

MINNESOTA CHAPTER OF THE FEDERAL BAR ASSOCIATION

Bar Talk



FBA HONORS JUDGE ROSENBAUM AT NOVEMBER LUNCH

The year is 1985. Mikhail Gorbachev becomes leader of the Soviet Union. Coca-Cola introduces “new” Coke. And recently re-elected President Reagan appoints 41-year-old James M. Rosenbaum, then United States Attorney for the District of Minnesota, to Minnesota’s newly created seventh federal judgeship. At that time, Judge Rosenbaum joined a Court comprised of Judges Paul Magnuson, Harry McLaughlin, Miles Lord, Donald Alsop, Robert Renner, and Diana Murphy, as well as senior Judges Edward Devitt and Earl Larson. Asked what it was like to serve on the bench with Judge Devitt, the principal author of *Federal Jury Practice and Instructions*, who had been the District’s Chief Judge for 23 years, Judge Rosenbaum borrowed a legendary football quotation: “It was like being in a huddle with God.”

Judge Rosenbaum remembers his early days on the bench. Although an experienced trial lawyer, he found it a challenge to get up to speed. “The first three years of being a federal judge is an astonishing experience. I tell my colleagues, don’t even think about whether you like the job for at

least three years. You simply lack a basis to know anything about what you’re doing. However expert, however talented a judge is in terms of the law, you will start to learn about fields of law that you never dreamed existed,” and will have “experts in that field approaching you constantly.” The federal bench offered its newest member a wide selection of choice cases, notably *West Publishing Co. v. Mead Data Central, Inc.*, a copyright infringement suit concerning whether Lexis was entitled to use the page numbers from West’s National Reporter System. In October 1985, only a few months on the bench, Judge Rosenbaum granted West’s motion for a preliminary injunction; the Eighth Circuit affirmed.

Much has changed since Judge Rosenbaum first took the bench. Especially in the area of diversity, the Judge finds “there is much to be proud of.” Judge Rosenbaum’s class at the University of Minnesota Law School graduated a mere handful of women; now, female lawyers and judges are commonplace in Minnesota state and federal court. The transition has been “seamless—nobody thinks about it

at all. The presence or absence of a woman on the bench is hardly remarkable, at least on the district court.”

Judge Rosenbaum has also seen considerable evolution in technology since 1985. In the Minneapolis courthouse—then located two blocks away on South Fourth Street—“there was no technology.” The Judge’s chambers had one computer terminal and an electric typewriter. Lawyers addressed the court and jury without benefit of a microphone. In 1997, the Court moved into its present building, with state-of-the-art

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courtrooms featuring improved prisoner security, real-time court reporting, video and audio playback, evidence cameras, and adjustable lecterns. Judge Rosenbaum played an active role overseeing the construction of the new building and served on the committee updating the *U.S. Courts Design Guide*. The Judge's interest in the intersection of law and technology led him to write several articles for the *Green Bag*: "In Defense of the DELETE Key," "In Defense of the Hard Drive," "In Defense of the Sugar Bowl," and, most recently, "In Defense of Rule 808, Federal Rules of Evidence." The Judge serves on the board of advisors for the Sedona Conference, which develops standards on legal technology, electronic discovery, and intellectual property. From 1997 to 2005, Judge Rosenbaum served as the Eighth Circuit's elected representative to the Judicial Conference of the United States. He served as Chief Judge of the District from 2001 until turning over the bow tie to Chief Judge Michael J. Davis in June 2008.

Judge Rosenbaum continues to try cases and recognizes the declining number of trials makes it increasingly difficult for new lawyers to get courtroom experience. "It's very hard to learn how to swim without water. There's one way to do it, and ultimately you have to get into court, and try cases." When asked what new lawyers can do to develop their skills, Judge Rosenbaum encourages them to seek out an experienced mentor.

After nearly twenty-five years on the bench, Judge Rosenbaum took senior status on October 26, 2009. To honor the occasion, the Federal Bar Association presented the Judge with the gift of a chair at the November monthly lunch.

In keeping with what he calls a "bittersweet" tradition, the Judge accepted the chair from Catherine McEnroe, one of his former clerks. (The chair now resides in the Judge's home office, and no, it does not have rockers.) The Judge's current and former clerks have established a scholarship in his name at the University of Minnesota Law School.

All that said, unlike "new" Coke or the Soviet Union, Judge Rosenbaum shows no signs of fading from the scene. "Nobody comes to the bench knowing the full breadth of what we do. I don't know it yet." The Judge adds, "Once you do have a familiarity with more areas of the law, and have become more practiced at learning new ones, the experience can be richer" because an experienced judge can "get into the problems and figure out what



Judge Rosenbaum accepts a chair given to him by the FBA to commemorate his senior status.

the real issues are." He observes, "one of the great challenges is how little of what you learned in law school makes a great difference in your work as a Judge. If there are questions that have easy answers, people don't bring them to federal judges. And so you're always out on an edge, you never are sure exactly where you are . . . the questions that do get asked are stunning, they're difficult, they're interesting, and they're always one step beyond what they've taught you or what you learned before. That's what makes it exciting, and really is what keeps it going."

Karin Ciano and **Sybil Dunlop** are Judge Rosenbaum's current law clerks.

RULE CHANGES: “DAYS ARE DAYS”

It's official: the United States District Court for the District of Minnesota has adopted amendments to its Local Rules relating to the computation of time periods and filing deadlines. These amendments address compliance with recent amendments to Federal Rule of Civil Procedure 6(a). The amended Federal Rules and Local Rules—along with amendments to Federal Rule of Appellate Procedure 26(a), Federal Rule of Criminal Procedure 45(a), and Federal Rule of Bankruptcy Procedure 9006(a) that adopt the same time-computation method for each set of rules—went into effect on December 1, 2009, and present material changes for federal practitioners.

An Explanation of the Changes to Federal Rule 6

As a result of the Judicial Conference Committee on Rules of Practice and Procedure's Time-Computation Project, amended Federal Rule 6 simplifies time computation, providing that all time periods stated in days, no matter what the length, are now computed in the same way (the amendments apply only where a time period must be computed, *e.g.*, “within 14 days,” and do **not** apply in situations where a court has established a specific date by which an action must be taken, *e.g.*, “by January 15, 2010”). Agenda E-19, Rules, Sept. 2008 Rep. Judicial Conference Comm. R. Practice P. at 2 (“Report”). Under the old Rule 6, a period of 11 days or

more was computed differently than a period of less than 11 days; in the shorter period only, intermediate Saturdays, Sundays, and legal holidays were excluded. Amended Rule 6 eliminates this confusion by providing that the day of the event that triggers the deadline is not counted, but all other days, including Saturdays, Sundays, and legal holidays, are. Fed. R. Civ. P. 6(a)(1). The sole exception to this “days are days” approach is when a given time period ends on a Saturday, Sunday, or legal holiday, the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. *Id.*

Amended Rule 6 also clarifies the procedure for determining the “next day” when computing deadlines for both forward- and backward-looking time periods. Fed. R. Civ. P. 6(a)(5); *see also* Fed. R. Civ. P. 6(a)(6)(C). The Federal Rules contain both types of time periods, either requiring action within a period of time after an event (*e.g.*, Rule 59(b) requiring a motion for a new trial to be filed no later than 28 days after entry of judgment) or within a time period before an event (*e.g.*, Rule 26(f) requiring parties to confer at least 21 days before a Rule 16 scheduling conference). When calculating what the “next day” is, practitioners should continue counting in the same direction, *i.e.*, counting forward for forward-looking periods and backward for backward-looking periods. Fed. R. Civ. P. 6(a)(5) 2009 advisory committee's note; *see also* D. Minn. L.R. 1.1(f)

2009 advisory committee's note. In calculating deadlines according to this general statement, however, practitioners should take into account subdivisions (a)(3) and (a)(6)—which pertain to inaccessibility of the clerk's office and the definition of “legal holiday”—as illustrated by the following:

If, for example, a filing is due within 30 days after an event, and the thirtieth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 21 days before an event, and the twenty-first day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk's office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that it not a Saturday, Sunday, or legal holiday—no later than Tuesday, September 4.

Fed. R. Civ. P. 6(a)(5) 2009 advisory committee's note. Importantly, the procedure for determining backward-looking deadlines when the deadline falls on a weekend or holiday now specified in the Federal Rules is different from the process outlined in former Local Rule 1.1(f), and the language of the Local Rule has been updated accordingly.

Because the inclusion of intermediate Saturdays, Sundays, and legal holidays would otherwise result in

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time periods of less than 11 days being shortened, many of these periods throughout the Federal Rules have been lengthened to compensate for the change, usually by extending the period to 14 days, as seen, for example, in Rule 14(a) (1). Fed. R. Civ. P. 6(a)(2) 2009 advisory committee's note. Additionally, most time periods of less than 30 days have been changed to multiples of 7 days (7, 14, 21, or 28), so that deadlines will fall typically on weekdays.

Other changes include new provisions in Rule 6(a) to provide direc-

tion for computing hourly time periods and to address special timing considerations related to electronic filing. Under the amended Rules, unless a different time is set by a state or local rule, or court order, the "last day" of a time period for electronic filing is defined as midnight in the court's time zone, or when the clerk's office is scheduled to close for filing by other means. Fed. R. Civ. P. 6(a) (4).

Corresponding Changes to the Local Rules

Amended Federal Rule 6 expressly applies not only to calculating the time periods specified in the Fed-

eral Rules themselves, but to any time period "in any local rule or court order." Fed. R. Civ. P. 6(a). Thus, the changes to Federal Rule 6 have also resulted in significant, corresponding deadline changes to the District of Minnesota's Local Rules.

The table below summarizes the filing-deadline changes to the District of Minnesota's Local Rules and Forms and Rules for Procedure for Expedited Trials.

In addition to the changes to the Local Rules, the amended time-computation methods affect the deadlines set forth in a total of

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Local Rule	Amendment Description
1.1(f) Scope of the Rules	Explanatory language for computing time changed
5.3 Deadline for Filing Answers	10 days changed to 14 days
5.5(b)-(c) Redaction of Transcripts	Removed "calendar"
7.1(b) Civil Motion Practice	45 days changed to 42 days; 20 days changed to 21 days for responses; and 12 days to 14 days for replies
7.2(b) Procedures in Social Security Cases	10 days changed to 14 days
16.2(a) Pretrial Conferences	14 days changed to 21 days; 10 days changed to 14 days
26.1(f) Discovery	10 days changed to 14 days
39.1(b) Preparation for Trial in Civil Cases	10 days changed to 14 days; 5 days changed to 7 days
54.3(b) Time Limit for Motion for Award of Attorney's Fees	15 days changed to 14 days
72.2(a)-(b) Review of Magistrate Judge Rulings	10 days changed to 14 days
83.6(b), (k) Attorney Discipline	In (b), 5 and 3 days changed to 7 days; in (k) 10 days changed to 14 days
Form 5 – Stipulation for Protective Order (Patent Cases)	15 and 10 days changed to 14 days
Form 6 – Stipulation for Protective Order	15 and 10 days changed to 14 days
Rules of Procedure for Expedited Trials	5 days changed to 7 days in section 3; and 2 days changed to 3 days in sections 8-9

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ninety-one Appellate, Civil, Criminal, and Bankruptcy rules. Report at 4. The Time-Computation Project has also resulted in changes to deadlines in twenty-nine statutory provisions. The statutes affected include, among others, bankruptcy and criminal statutes, the Classified Information Procedures Act, and the Crime Victims' Rights Act. Generally, the changes increase short time periods within the statutes by two or four days, thereby keeping the existing time periods unchanged in practice. *Id.* 5 – 12.

Suggestions Relating to Local Rules 7.1 and 54.3(c)

Since the amended Local Rules took effect, the Court has received questions about applying the amended Local Rules to briefing schedules when a motion hearing date was set before December 1, 2009, and the procedure for motions for costs relating to judgments that were obtained before this date. Generally speaking, attorneys should make every good faith effort to comply with the rules as amended. For issues arising in a specific case, practitioners should confer with opposing counsel, then contact chambers to determine how the Court wishes to proceed. The changes to the rules should be applied to pending cases to the extent just and practicable and, as a practical matter, these issues will not be a concern for very long.

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DIVERSITY EVENT WITH MAIBA

On October 19, 2009, more than seventy members of the local bench and bar attended a fall reception organized by the Diversity Committee of the Minnesota FBA Chapter and the Minnesota American Indian Bar Association ("MAIBA"). The event was held in the atrium of the University of St. Thomas School of Law.

Magistrate Judge Jeanne J. Graham, co-chair of the Diversity Committee, said the reception is part of an effort to recruit and retain minority lawyers and diversify the membership of the bar. She said the reception was a big success. "People made significant connections," Magistrate Judge Graham commented. "It was an extraordinary bar event."

The event featured a traditional prayer by Tribal Court Judge Paul Day and a speech by MSBA President Leo Brisbois, a member of the White Earth Band of Ojibwe. Magistrate Judge Graham and Chief Judge Michael J. Davis also spoke at the event.

FBA Diversity Committee member Jeanine Johnson said there was a great turnout for the reception. "It was a smashing success," said Johnson, who is also a MAIBA board member. "It was an all-around good situation."

The MAIBA reception is the most recent effort by the local FBA chapter to reach out to diverse bar associations. Since 2008, the Minnesota FBA chapter has hosted receptions with the Lavender Bar



MSBA President Leo Brisbois, Chief Judge Michael Davis, Assistant US Attorney Ann Anaya, FBA Minnesota Chapter President Lora Friedemann, and Phyllis Tousey of Swanson, Drobnick & Tousey attended the reception.

Association and the Hispanic Bar Association. The Diversity Committee also sponsored a reception with Twin Cities Diversity in Practice in honor of Chief Judge Davis's appointment as the first African-American Chief Judge in the District of Minnesota. "The goals are to network and to recognize diverse bar associations," Johnson said.

The Diversity Committee plans to continue co-hosting events with other bar associations in the next year and also plans to sponsor a larger gathering including all of the bar associations.

Michael Goodwin is currently serving as an AmeriCorps VISTA member with the Education Law Advocacy Project at Southern Minnesota Regional Legal Services and is a member of the Communications Committee.

SUPREME COURT REVIEWS LOCAL BANKRUPTCY CASE

On December 1, 2009, the United States Supreme Court heard oral arguments in *Milavetz, Gallop & Milavetz, P.A. v. United States*. This case is on appeal from the Eighth Circuit and originated in the District of Minnesota when the Edina law firm of Milavetz, Gallop & Milavetz, two of its attorneys, and two of its clients ("Petitioners") brought suit against the United States seeking a declaratory judgment that certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA")—11 U.S.C. §§ 524(a)(4), 528(a)(4) and (b)(2)—do not apply to attorneys and law firms and are unconstitutional as applied to attorneys.

The District Court granted summary judgment for Petitioners and declared that attorneys in the District of Minnesota were excluded from the definition of "debt relief agency" as defined by BAPCPA. The Court further held that the challenged provisions of BAPCPA were unconstitutional as applied to attorneys in the District of Minnesota. *See* 2007 WL 1227598 (D. Minn. Apr. 29, 2007) (Rosenbaum, C.J.).

The Eighth Circuit affirmed in part and reversed in part. *See* 541 F.3d 785 (8th Cir. 2008). It held that attorneys who provided "bankruptcy assistance" were unambiguously included in the definition of "debt relief agency," but that BAPCPA section 524(a)(4), prohibiting debt relief agencies from advising clients to incur debt in contemplation of bankruptcy,

was unconstitutional as applied to attorneys. Additionally, it held constitutional, under a rational basis review, BAPCPA sections 528(a)(4) and (b)(2), which requires debt relief agencies to disclose in advertisements that "we are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code[,] or a substantially similar statement." *Id.*

Both the Petitioners and the United States petitioned the Supreme Court for writ of certiorari, and both petitions were granted on June 8, 2009. *See* 129 S. Ct. 2769 (2009). Petitioners first raise the argument, which the District Court accepted but the Eighth Circuit reversed, that pursuant to the "doctrine of constitutional avoidance," the Court should hold that attorneys are not included in the definition of "debt relief agency," thereby avoiding the constitutional questions of whether the above provisions of the BAPCPA violate Petitioners' First and Fifth Amendment rights. As the Eighth Circuit recognized and the Government argues, the majority of courts have rejected this constitutional avoidance argument.

If the Supreme Court also rejects the constitutional avoidance argument, Petitioners argue that the above provisions of the BAPCPA are unconstitutional as to attorneys. Regarding section 524(a)(4), Petitioners argue that the provision is overly broad in that it prevents attorneys from fulfilling their duty to clients to give appropriate and beneficial advice not otherwise

prohibited by law. The Government argues that this provision is not overly broad if construed in terms of its legislative purpose and history and if the Court invokes principles of constitutional avoidance. Citing *Hersch v. United States*, 553 F.3d 743 (5th Cir. 2008), the Government argues that section 524(a)(4) should be interpreted only to prohibit attorneys from advising clients to incur debt when doing so would be an abuse or improper manipulation of the bankruptcy system.

Finally, the Petitioners appeal the Eighth Circuit holding that the advertising disclosure requirements in sections 528(a)(4) and (b)(2)(B) are constitutional and do not unconstitutionally compel speech. The Eighth Circuit held, and the Government argues, that under a rational basis review, section 528 is a reasonable means of enforcing the government's interest in protecting consumer debtors from deceptive advertisements, as it only requires those attorneys to disclose factually correct statements in their advertising. Petitioners argue that compulsory speech of this kind with respect to truthful, non-deceptive advertising is unwarranted and, further, the required language under section 528 is confusing, inherently misleading, and, in some contexts, simply untrue. The Supreme Court will issue its decision sometime in 2010.

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A PATENTLY UNIQUE OPPORTUNITY FOR LAW CLERKS

If you read the November/December issue of *The Federal Lawyer*, you undoubtedly recall that it highlights the “unique and amiable” relationship between our local federal bench and bar communities. As I recently discovered, the Minnesota Chapter’s IP Practice Group plays a significant yet unassuming role in fostering this dynamic relationship. In that regard, the IP Practice Group recently concluded its four-week, four-part patent law training program for the District’s judicial law clerks. The training program is truly unique, and its facilitators should be lauded for their foresight and activism.

It is no secret that the District of Minnesota regularly handles a large volume of patent cases. In fact, according to system-wide data corresponding to years 2000 through 2008, the District of Minnesota consistently ranks as one of the top ten busiest districts in terms of patent filings (ranging from eighth to thirteenth busiest district). Recognizing this burden as an opportunity, the IP Practice Group devised a plan to address the District’s burgeoning patent docket through enhancing systemic efficiency—by providing the District’s judicial law clerks with a solid foundation in basic patent law. Spearheaded by Lora Friedemann, Fredrikson and Byron shareholder and current Chapter president, the IP Practice Group launched its inaugural training program in 2007. The training program proved to be a resounding success,

paving the way for future opportunities and continued growth.

This year’s faculty covered the waterfront (thanks, in part, to the more than able assistance of Charles Cree, Training Specialist for the District of Minnesota). First, Carl R. Moy, William Mitchell College of Law Professor of Law, laid the foundation for the program, focusing largely on the policy underlying the patent system. Next, Darren Schwiebert, Fredrikson and Byron attorney, addressed patent infringement basics, emphasizing the *Markman*/claim-construction process. In the third week, Kevin Conneely and Ruth Rivard, Leonard Street and Deinard lawyers, discussed patent infringement defenses. In the final session, Michael Lafeber and Sharna Wahlgren of Briggs and Morgan, and Patrick Arenz of Robins Kaplan, Miller & Ciresi covered the latest and greatest in all things patent law (*e.g.*, heightened inequitable conduct pleading standard, recent development in joint infringement, and recent developments concerning reasonable royalties, to name a few).

Not only does the IP Practice Group’s patent law training program facilitate a healthy and refreshing level of close collaboration between legal advocates and arbiters, but it also enhances the overall efficiency of our federal court. In doing so, the patent-law training program unobtrusively improves the professional lives of countless federal practitioners

across all practice areas. Thank you, IP Practice Group!

Bryan T. Symes is an associate attorney with Seaton, Beck & Peters, P.A., and a member of the Communications Committee. He represents employers exclusively in the area of employment and labor law and was selected as one of *Minnesota Lawyer’s* “Up & Coming Attorneys” for his leadership, professional accomplishment, and service to the legal community.

MEMBERS ON THE MOVE

United States District Judge Donovan W. Frank was asked to chair the national Federal Bar Association’s inaugural Task Force on Diversity. Judge Frank co-chaired (with Annie Huang of Robins, Kaplan, Miller & Ciresi) our Chapter’s Diversity Committee from 2005 to 2007. Congratulations, Judge Frank!

Kudos to **Becky Thorson** of Robins, Kaplan, Miller & Ciresi, who is on the editorial board of the Federal Bar Association’s official publication, *The Federal Lawyer*. Becky helped coordinate the recent IP-themed November/December issue which featured several members of our local bar, including **Patrick Arenz** of Robins, Kaplan, Miller & Ciresi, who wrote an article about our Chapter’s IP Practice Group.

NATURALIZATION CEREMONIES



This year, almost 10,000 new United States citizens have been naturalized in Minnesota. Federal judges in the District of Minnesota administered the Oath of Allegiance to almost all of them, during nearly 80 formal naturalization ceremonies.

An immigrant must live in the United States as a legal permanent resident for at least five continuous years before applying for U.S. citizenship. During the application process he or she must demonstrate good moral character, an understanding of the English language, and civics knowledge. If the application for naturalization is approved, the final step is to swear an Oath of Allegiance to the United States.

The Oath of Allegiance is frequently administered during a formal ceremony at one of the federal courthouses in St. Paul, Minneapolis,

Duluth, or Fergus Falls. Naturalization ceremonies are also held at the Landmark Center, the Mall of America, the Festival of Nations, the Minnesota History Center, several universities, and all four of Minnesota's law schools.

If you have never attended a naturalization ceremony, you should. You'll know a naturalization ceremony is about to begin when you walk into the courthouse lobby and find yourself among hundreds of people of many nationalities. Flashbulbs will be popping. Everyone will be smiling. Only a few people grouse about having to wait in the security line. The enthusiasm is palpable.

The ceremony itself is solemn and moving. Before administering the Oath of Allegiance, the judicial officer announces each country of emigration and encourages the prospective citizens to stand when

their countries are called. Each nationality is acknowledged with applause, in recognition of the challenges and hardships involved in leaving one's homeland. A representative from the United States Citizenship and Immigration Services (USCIS) then makes a formal motion, which is always granted, and the Oath of Allegiance is administered to the group.

Next, the judicial officer typically offers an anecdote or two, perhaps some advice. As United States Magistrate Judge Jeanne Graham often reminds new citizens, one of the greatest strengths of our country is the diversity of its citizens. "When you share with all of us the best of the culture from the country of your birth, you help to continue the values and traditions that are vital to our continued peaceful survival: diversity, tolerance, dignity, and respect." Magistrate Judge Graham also emphasizes that with the privilege of freedom comes responsibility: the responsibility to participate in democracy, to follow the law, and to model compassion and tolerance.

After the judge's remarks, everyone heartily recites the Pledge of Allegiance. The grand finale occurs when the new citizens wave their flags and sing along to Lee Greenwood's "Proud to Be an American."

Although the majority of naturalization ceremonies are held in a courtroom or another large venue, some occur in locations that are

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quite extraordinary, and under very special circumstances.

Recently, a member of the United States Military was naturalized so that he could be deployed overseas. Only American citizens may serve in other countries. The young man, who had emigrated from Somalia, said the United States had given him freedom, and the only way to repay that was to defend it at any cost.

In a particularly poignant situation, a woman, eight months pregnant, lay in a hospital bed on bed rest. Doctors had given her less than a twenty-five percent chance of surviving her baby's birth. A USCIS representative asked whether any of the federal judges would be willing to come to the hospital to naturalize the young woman, who had emigrated from Vietnam. Under the worst-case scenario, she

wanted to die an American. The representative explained that the young woman's mother could be present at the ceremony only if it occurred in the evening. Three federal judges readily volunteered, and United States Dis-

trict Judge Donovan Frank administered the oath. The two new citizens, mother and baby, both survived.

Every federal judge will tell you that performing a naturalization ceremony, whether for an individual or a group, is one of the most fulfilling of all judicial duties. For those of us who are fortunate enough to be born American citi-



Judge Frank administers the Oath of Allegiance to a new citizen in her hospital room.

zens, attending a ceremony is a great reminder of everything that opportunity confers, and what we should strive to give back.

Adrienne Meyers is a law clerk to United States Magistrate Judge Jeanne J. Graham and a member of the Communications Committee. Prior to clerking for Magistrate Judge Graham, Adrienne clerked for District Judge Paul A. Magnuson, United States Magistrate Judge Susan Richard Nelson, and United States Magistrate Judge Jonathan G. Lebedoff.

PATENT SURVEY COMING YOUR WAY

The Minnesota FBA Chapter, in conjunction with the Judges of the United States District Court for the District of Minnesota, invite you to participate in a short survey about patent cases. The survey is part of a multi-phase project led by the *Markman* Study Group, which is a subset of the FBA's IP Practice Committee. The goal of the group is to determine if there are ways to make the claim construction, or *Markman*, process in patent litigation cases more efficient for the Court and the parties.

Markman Study Group members Sharna Wahlgren, Mary Kie-

drowski, Kevin Conneely, and James Hietala constructed the survey and worked with Wendy Osterberg and Greg Barnes from the Clerk's Office to distribute it.

The survey of the bar follows a survey of the judges in the District to learn how they handle various aspects of the *Markman* process. The present survey seeks feedback from the bar on many of the ideas that were generated from our survey of the bench.

The Court e-mailed the survey on December 4, 2009, to all litigators who have appeared in a patent

case in the past 10 years, as well as members of the Minnesota Intellectual Property Law Association. However, any attorney who has been involved in a patent dispute is welcome to participate. If you did not receive an e-mail, you can reach the survey directly (<http://tinyurl.com/MarkmanSurvey>) or through the Minnesota FBA's homepage under Chapter Initiatives. The password, if required, is westview.

James Hietala is a patent attorney at Carlson, Caspers, Vandenburg & Lindquist. He devotes most of his practice to patent litigation and client counseling.

FBA IN ACTION: THE MINNESOTA CHAPTER GRANT COMMITTEE

Shortly after the first of the year, the all-volunteer Minnesota Chapter Grant Committee will be mailing invitations to various programs and organizations, encouraging them to apply for grants offered by our Chapter's donor-advised fund. While not widely publicized, our Chapter and the fund have awarded these types of grants for more than a decade, funding them through member-supported events such as the monthly luncheon series, the judges' annual dinner-dance, the annual golf tournament, and the FBA annual seminar.

Ranging in size from a few hundred to a few thousand dollars, the grants support programs and organizations with a specific connection to the federal judicial system. The Grant Committee's mandate is to identify, evaluate, and recommend potential recipients, including those involved with:

- Promoting and supporting legal research and education;
- Advancing the science of federal jurisprudence;
- Facilitating the administration of justice; and

- Fostering improvements in the practice of federal law, including the elimination of bias and the promotion of diversity and high standards of federal practice.

Each applicant provides information describing its constituents and purpose. Applicants are also asked to provide information on how they analyze the effectiveness of their respective services. Past beneficiaries are encouraged to apply each year, and to keep the Grant Committee informed of

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In 2009, the Minnesota Chapter's donor-advised fund gave awards to ten organizations:

- **The Advocates for Human Rights** (formerly Minnesota Advocates for Human Rights): for legal services for asylum seekers petitioning for review in the federal courts of appeal.
- **Anishinabe Legal Services:** for professionally designed newsletters to serve as educational tools as ALS provides legal services to low-income residents of the Leech Lake, Red Lake, and White Earth Reservations in Minnesota.
- **Books for Africa:** for sending law books to African law schools and bar associations, in honor of United States Magistrate Judge Jack Mason, a Books for Africa board member at the time of his death in 2002.
- **Immigrant Law Center of Minnesota:** for legal representation of low-income immigrants as they work to achieve their citizenship status.
- **Innocence Project of Minnesota:** for legal and investigative assistance to inmates who claim innocence of the crime of which they were convicted.
- **Mid-Minnesota Legal Assistance** (the umbrella organization for Legal Aid Society of Minneapolis): for a work-study law clerk to work with the Housing Discrimination Law Project, which provides fair housing enforcement services under the federal Fair Housing Act and other civil rights laws.
- **Minnesota Justice Foundation:** toward a summer clerkship program that allows law students to perform public interest and pro bono legal services for low-income and disadvantaged Minnesotans.
- **Minnesota Landmarks, Landmark Center:** for the "Uncle Sam Worked Here" Lecture Series focusing on Judge Sanborn and Justices Blackmun and Burger.
- **Volunteer Lawyers Network:** toward a program relating to *pro se* litigants in federal court cases.
- **Volunteers of America of Minnesota:** toward the Federal Visitation Program, which maintains familial ties between federally incarcerated mothers and their children living in Minnesota.

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their programs' success in making use of prior grant money. Grants are not, however, limited to past recipients or organizations receiving written invitations, notes Jim Simonson, Co-Chair of the Grant Committee for 2009-2010; the Committee is always on the lookout for new recipients.

This year's Grant Committee plans to review applications during early 2010, and, as has been the case in past years, will offer its recommendations to the FBA Board of Directors during the Board's March meeting. At the spring meeting, the Board reviews the Commit-

tee's suggestions and makes the appropriate recommendations to the donor-advised fund. Recipients receive their grant money as early as April.

Distinguished recipients in past years have included the Bernie Becker Scholarship Endowment at William Mitchell College of Law, the Minnesota branch of the Eighth Circuit Historical Society, and the Page Education Foundation.

The Co-Chairs of the Grant Committee for 2009-2010 are James Simonson of Gray Plant Mooty and Tara Norgard of Carlson, Caspers, Vandenburg & Lindquist, who deserve sincere thanks for

serving on the Committee and providing information for this article. The author would also like to thank Shannon O'Toole for providing historical information related to the grant process. Interested organizations, individuals wishing to recommend a worthy organization, or those interested in volunteering on the Grant Committee should contact either Mr. Simonson at james.simonson@gpmlaw.com or Ms. Norgard at tnorgard@ccvl.com.

Kerri Nelson is a member of the Communications Committee and an attorney at Holstein Law Group, PLLC.

CLERK'S CORNER: NEW HELP FOR *PRO SE* LITIGANTS

On December 1, 2009, the United States District Court for the District of Minnesota launched its Representing Yourself (*Pro Se*) webpage. The webpage contains materials designed to assist parties proceeding *pro se* and may also prove valuable to attorneys whose clients lack a basic understanding of how a federal court lawsuit progresses. The Representing Yourself (*Pro Se*) webpage may be accessed from the Court's website at www.mnd.uscourts.gov. The webpage's features include:

- Answers to common *pro se* litigant questions.
- Comprehensive *Pro Se* Civil Guidebook. The guidebook is designed to answer common procedural questions that arise from case opening through

filing a notice of appeal. It is drafted in a user-friendly, question-and-answer format.

- Information sheets that provide basic information about specific procedures for proceeding in federal court.
- Glossary of legal terms.
- Forms menu. The forms menu includes nine new forms developed to assist *pro se* litigants, including three complaint forms and three forms related to filing civil motions. The forms menu is organized so that the forms are presented in the order they are likely to be used. The menu also directs the user to other resources that may assist them in completing the forms.

- Links to the Federal Rules and Local Rules.
- Information about other legal resources, including website and contact information on resources for finding an attorney and Minnesota law libraries, and a list of online legal research resources.

The Representing Yourself (*Pro Se*) webpage is the culmination of a collaborative effort to improve the services provided to *pro se* litigants. The Court plans to continue to develop and improve the resources it provides to *pro se* litigants, including a web-based program that will assist *pro se* litigants in completing the necessary forms to initiate a civil case and providing improved and additional resources for *pro se* prisoner litigants.

STEP-UP PROGRAM A SUCCESS

In summer 2009, twenty-five legal employers participated in the Step-Up program, providing summer jobs to Minneapolis youth ages 16-21:

- Briggs & Morgan
- Faegre & Benson
- Foley & Mansfield
- Halleland, Lewis, Nilan and Johnson
- Oppenheimer, Wolff & Donnelly
- Robins, Kaplan, Miller & Ciresi
- Sprenger & Lang
- HealthPartners (Legal Department)
- Medica (Legal Department)
- Thrivent Financial for Lutherans (Legal Department)
- U.S. Bancorp (Legal Department)
- University of Minnesota Law School
- Battered Women's Legal Advocacy Project
- Central Minnesota Legal Services
- City of Minneapolis Attorney
- Minneapolis Civilian Police Review Authority
- Civil Action Group
- Hennepin County Attorney
- Legal Rights Center
- Minnesota Supreme Court
- Restorative Justice Community Action, Inc.
- Southern Minnesota Regional Legal Services
- U.S. District Court
- Volunteer Lawyers Network
- William Mitchell College of Law

Thanks to everyone who participated! If you would like information about participating in summer 2010, please contact George Ellis at gellis@achievements.org or (612) 455-1561 by **March 31, 2010**.

SAVE THE DATE

THE ANNUAL FBA SUMMER SEMINAR

will be held

Tuesday, June 22, 2010

at the beautiful Guthrie Theater in Minneapolis

Among other exciting topics, it will feature:

- Everything you want to know about motions to dismiss;
- Federal Rule of Evidence 502 explained;
- Tips from the trenches: a federal law clerk's perspective; and
- Breakout sessions on employment law and intellectual property.

CALENDAR OF UPCOMING EVENTS

December 21, 2009

Monthly Luncheon at the Minneapolis Club
“Masters of Mediation” Panel Discussion

January 20, 2010

Monthly Luncheon at the Minneapolis Club

February 17, 2010

Monthly Luncheon at the Minneapolis Club

March 17, 2010

Monthly Luncheon at the Minneapolis Club

March 25, 2010

6:00 pm
Spring Board of Directors Meeting at the Women’s
Club of Minneapolis

April 21, 2010

Monthly Luncheon at the Minneapolis Club

May 1, 2010

Dinner and Dance at the Minnekahda Country Club

May 12, 2010

Monthly Luncheon at the Minneapolis Club

June 22, 2010

FBA CLE Seminar at the Guthrie Theater

August 11 – 13, 2010

Eighth Circuit Judicial Conference at the Marriott
City Center

August 30, 2010

Annual Golf Tournament at Midland Hills Country
Club

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*Do you have news or an idea for a future issue of Bar Talk?
Please contact Anita Terry at anita_terrj@mind.uscourts.gov
or Leah Janus at LJanus@fredlaw.com to share.*

*Special thanks to **Rebecca L. Baertsch**, Judicial Assistant
to United States District Judge Donovan W. Frank, for her
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