE](#) to register for this program.

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### **DUES RENEWAL TIME!**

Have you been enjoying member discounts to our CLE programs and events? Have you benefited from those programs and other services provided by the FFA? Do you want to continue being a part of the organization committed to enhancing the practice of law in Colorado's Federal Courts?

Then it's time to renew your membership for 2023. Click [HERE](#) to renew or to join the FFA.

**HAPPY HOLIDAYS!**

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**720-667-6049**  
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