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**Federal Bar
Association**
Minnesota Chapter

Bar Talk

Magistrate Judge Katherine M. Menendez Joins the District of Minnesota Bench

By Fran Kern

On April 28, 2016, Magistrate Judge Katherine M. Menendez joined the bench as the District of Minnesota's newest magistrate judge. After eighteen years at the Office of the Federal Defender and not long after a hard-fought victory at the Supreme Court, she transitioned from federal-court advocate to judge.

Born and raised in Kansas, Magistrate Judge Menendez attended the University of Chicago for her undergraduate degree, where she initially focused on pre-medical studies. Although coursework in anthropology shifted her sights from medical school to law school, she retained her devotion to public service. Following her graduation with honors, she enrolled in the New York University School of Law as a scholar in the Root-Tilden-Kern Program, the nation's premier public service scholarship. Although her law school work and studies included public interest work and Indian law, she had fallen for criminal law by the summer after her second year, which she spent clerking for the Office of the Fed-

eral Defender in Eastern Washington. After graduating with her law degree *magna cum laude*, she clerked for the late Honorable Samuel J. Ervin III on the United States Court of Appeals for the Fourth Circuit, whom she described as a humble, dedicated jurist and a wonderful mentor.

Upon completion of her clerkship, she began working at the Office of the Federal Defender in the District of Minnesota as a Soros Justice Fellow. As a fellow, she researched the legal issues raised by federal criminal jurisdiction over crimes committed on Indian reservations and worked to strengthen the relationship between the Federal Defender's Office and the Native American citizens they serve. Upon completion of her fellowship, she remained at the Federal Defender's Office as an Assistant Federal Defender, working on every type of case the office handles. Around 2004, the judge transitioned to handling, primarily but not entirely, appeals. In 2006, she became Chief of Training for the office, and she was certified as a Criminal Law Specialist by the



Magistrate Judge
Katherine M. Menendez

Minnesota State Bar Association in 2011.

Many readers are likely familiar with her name from the June 2015 Supreme Court decision in *Johnson v. United States*, in which she and co-counsel Douglas Olson prevailed on behalf of their client after two sets of briefs and two rounds of arguments. Their efforts culminated with the Supreme Court holding that the imposition of an increased sentence under the residual clause of the Armed

Continued on page 2.

Career Criminal Act violated due process because the Act's definition of a "violent felony" was void for vagueness. Although Magistrate Judge Menendez took the lead on briefing the case and twice argued it before

the Court, she is quick to credit the support of Federal Defender Katherian D. Roe and her colleagues at the Office of the Federal Defender for the victory. She was thrilled with

the opportunity to advocate at the nation's highest court.

Fran Kern is an attorney with the law firm of Moss & Barnett, P.A.

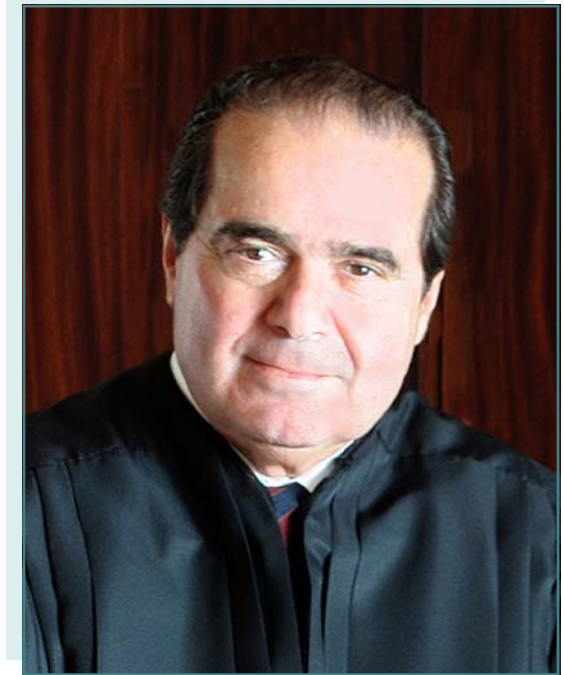
Judge Patrick J. Schiltz Reflects on his Former Boss and Longtime Friend: Supreme Court Justice Antonin Scalia

By Nate Louwagie

United States District Judge Patrick J. Schiltz clerked for Supreme Court Justice Antonin Scalia both on the D.C. Circuit and the Supreme Court, giving him a unique perspective on the life and career of Justice Scalia. Judge Schiltz sat down with *Bar Talk* to reflect on the life and legacy of the influential Supreme Court Justice.

Judge Schiltz began working for Justice Scalia while then-Judge Scalia was a member of the D.C. Circuit Court. During the last week of Judge Schiltz's planned one-year clerkship, Justice Scalia was nominated for the Supreme Court and asked if Judge Schiltz would stay to help him prepare for his confirmation hearing. Judge Schiltz agreed, and after helping Justice Scalia get confirmed—a process which consisted of "putting together a bunch of memos and notebooks which Justice Scalia never read"—Judge Schiltz agreed to continue working for Justice Scalia through his first year on the Supreme Court.¹ During these two years, Judge Schiltz became good friends with Justice Scalia. This friendship began with work, but extended into other parts of their lives. For example, during his clerkship Judge Schiltz would run around the National Mall with Justice Scalia three to four times per week. The friendship between Judge Schiltz and Justice Scalia continued for the rest of Justice Scalia's life.

In discussing the Supreme Court Justice, it is clear that Judge Schiltz has immense respect for Justice Scalia, both as a person and as a jurist. As a person, Judge Schiltz remembers how kind Justice Scalia was to his friends. For example, Judge Schiltz said that on several occasions Justice Scalia flew across the country at Judge Schiltz's request. Indeed, Judge Schiltz says that he does not recall any time that he asked Justice Scalia for help and was refused. Judge Schiltz also noted that Justice Scalia was fiercely loyal to his friends whether or not they agreed with him on legal issues. For example, Judge Schiltz remembers that Justice Scalia was particularly close with Justice Brennan, explaining that "one of the only times I remember Justice Scalia losing his temper is when someone said something nasty about Justice Brennan." Most importantly, however, Judge Schiltz remembers that, "before Justice Scalia was a Justice he was a husband, a father, and a Catholic; and no matter how high Justice



Supreme Court Justice Antonin Scalia

Scalia rose or how powerful he became, his center of gravity was always his faith and his family."

As a jurist Judge Schiltz said that Justice Scalia was a perfectionist, both while he was on the D.C. Circuit and the Supreme Court. Justice Scalia would continue to work as long as was necessary to make sure that any opinion he wrote was perfect. As an example, Judge Schiltz recounted one particular Friday evening when Justice Scalia had packed his bags, put his coat on, and started walking out of the office to have dinner with his family. As Justice Scalia was on his way out the door, Judge Schiltz stopped him and mentioned a small weakness in an opinion they had been working on together. When Judge Schiltz mentioned this to him, Justice Scalia stopped, turned around, unpacked his bags and continued working late into the evening. Judge Schiltz also remembers Justice Scalia as being very courageous because he followed his principles regardless of whether they led him

to a popular or unpopular outcome. Finally, Judge Schiltz was very impressed by Justice Scalia's writing. When asked if there was a particular phrase he likes most from an opinion by Justice Scalia, Judge Schiltz could not answer, saying "it is like being asked to choose a favorite from among your children." Judge Schiltz did say, however, that his writing improved "about a thousand percent" during his two years working for Justice Scalia. Judge Schiltz said this improvement came from receiving comments on his writing from Justice Scalia and said that whenever he received such comments he would take as much time as possible to internalize them and incorporate them in his future writing.

Judge Schiltz had an opportunity to reflect on Justice Scalia's life with many of Justice Scalia's other friends at the Justice's wake and funeral. The most meaningful part of the weekend for

Judge Schiltz was when he stood vigil by Justice Scalia's casket. He appreciated the vigil because it allowed him to take time to reminisce on Justice Scalia's life and all of the things the Justice had done to help Judge Schiltz become the judge, and the person, that he is today.

¹ Judge Schiltz had accepted a job with Supreme Court Justice Sandra Day O'Connor, but she agreed to let Judge Schiltz out of this commitment so that he could have the unique experience of working with a Justice during his first year on the Court.

Nate Louwagie is an attorney with the law firm of Carlson Caspers.

Final Thoughts from Magistrate Judge Jeffrey J. Keyes: Following the Path of Opportunity

By Janet Westenberg

As Magistrate Judge Jeffrey J. Keyes prepares to retire from the federal bench, he closes another chapter of his long and distinguished legal career. But it will not be his final chapter. Appointed as a Magistrate Judge for the District of Minnesota in 2008, he had previously spent 22 years working as a civil trial lawyer for Briggs and Morgan and 14 years before that working for the law firm Gray Plant Mooty. Magistrate Judge Keyes now plans to contribute his extensive skills and experience as a trial lawyer and federal judge in private practice as a mediator and arbitrator. "There's a saying," he jokes, "old judges never die, they mediate. I'm not ready to fully retire yet, I've still got some energy left in me."

When asked about his path to the federal bench, he explained that he never intended to be a judge. He loved doing trial work and was very satisfied with it. In his early work, he focused on complex commercial litigation. In the last ten years of his practice, he had begun accepting more pro bono work, representing those who

could not otherwise afford representation. While volunteering for the Minnesota Human Rights Advocates, he successfully defended a death row inmate by convincing a federal court in Texas to overturn the death penalty conviction. In another notable case, he argued against the deportation of a Somali immigrant before the U.S. Supreme Court in *Jama v. Immigration and Customs Enforcement*.

Magistrate Judge Keyes believes this work heightened his interest in working in the justice system, but he had not really thought about becoming a judge. He recalls that he was teaching at a CLE seminar with Magistrate Judge Janie S. Mayeron when she suggested that he should apply for the open position for magistrate judge. He looked at her and just said, "Really?" But that put the bug in his head and he decided to apply.

Magistrate Judge Mayeron elucidates, "The reason I thought Jeff would be a great judge is that he is so intelligent and has stellar analytical



Magistrate Judge Jeffrey J. Keyes

and writing skills, but is so humble about his intelligence and abilities." Her acquaintance with Magistrate Judge Keyes began in the 1980s when they both served on the Minnesota State Bar Association's Civil Litigation Section Council, then later as practicing attorneys, and then when he appeared before her as she served

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on the federal bench. She describes him as kind, fair, passionate in his quiet way, and unflappable. “He always takes great interest in whatever he is doing, to whomever he is speaking, and to whomever he is serving.”

Not just in his journey to the bench, but throughout his life, he has been one to go where the opportunities lead him. Magistrate Judge Keyes, 68, was born in New York City. His father was a clothing salesman with a ninth grade education. At the age of 12, he decided he wanted to be a lawyer, spurred on by watching legal TV shows, such as “Perry Mason,” reports the *Star Tribune*. His family could not afford to pay for his college, but with scholarships and other aid, he received his B.A. *magna cum laude* from the University of Notre Dame. He spent a year in graduate school at Georgetown University in Washington, D.C. and then went on to receive his law degree *cum laude* from the University of Michigan. The judge and his wife chose to relocate to Minnesota to pursue law practice, where he joined Gray Plant Mooty.

He identifies the highlight of his time on the bench as his colleagues. “All the district judges and magistrate judges here are deeply committed to

what they do. You never really know if you’re going to like working at a place until you’re there and I realized as soon as I got here, when you read the opinions from the court and see the quality of work, I knew that I was going to have to be at the peak of my game.”

Magistrate Judge Keyes notes that some of his most rewarding work on the bench has included settlement conferences and mediation. “I have really developed a respect for that as a process, and of course our court puts such a strong emphasis on assisting parties to get cases settled.” Another thoroughly rewarding aspect of his work has been the community outreach programs under the leadership of former Chief Judge Michael J. Davis. “That is unique to the whole federal system, not only to open our courtrooms to the public, but for us to reach out to public about the rule of law.” He says working on these programs, such as the Dred and Harriet Scott program, the Jewish Lawyers in Germany, and the Japanese Internment Program has just been a great experience.

He depicts the toughest part of his job as the criminal docket, especially the first appearances and detention

decisions. “These are the most challenging decisions that keep you awake at night because you have to make quick decisions that have such a great impact on people’s lives. But you have to do the best you can and we are fortunate to have the wonderful assistance of pretrial services and the incredible work of the Federal Defender’s Office and the U.S. Attorney’s office.”

If he were to give any advice to attorneys who appear in federal court it would be that “civility in the practice is something we’re all really concerned about.” “We have a very civil practice here where lawyers tend to treat each other the right way, but technology has made the midnight emails irresistible. It’s so easy to send out those explosive emails and accuse opponents of bad faith.” He cautions attorneys to take a deep breath and think twice. “There is nothing judges dislike more than when bombarded with a record of vitriol between counsel.”

Magistrate Judge Keyes isn’t planning to do mediation full time. He won’t practice law in the traditional sense, although he may do more pro bono work. He plans on staying active with the numerous committees and boards in which he participates. He would like to find time to do some of the things he has not had time to do, like “playing more bad golf and traveling.” He and his wife would like to spend time in South America, where they have never been, and at their second home in Florida. And he is not sure if he will be able to improve his golf game, “but maybe, with a little more time,” now that he has the opportunity.



Janet Westenberg is a deputy clerk at the United States District Court for the District of Minnesota.



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As the rules change and complications arise,
look to our team of industry veterans to help
clarify your options and choose the best path.

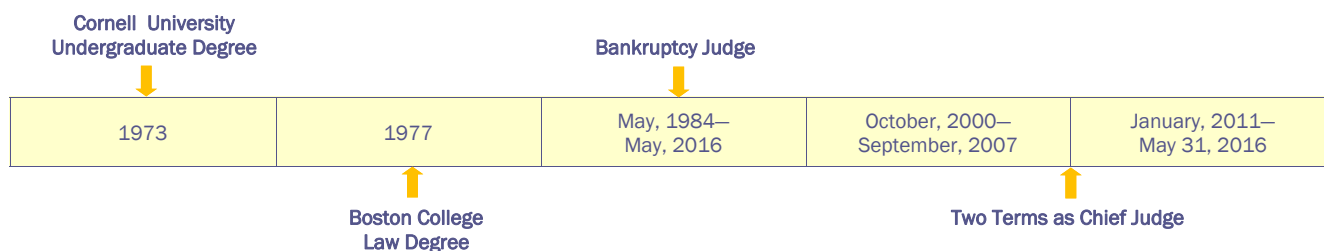
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Chief Bankruptcy Judge Gregory F. Kishel Retires

By Karl Johnson



After 32 years, Chief Bankruptcy Judge Gregory F. Kishel is retiring on May 31, 2016. He started as a part-time Bankruptcy Judge in May 1984 serving in Duluth, Minnesota. He was appointed to a full-time bankruptcy judgeship in St. Paul in 1986. It was a period of transition and turmoil. Only a decade earlier, bankruptcy cases were handled by referees who lacked authority to make final orders. In the aftermath of *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), the system of bankruptcy courts and judges provided by the Bankruptcy Reform Act of 1978 was suddenly unconstitutional. In the summer of 1984, Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984, which appeared to patch the constitutional deficiency until *Stern v. Marshall*, 564 U.S. 2 (2011), again found the system unconstitutional in some cases. Judge Kishel would later remark that there was controversy about the constitutionality of his position both at the beginning and near the end of his judicial career.

Judge Kishel was the last of four new bankruptcy judges appointed from late 1982 through mid-1984. Judge John J. Connelly, one of the last referees, mentored the new judges. Judge Kishel is the last of the 1980s appointees to retire and has taken on the role of mentor to three new bankruptcy judges who have been appointed since 2012.

Judge Kishel started his legal career representing low-income clients out of a storefront in Duluth. Even after joining the bench, Judge Kishel has supported the Volunteer Attorneys Program in Duluth, Southern Minnesota Regional Legal Services, and Volunteer Lawyers Network. In 2014, Judge Kishel was awarded the Nancy C. Dreher Pro Bono Distinguished Service Award for his long-term commitment to supporting pro bono efforts.

Judge Kishel has presided over thousands of cases. None have been more significant than the various Petters cases, the largest Ponzi scheme in history at the time the cases were filed (weeks before Bernie Madoff's Ponzi scheme was discovered). Besides the ongoing Petters cases, one of his more prominent cases the past few years has been the case of Magnetation, LLC, a company in Grand Rapids, Minnesota that uses magnetic separators to recover iron ore concentrate from waste stockpiles left over from prior mining operations. Judge Kishel grew up on the Iron Range in Virginia, Minnesota, so it is fitting that one of his last major cases concerns an iron company up north.

While Judge Kishel has been known for writing lengthy and erudite decisions on a wide-range of bankruptcy issues, he has also been known for scholarship in other areas. In the 1960s, he published a Marvel Comics fanzine. Since at least the early 1990s, he has regularly contributed articles and translations to the Polish Genealogical Society of Minnesota Newsletter, found at: <http://pgsmn.org/newsletters/>.

Judge Kishel has publicly announced that one possible post-retirement project will be researching and writing biographies of Minnesota's bankruptcy referees going back to the enactment of the Bankruptcy Act of 1898.



Chief Bankruptcy Judge Gregory F. Kishel

¹ Not counting Judge Margaret "Peggy" Mahoney, who resigned her position as a bankruptcy judge in Minnesota in 1988 to become a bankruptcy judge in the Southern District of Texas.

Karl Johnson is an attorney with the law firm of Hellmuth & Johnson PLLC and former law clerk to Chief Judge Kishel.

History of the Minnesota Chapter of the FBA, Part V: 2010 Onward

By Tara Norgard and Nate Louwagie

Although the history of our Chapter dates back to the 1940s, it is an ongoing story. Each year we continue to look ahead to seize opportunities and overcome challenges while remaining steadfastly committed to our core values of equal justice under law through a strong federal legal system and inclusive and friendly relations among members of the bench and the bar.

Every person interviewed for this project, from Richard Flint (Chapter president from 1967–68) to Bill Otteson (current Chapter President) repeatedly emphasized the genuine collegiality that makes the meaningful work of our Chapter possible. Patrick Martin, Chapter President from 2011–2012, specifically noted that even before he became president he was “amazed at how much—and how hard—members wanted to work on these projects and programs to make them successful.”

All of the work done by the FBA does not go unnoticed by the federal bench. Judge Joan N. Ericksen, Chapter president for 2013–2014, said, “the federal judges appreciate probably more than we let you know the support given by this Chapter.” Judge Ericksen joined the FBA in 1983 when she worked in the United States Attorney’s Office (where she was hired by then-United States Attorney James Rosenbaum, Chapter President for 1992–1993). She soon learned that the Minnesota Chapter “was like no other group” in its activities, community outreach, and collegiality. One of the initiatives Judge Ericksen developed during her term was the White-Collar, Compliance, and Criminal Law Com-

mittee. This committee was formed with the goal of bringing together a community of practitioners to think about practice areas and to increase collegiality. Judge Ericksen said that although the Minnesota Chapter has become a larger, more active organization in the years that she’s been a member, it’s still the “family group of friends” it was in the early 1980s. It is clear that the organization is very important to Judge Ericksen, who said “I wouldn’t be where I am today without the FBA.”

Rachel Zimmerman Scobie, Chapter President from 2014–2015, echoed this sentiment, and especially appreciated that the Chapter allows practitioners to form relationships with their colleagues and members of the federal bench. During Scobie’s presidency, the Minnesota Chapter hosted a series of programs celebrating women and the law, beginning with an event in September 2014 honoring Judge Diana E. Murphy: the first woman to serve as a district judge on a federal court in Minnesota, the first woman to serve as Chief Judge of a district court in the Eighth Circuit, the first woman appointed to the United States Court of Appeals for the Eighth Circuit, and the first woman to chair the United States Sentencing Commission. The event included a number of prominent Minnesota jurists, and was capped with a keynote address by U.S. Supreme Court Justice Ruth Bader Ginsburg. The series also included a Leadership Summit in partnership with the federal district court in which leaders from corporate in-house legal departments, private practice law firms, and the public sector came together to explore,

analyze, and develop strategies for addressing the gender imbalance in leadership positions in law firms and corporate in-house legal departments. Scobie said that the issues addressed by these programs were a passion of hers from before she joined the FBA, and credited the mentorship of Judge Michael J. Davis for helping her to make them a reality, saying that he always told her to “think big.”

Current president Bill Otteson appreciates the work of the many individuals who have made the Chapter what it is today. Specifically, he noted the impressive strength of the Chapter’s institutional programs, such as the monthly luncheons, the newer lawyers program, the annual seminar, and the dinner dance, that provide diverse forums for our community to learn from and build relationships with each other. At the same time, the Minnesota Chapter has continued to expand its reach by adding a Mass Tort, Multi-District Litigation, and Class Action Practice Group and engaging in new partnerships to address important issues such as Islamophobia and the self-government of the Dakota and Ojibwe nations.

The coming years will undoubtedly bring many new opportunities for the Chapter and its members. With gratitude to the many people who have worked so hard to build our strong history, we look forward to the future.

Tara Norgard is a partner with the law firm of Carlson Caspers. Nate Louwagie is an attorney with the law firm of Carlson Caspers.

Federal Practice Committee: New Federal and Local Rules on Civil Discovery

By Kristen Marttila

As civil litigators are by now no doubt aware, several amendments to the Federal Rules of Civil Procedure took effect on December 1, 2015.¹ In connection with the changes to the federal rules, the U.S. District Court for the District of Minnesota also made several corresponding changes to the local rules, effective that same date. The local-rule amendments, like many of the amendments to the federal rules, relate to discovery.

Changes to the Forms for Rule 26(f) Reports

Changes to Forms 3 and 4, which parties may use for Rule 26(f) reports in non-patent and patent cases respectively, track the amendments to Rules 16 and Rule 26 of the federal rules. The amended forms now explicitly prompt parties to describe any agreements or disputes they have about the preservation of electronically stored information, any agreements regarding attorney-client privilege or work-product doctrine that the parties want incorporated into a court order under Rule 502 of the Federal Rules of Evidence, and the parties' positions on whether the eventual scheduling order should require a party to request an informal conference with the Court before filing a discovery motion. The revised forms are available on the Court's website.

Changes to Local Rule 37.1

Some of the amendments to Local Rule 37.1 reflect the recent amendment to Federal Rule of Civil Procedure 37(e) regarding the failure to preserve electronically stored information ("ESI"). Where a discovery motion concerns such a failure, Local Rule 37.1(e) now specifically directs the moving party to show that the information should have been preserved, that it was lost because a party failed to take reasonable steps to preserve it, and that it cannot be restored or replaced through additional discovery. Local Rule 37.1(f) also requires a party bringing a discovery motion to specify the remedy sought and an argument why that remedy can and should be granted. Subsection (f) applies not only to motions brought under Rule 37(e), which permits different types of remedies

depending on the facts surrounding the failure to preserve ESI, but to other discovery motions, too. In addition, Local Rule 37.1 has been reorganized for clarity.

Impact of Amendments to Rule 37(e)

In the months since the amendments to the federal rules took effect, a handful of cases—all outside this District—have addressed the application of newly amended Rule 37(e). Thus far, courts have applied the amended rule to discovery motions filed after the effective date of December 1, even where the litigation itself was commenced before that date.²

The Advisory Committee's note recognizes that, under the previous version of the rule, federal courts differed in the standards they applied in considering sanctions or curative measures for failures to preserve ESI. Some courts, like those in the Second Circuit, had allowed such sanctions on a showing of negligence. The amended Rule 37(e) imposes a more uniform standard and now requires a showing of intent before a dismissal, default judgment, or adverse inference may be awarded. Accordingly, when citing pre-amendment case law in discovery disputes about ESI, practitioners should consider whether the amendments to Rule 37(e) have altered the prevailing standards within the relevant jurisdiction for the particular sanction sought.

¹ A summary of those changes previously appeared in the March, 2016, issue of *Bar Talk*, available at: <http://www.fedbar.org/Image-Library/Chapters/Minnesota-Chapter/Bar-Talk/March-2016.aspx>.

² *E.g., CAT3, LLC v. Black Lineage, Inc.*, 2016 WL 154116, at *5 (S.D.N.Y. Jan. 12, 2016).

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Pro Se Project Holds Volunteer Recognition and Celebration Event

By Tiffany Sanders

On April 18, 2016, the U.S. District Court for the District of Minnesota, in conjunction with the Minnesota Chapter, recognized the 2015 *Pro Se* Project volunteer attorneys and participating law firms for their extraordinary pro bono work. Chief Judge John R. Tunheim wrote honorees a letter of appreciation, which was also signed by Judge Michael J. Davis, Judge Franklin L. Noel, Minnesota Chapter President Bill Otteson, and *Pro Se* Project Coordinator Tiffany Sanders. The letter included a *Pro Se* Project brochure containing the sentiments of *pro se* litigants, volunteer

attorneys, and judges over the years, including:

“The collaboration between the Court and the *Pro Se* Project is quite remarkable . . . [It is] an astounding resource [and] the *Pro Se* Project and the volunteers make it possible for individuals (and in this case, a family) . . . to pursue what is just, [after] having lived through an injustice. [S]ocial justice initiatives, like the *Pro Se* Project and its supporters, create something unique . . . in that words are incomparable, yet the effects are lasting and memorable to the future and beyond. Suffice it to express, just truly thank you.”

- *Pro Se* Project Plaintiff, March 14, 2013.

The *Pro Se* Project hosted a happy hour to acknowledge the pro bono work of volunteer attorneys and participating law firms in another successful year of helping to improve the court's administration of justice. Judges, volunteer attorneys, and pro bono directors met at The Library at Marin to celebrate the *Pro Se* Project 2015 volunteers, and their important contributions to the pursuit of ensuring equal justice for all.

The *Pro Se* Project will receive a \$22,015 cy pres award in the *Crofoot v. Center for Diagnostic Imaging, et al.*, 13-cv-03455-TNL matter. Thomas J. Lyons, Jr., consumer Justice Center, P.A., and Mark L. Vavreck, Martineau, Gonko & Vavareck, PLLC, represented the plaintiffs. Eric C. Tostrud and Gregory J. Myers, Lockridge Grindal Nauen P.L.L.P., represented Defendant Center for Diagnostic Imaging, and Ryan J. Trucke and Matthew R. Doherty, Brutlag, Hartmann & Trucke, P.A., represented Defendant CT Services Inc. The parties' settlement agreement included a cy pres distribution to the *Pro Se* Project of 100% of the unclaimed checks or monies owed to Settlement Class Members, which Magistrate Judge Tony N. Leung approved.

To learn more about the *Pro Se* Project, or to volunteer, contact Tiffany Sanders, *Pro Se* Project Coordinator, at proseproject@q.com or 612.965.3711.



L to R: Tiffany Sanders, Chief Judge John R. Tunheim, Magistrate Judge Steven E. Rau, Vildan Teske, Jeanette Bazis, and Douglas Micko.

Pro Se Project HAPPY HOUR



L to R: Dianne Heins, Patrick Arenz, and Jonathan Bye.



L to R: Karin Ciano and Tiffany Sanders.



L to R: David Goodwin and Adam Hansen.

Pro Bono Spotlight: Stinson Leonard Street LLP

By João da Fonseca

“Pro bono” could easily be listed as one of Stinson Leonard Street’s “sophisticated regional and national practices.” In fact, that work has even reached an international scale, as a result of the firm’s efforts in representing foreign clients and advocating for the protection of human rights throughout the world.

At a local level, over the course of more than 23 years of public service, hundreds of attorneys and paralegals have provided over \$25 million in legal services to the clients of the Deinard Legal Clinic, located at the Community University Health Care

Center (CUHCC) in the Phillips neighborhood of Minneapolis. The Deinard Clinic offers basic legal services in the areas of family, landlord and tenant disputes, government benefits, and immigration/asylum law. The firm’s partnership with CUHCC is credited as the first example of a growing service model called Medical-Legal Partnerships (MLPs), through which medical providers screen for the health-harming legal needs of their patients and then refer those patients to a local legal services provider—in this case, Stinson Leonard Street.

The “Adopt-a-Neighborhood” program has also provided the firm with its own “community client”—the Marlborough neighborhood in Kansas City, Missouri. This once deeply poverty-entrenched neighborhood is now being revitalized step-by-step through the transactional and litigation work of attorneys in the firm’s Kansas City office. The firm is also helping to develop the Kansas City Social Investment Pool, which will provide funding for short-term loans to private construction rehabilitators of blighted and abandoned residential properties in the urban core of Kansas City, Missouri. The rehabbers are typically

unable to acquire traditional bank loans to renovate these abandoned homes and, as a result, face prohibitively high costs of capital. The Investment Pool aims to fill this financing hole. Additionally, through a Beneficiary Deeds Clinic held last fall on the American Bar Association's Day of Service, Marlborough neighborhood residents were able to designate who they would like to receive their home upon death using a legal document drafted by Stinson attorneys that will significantly reduce the number of abandoned properties in the community. Out of more than 900+ events held the same day, the firm's clinic was awarded third place nationally for firms with 100–500 attorneys. Through a new Pro Bono Innovation Grant from the Legal Services Corporation, a local legal aid organization is now replicating the firm's "Adopt-a-Neighborhood" model in four other neighborhoods.

On the international level, a team of attorneys from the firm's St. Louis and D.C. offices raised concerns over the violent treatment of Oromo students in Ethiopia by filing a brief with

the African Commission on Human and People's Rights. In another project, firm attorneys proposed revisions to the United Nations protocol that is used to inform state action in the investigation of suspicious and unlawful killings. And, through the Deinard Legal Clinic, the firm has provided legal services to clients who immigrated to the United States from more than 56 countries.

Other initiatives include the successful petition for a writ of habeas corpus, which resulted in a new trial and settlement that will lead to the release of a wrongfully convicted man who received ineffective assistance of counsel and has been imprisoned for more than seven years; representation of two orphans in a complex probate matter where the dispute over a small inheritance was settled with the creditor, allowing the orphans to remain in their family home and to attend college; investigation and legal research to protect the basic rights of inmates with mental health issues in the Maricopa County Jail in Phoenix, Arizona; and filing a writ of habeas corpus petition on behalf of a young man who

was sentenced to 87 years in jail for an alleged robbery involving theft of \$500.

This vast success is due in great part to the firm's Pro Bono Committee members, who creatively seek ways to engage and commit the firm's attorneys and staff to volunteer work. Additionally, during the ABA's National Pro Bono Celebration, firm leaders pledged to take a pro bono matter and encouraged others to do the same. Finally, associates and partners earn 100 and 50 billable hours, respectively, for their work on pro bono matters.

According to Theresa Murray Hughes, director of the firm's pro bono program, the firm's commendable pro bono service are due not so much to the firm's size and resources but more to the willingness and desire of its attorneys and staff to take this work seriously. Whether in a small—or large—firm setting, exemplary commitment to public service is within everyone's reach.

João da Fonseca is an attorney with the law firm of Halunen Law.

IP Practice Group Holds Happy Hour, Discusses Discovery Issues

By Ryan Schultz

On March 16, 2016, Magistrate Judge Hildy Bowbeer and Magistrate Judge Becky R. Thorson participated in an interactive discussion at Robins Kaplan LLP regarding case management and discovery, especially for patent cases. Over forty practitioners heard very practical advice on how best to approach scheduling matters and discovery disputes. The theme of the discussion was helping parties effectively and efficiently move cases toward finality, with assistance and creative thinking from lawyers.

Magistrate Judges Bowbeer and Thorson emphasized that the scheduling conference is an excellent opportunity for the parties to engage with the Court to set up a case management schedule that makes sense for that case. While both judges have a form scheduling order available, they are willing to entertain options for a particular case that will help the case reach a resolution. The judges emphasized that the lawyers handling the case are in the best position to identify these options, and should not be deterred from raising them simply because of the form scheduling order.

As to discovery, the judges recognized that discovery disputes are common in patent cases. However, they emphasized that parties should put more effort into resolving the disputes between themselves. When a resolution cannot be reached, the best approach for obtaining relief is to be specific as to what discovery is being requested and why it is relevant to the case. Too often, the judges noted, parties would spend more time in the briefing describing the alleged unsupported position of the other side and not focus on the merits of the dispute.

The Intellectual Property Committee of the Minnesota Chapter of the Federal Bar Association would like to thank Magistrate Judges Bowbeer and Thorson for providing such sage advice on case management and discovery.

Ryan Schultz is an attorney with the law firm of Robins Kaplan LLP.

The University of Minnesota Law Division Hosts Spring Event on IP Issues

By Nia Chung Srodoski and Will Orlady

On March 23, 2016, the University of Minnesota Law Division of the Minnesota Chapter of the FBA, in partnership with the Student Intellectual Property Law Association, held a lunch event with Fish & Richardson attorneys Tasha M. Francis, Ph.D. and Rick Bisenius, both of whom are associates in the Twin Cities office of Fish & Richardson. Dr. Francis is a member of the firm's litigation group and has been involved in cases in the areas of pharmaceuticals, life sciences, and medical devices. Prior to law school, Dr. Francis earned her Ph.D. in chemical biology with research focusing on the development of anti-cancer therapeutics. Rick Bisenius is in the patent group and focuses his practice on patent reexaminations/post-grant proceedings, U.S. and

foreign patent portfolio strategy and management, and due diligence investigations.

Dr. Francis and Mr. Bisenius gave a presentation entitled "*Bio-Pharma Developments in IPRs: Hedge Fund Managers, Biologics, and Small Molecules*." They reviewed the impact of patent office post-grant proceedings on the bio-pharma industry. Specifically, the attorneys elaborated on statistics concerning bio-pharma inter partes review (IPR). Bio-pharma IPRs, for example, are seeing lower institution rates. But those proceedings instituted by the Patent Trial and Appeal Board (PTAB) are more frequently leading to complete trials before the Patent Office, an interesting trend to watch for industry players and practitioners.

Dr. Francis and Mr. Bisenius also remarked on how non-practicing entities—particularly hedge funds—have entered the post-grant fray. On this point, the presentation focused on how IPRs have been used to drive down the share prices of various bio-pharma companies in the hopes of later shorting their stocks. The conversation also touched on how the PTAB has held that this type of conduct is currently permissible. The event entertained over 45 attendees. The audience was composed of law students, engineering students, business students, attorneys, and more. This event was approved for one hour of CLE credit.

Nia Chung Srodoski and Will Orlady are law students at the University of Minnesota Law School.

Minnesota Chapter Honors Four Law Students in Annual Awards Ceremony

By Tasha Francis

On April 20, 2016, the Minnesota Chapter of the Federal Bar Association held its annual law school student awards ceremony. Every year, students are selected to receive awards from the Chapter for excellence in the study and practice of federal law. Each award is named in honor of a person who contributed significantly to the federal legal system in Minnesota. The students are selected with the help of a faculty committee at each law school. Award recipients receive \$2,000 and an engraved wooden plaque.

This year the Judge Earl R. Larson Award was presented by Judge Patrick J. Schiltz to Caitlin Drogemuller from the University of St. Thomas School of Law. Judge Donovan W. Frank presented the Judge Jacob Dim Award to Cha Xiong from Mitchell Hamline School of Law. Kelly Fermoye, also from Mitchell

Hamline School of Law, received the Harry A. Sieben Award, presented by Chief Judge John R. Tunheim. Judge Ann D. Montgomery presented the Judge Edward J. Devitt Award to Nia Chung Srodoski from the University of Minnesota Law School.

The Minnesota Chapter of the FBA has recognized outstanding achievement by law students from the local law schools for over 30 years. The program furthers our mission of encouraging and maintaining high standards of learning and competence in the legal profession.

Pictures from the event are on page 13.

Tasha Francis is an attorney with the law firm of Fish & Richardson, P.C.



L to R: Nia Chung Srodoski, Judge Ann D. Montgomery, Cha Xiong, Judge Donovan W. Frank, Caitlin Drogemuller, Judge Patrick J. Schiltz, Kelly Fermoye, and Chief Judge John R. Tunheim.



L to R: University of Minnesota Deans David Wippman and Erin Keyes, with Nia Chung Srodoski and Judge Ann D. Montgomery.



L to R: St. Thomas Dean Robert K. Vischer, Caitlin Drogemuller, and Judge Patrick J. Schiltz.



L to R: Judge Donovan W. Frank, Mitchell Hamline Dean Mary Patricia Byrn, Cha Xiong, Kelly Fermoye, and Kate Kruse.

District Holds Event To Combat Islamophobia

By Amy Connors

On April 13, 2016, United States Attorney Andrew Luger, the Minnesota Chapter of the Federal Bar Association, the North American Somali Bar Association, and other professional groups hosted a forum on islamophobia at Dorsey & Whitney. After introductions from speakers including former Vice President Walter F. Mondale, Chief Judge John R. Tunheim, Andrew M. Luger, and the chair of the North American Somali Bar Association, the forum featured a panel of Minnesotans who have experienced islamophobia.

Their stories were deeply troubling. Asma Jama described being hit in the face with a glass beer mug at an Applebee's in Coon Rapids by a woman who was upset that Jama was speaking Swahili. Jama suffered facial injuries that required 17 stitches. She now fears being targeted every time she leaves her home. Twin Cities attorney

Deepinder Mayell described being confronted at a Vikings game by someone angrily accusing him of being a refugee. No one came to his aid. Lui Harsi, a St. Cloud mother of four, described how the hatred in the political climate affects her children. Haji Yusuf, a business owner in St. Cloud, started a Facebook group called Unitecloud after a teenaged boy sent him a picture of an anti-Muslim license plate, which then went viral. Yusuf has used the Facebook page to raise awareness of islamophobia and to resolve tension and build community in St. Cloud. The event was one of more than a dozen panels led by federal prosecutors around the country in April.

Amy Connors is an attorney with the law firm of Best & Flanagan LLP.

Upcoming Events:**June 21, 2016**

Federal Practice Seminar & Mason Memorial Luncheon
8:30 AM to 5:30 PM
University of St. Thomas, Minneapolis

June 22 and July 13, 2016

Summer Associate/Law Clerk Luncheons
12:00 p.m.
Courtroom 15
Minneapolis Courthouse

August 29, 2016

Golf Tournament
11:30 AM
Midland Hills Country Club, Roseville MN
To register, contact Tracey Holmes Donesky (Tracey.Donesky@StinsonLeonard.com)

October 18, 2016

Visit by Associate Justice Sonia Sotomayor
Details to follow

Communications Committee:

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Seaton, Peters & Revnew, P.A.

Brittany Bachmann
Nichols Kaster, PLLP

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Bar Talk is the official newsletter of the Minnesota Chapter of the Federal Bar Association. It is published quarterly by the Communications Committee. For any inquiries or article suggestions, please contact: **Jeff Justman** at jeff.justman@faegreBD.com or **Adam Hansen** at ahansen@nka.com.

A special thank you to **Rebecca Baertsch**, Judicial Assistant to Judge Donovan W. Frank, for her proofreading expertise.

Online Registration:

The Minnesota Chapter of the FBA utilizes an online registration system for the monthly Minneapolis Club luncheons. A registration link will be sent to you via e-mail for each luncheon. One feature of the system is the automatic calendar entry; just click "Add to Calendar" from the registration system or your confirmation e-mail. Registration coordinators have the option to register multiple attendees in a single registration. Also, Season Pass Holders must register for each luncheon online to select their meal choice and confirm their attendance.

If you have any questions about the registration system, please e-mail **Joe Dixon** at jdixon@fredlaw.com.

Federal Bar Association Application for Membership

The Federal Bar Association offers an unmatched array of opportunities and services to enhance your connections to the judiciary, the legal profession, and your peers within the legal community. Our mission is to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary, and the public they serve.

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The opportunity to make a change and improve the federal legal system through grassroots work in over 90 FBA chapters and a strong national advocacy.

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Connect with a network of federal practitioners extending across all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.

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Governance positions within the association help shape the FBA's future and make an impact on the growth of the federal legal community.

Learning

Explore best practices and new ideas at the many Continuing Legal Education programs offered throughout the year—at both the national and chapter levels.

Expand your connections, advance your career

THREE WAYS TO APPLY TODAY: Join online at www.fedbar.org; Fax application to (571) 481-9090; or Mail application to FBA, PO Box 79395, Baltimore, MD 21279-0395. For more information, contact the FBA membership department at (571) 481-9100 or membership@fedbar.org.

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First Name _____ M.I. _____ Last Name _____ Suffix (e.g. Jr.) _____ Title (e.g. Attorney At Law, Partner, Assistant U.S. Attorney) _____
☐ Male ☐ Female Have you been an FBA member in the past? ☐ yes ☐ no Which do you prefer as your primary address? ☐ business ☐ home

Firm/Company/Agency _____ Number of Attorneys _____
Address _____ Suite/Floor _____
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Bar Admission and Law School Information (required)

U.S. Court of Record: _____
State/District: _____ Original Admission: / /

Foreign Court/Tribunal of Record: _____
Country: _____ Original Admission: / /

Tribal Court of Record: _____
State: _____ Original Admission: / /

Students Law School: _____
State/District: _____ Expected Graduation: / /

Authorization Statement

By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application or the immediate termination of my membership. I also understand that by providing my fax number and e-mail address, I hereby consent to receive faxes and e-mail messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.

Signature of Applicant _____ **Date** _____
(Signature must be included for membership to be activated)

*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5 percent which is used for congressional lobbying and is not deductible. Your FBA dues include \$14 for a yearly subscription to the FBA's professional magazine.

Application continued on the back



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Member Admitted to Practice 0-5 Years.....	\$165	\$145
Member Admitted to Practice 6-10 Years	\$230	\$205
Member Admitted to Practice 11+ Years	\$275	\$235
Retired (Fully Retired from the Practice of Law)	\$165	\$165

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Open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia.

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All first, second and third year student memberships include an additional free year of membership starting from your date of graduation.

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Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location. *No chapter currently located in this state or location.

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