

# FOR THE DISTRICT OF OREGON

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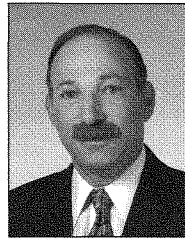
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## SIGNIFICANT NEW TIMING RULES AND SUBSTANTIVE CHANGES TO ALL FEDERAL RULES OF PROCEDURE TAKE EFFECT DECEMBER 1, 2009

By James L. Hiller and Kathryn M. Pratt

If Congress does not act, on December 1, 2009, a rash of changes to the Federal Rules of Civil Procedure, Appellate Procedure, and Criminal Procedure will take effect. A complete list of those changes is on the included table. A summary of the major changes is discussed below.

### I. FEDERAL RULES OF CIVIL PROCEDURE

#### A. Time Computation Changes

The proposed amendments to Appellate Rule 26, Civil Rule 6, and Criminal Rule 45 make the method of computing time more consistent and user friendly. The primary changes in the amended time computation rules are the adoption of a "days are days" method of computing time. Under the current rules, weekends and holidays are sometimes omitted and sometimes counted. Now under the "days are days" method, the weekends and holidays will be counted. However, the day that triggers the event is not counted. If the last day of the period falls on a Saturday, Sunday, or legal holiday, then the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. These amendments apply only when time has to be computed. They do not apply when there is a fixed time to act, nor do they apply when a time period being computed is set by a statute with a specific method of computing time.

Additionally, the new rules line out clearer definitions of the terms "Days," "Hours," "Legal Holiday," etc. and clarify how the deadlines are computed. "Legal Holiday" is defined as New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day. "Last Day" is defined as (1) for electronic filing: midnight in the **court's time zone**; and (2) for filing by other means: when the clerk's office is scheduled to close.

Under the prior rules, in an 11-day period of time, the weekends and holidays were not counted, which essentially created a 14-day period of time. A five-day

*Continued on page 3*

stored information.

**Rule 11** of the Rules Governing Proceedings under 28 U.S.C. § 2254 or 2255 consolidates and clarifies the requirements for certificates of appealability. The amendment requires the district court to rule on the certificate of appealability when a final order is issued, rather than later after a notice of appeal is filed.

### **III. FEDERAL RULES OF APPELLATE PROCEDURE**

#### **A. Time Computation Change**

These rules have been updated to comply with the time computation changes as well and will generally be in multiples of 7, 14, 21, and 28 days.

#### **B. Substantive Changes**

**Rule 4** eliminates an ambiguity arising from the 1998 restyling. The current rule might be construed to require an appellant to amend a prior notice of appeal whenever the district court amends the judgment, even if the amendment to the judgment favors the appellant.

**Rule 12.1** dovetails with proposed new Civil Rule 62.1 to provide for a party to request an “indicative ruling” in the district court on a motion that the district court lacks authority to grant because of a pending appeal. The proposed Appellate Rule facilitates remand to the district court for a ruling on the motion when the district court has indicated that the motion raises a substantial issue or that the district court would grant the motion if the court of appeals remanded for that purpose.

**Rule 22** conforms to the proposed new Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. § 2254 or 2255 by deleting the requirement that the district judge issue a certificate of appealability or state why a certificate should not issue. That requirement will now be set out in the proposed new Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. § 2254 or 2255.

**Rule 26** clarifies the operation of the “three-day rule” when a time period ends on a weekend or holiday.

## Federal Rules – Proposed Changes Effective December 1, 2009

Rule Type	Rule No.	Heading	Type Of Change
Civil	6	Computing and Extending Time; Time for Motion Papers	Essentially rewrites the rule, expands on definitions, to simplify and clarify how deadlines are computed by counting in straight days, including weekends and holidays; b(2) removes "except as those rules allow;" The provision under FRCP 6(c) changes when written motion and notice of hearing must be served from 5 days to 14 days and when a Supporting Affidavit must be served from 1 day to 7 days. The time computation provisions apply only when a time must be computed, not when a fixed time to act is set.
Civil	8	General Rules of Pleadings	Deletes "discharge in bankruptcy" from the list of affirmative defenses in subdivision (c).
Civil	12	Defenses and Objections: When and How Presented; Motion for Judgment on Pleadings; Consolidated Motions; Waiving Defenses; Pretrial Hearing	Time for filing a Responsive Pleading, serving an answer to a counterclaim or cross claim and time to reply to an answer changes from 20 days to 21 days; Effect of Motion - If the Court denies a motion, postpones disposition or grants a motion for more definite statement, the time to file a responsive pleading changes from 10 days to 14 days. The time for making a motion to strike if no responsive pleading is allowed has changed from 20 days to 21 days.
Civil	13	Counter Claim and Cross Claim	Subdivision (f) (allowing for a counter claim that was omitted by oversight) is deleted because it is largely redundant of Rule 15. Abrogation of Rule 13(f) establishes Rule 15 as the sole rule governing amendment of a pleading to add a counterclaim.
Civil	14	Third Party Practice	Time for filing a third party complaint changes from 10 days to 14 days after service of the original answer – After that, a motion must be made to obtain leave of the court to file a third party complaint.
Civil	15	Amended and Supplemental Pleadings	Clarifies when a pleading may be amended as a matter of course, without the need to obtain leave of court. First, the right to amend once as a matter of course terminates 21 days after service of a motion under Rule 12(b), (e), or (f). Second, the right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21 -day limit as the right to amend in response to a motion. Finally, amended Rule 15(a)(l) extends from 20 to 21 days the period to amend a pleading to which no responsive pleading is allowed and omits the provision that cuts off the right if the action is on the trial calendar. Time to respond to an amended pleading changes from 10 days to 14 days.
Civil	23	Class Actions	Appeals from an order granting or denying class certification changes from 10 days to 14 days.
Civil	27	Depositions and Perpetuate Testimony	Time for giving and serving notice of a perpetuation deposition changes from 20 days to 21 days.
Civil	32	Using Depositions in Court Proceedings	The amendment now requires that there have been 14 days notice of a deposition rather than 11, in order to use a deposition against a party. In addition, the period for objections to a written question under Rule 31 extends from 5 days to 7 days.
Civil	38	Right to a Jury Trial; Demand	The time in which to serve a written jury trial demand changes from 10 days to 14 days. If a jury trial demand is for less than all claims, the

			time for the opposing party to demand a jury trial changes from 10 to 14 days.
Civil	48	Number of Jurors; Verdict, Polling	Adds a provision requiring a court to poll the jury individually at the party's request, or, alternatively, the court may do so on its own.
Civil	50	Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling	Time for renewing a JNOV motion after trial or making a motion for new trial changes from 10 days to 28 days after entry of judgment or if the motion addresses a jury issue not decided by verdict, this time changes from 10 to 28 days after the jury was discharged. Time for a losing party to file a motion for new trial changes from 10 days to 28 days after entry of judgment.
Civil	52	Findings and Conclusions by the Court; Judgment on Partial Findings	Time for a motion to be filed seeking amended or additional findings changes from 10 days to 28 days.
Civil	53	Masters	Time to object or move to adopt or modify a Master's findings, report or recommendations changes from 20 days to 21 days.
Civil	54	Judgment; Costs	The notice period for the clerk to tax costs other than attorneys' fees changes from 1 day's notice to 14 days notice. Time for a motion to review the clerk's action changes from 5 days to 7 days.
Civil	55	Default; Default Judgment	Time for serving a party who has appeared with written notice of the application for a default judgment changes from 3 days to 7 days.
Civil	56	Summary Judgment	Unless a different time is set by local rule or the Court orders otherwise, a party can now move for summary judgment at any time until 30 days after the close of all discovery (the 20 day waiting period from the commencement of the action was eliminated). Unless a different time is set by local rule or the Court orders otherwise, a response to a motion for summary judgment is due within 21 days after the motion is served or a responsive pleading is due, whichever is later. Unless a different time is set by local rule or the Court orders otherwise, a reply to a summary judgment motion is due 14 days after service of the response.
Civil	59	New Trial; Altering or Amending a Judgment	Time for Filing a Motion for a New Trial changes from 10 days to 28 days after entry of judgment. Time to serve opposing affidavits changes from 10 days to 14 days. Time in which the Court may order a new trial on its own initiative or for reasons not in the motion changes from 10 days to 28 days. Time for filing a Motion to Alter or Amend Judgment changes from 10 days to 28 days.
Civil	62	Stay of Proceedings to Enforce Judgment	Changes the stay period before execution or enforcement of a judgment from 10 days to 14 days after the entry of judgment.
Civil	62.1 New Rule	Indicative Ruling on Motion for Relief That is Barred by a Pending Appeal	Establishes procedures facilitating the remand of certain post-judgment motions filed after an appeal has been docketed in a case in which the district court indicates that it would grant the motion. See Appellate Rule 12.1.
Civil	65	Injunctions and Restraining Orders	Changes the time in which a temporary restraining order issued without notice expires from 10 days to 14 days.
Civil	68	Offer of Judgment	Changes time in which an offer of judgment may be served from at least 10 days prior to the date set for trial to 14 days from that date. Also changes time opposing party has to file an accepted offer of judgment from 10 to 14 days. Changes time in which an offer of judgment made after liability is determined must be served from 10 to 14 days.
Civil	71.1	Condemning Real or Personal Property	Changes time for appearance or answer to notice of condemnation of real or personal property from 20 days to 21 days.

Civil	72	Magistrate Judges: Pretrial Order	Changes time in which to file objection to recommendations of magistrate judge from 10 days to 14 days.
Civil	81	Applicability of the Rules in General; Removed Actions	Clarifies the definition of "state" to include commonwealths, territories, and possessions. Changes the three alternative time periods for a defendant who did not answer prior to removal to further plead from 20 days to 21 days after receiving a copy of the initial pleading, from 20 to 21 days after being served with the summons for an initial pleading on file at the time of service or from 5 to 7 days after the notice of removal is filed. Also changes to period in which a party in a removed action can demand a jury trial from 10 days to 14 days.
Civil	Supp B	In Personam Actions: Attachment and Garnishment	Changes time for a garnishee to answer from 20 days to 21 days.
Civil	Supp C	In Rem Actions: Special Provisions	Changes time for public notice from 10 days to 14 days and changes the time in which a person who asserts a right or possession or ownership interest in an action in rem to file a verified statement from 10 to 14 day after execution and the time in which such a person must serve an answer after filing a statement of interest from 20 to 21 days.
Civil	Supp G	Forfeiture Actions in Rem	Changes time for answer to notice from 20 days to 21 days, the time for the government to serve interrogatories from 20 to 21 days, the answers or objections to interrogatories from 20 to 21 days and the government's time to respond to a claimant's motion to dismiss from 02-21 days after the claimant has answered the interrogatories.
Civil	Form 3	Summons	Changes the time in which the defendant must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 from 20 days to 21 days.
Civil	Form 4	Summons on Third Party Complaint	Changes the time in which a third party defendant must serve on the plaintiff and defendant an answer to the attached complaint or a motion under Rule 12 from 20 days to 21 days.
Civil	Form 60	Notice of Condemnation	Changes time for serving an answer from 20 days to 21 days.
Criminal	5.1	Preliminary Hearing	Changes the time for a magistrate judge to hold the preliminary hearing from 10 days to 14 days after the initial appearance if in custody and 20 days to 21 days if not in custody.
Criminal	7	The Indictment and The Information	A forfeiture-related provision that is more appropriately set out in Rule 32.2 was deleted as unnecessary. Citation Error was correction. The time in which a defendant may move for a bill of particulars has changed from 10 days to 14 days.
Criminal	12.1	Notice of Alibi Defense	Time for a defendant to serve written notice of the gov't of any alibi defense changes from 10 days to 14 days (or at some other time the court sets). Time for the gov't to disclose witnesses changes from 10 days to 14 days after defendant serves notice of alibi defense.
Criminal	12.3	Notice of a Public-Authority Defense	Time in which the government must serve a written response on the defendant after receiving notice of a public authority defense has been changed from the time period within 10 days to 20 days before trial to the time period within 14 days and 21 days before trial. Time in which the government must serve the request to disclose witnesses changes from no later than 20 days before trial to no later than 21 days. The defendant's time for response to that request and the government's time to reply to that request both change from 7 days to 14 days.

Criminal	29	Motion for a Judgment of Acquittal	Time in which to move for a judgment of acquittal following a jury verdict or discharge changes from 7 days to 14 days after a guilty verdict or after the court discharges a jury, whichever is later.
Criminal	32	Sentencing and Judgment	Change requires the presentence report to state whether the government is seeking forfeiture under Rule 32.2 or any other provision of law.
Criminal	32.2(1)	Criminal Forfeiture	This rule changes to (1) state that the government's notice of forfeiture should not be a count in an indictment or information; (2) provide that the notice of forfeiture need not identify the specific property or money judgment that is subject to forfeiture; (3) require the court to enter a preliminary forfeiture order sufficiently in advance of sentencing to permit the parties to comment; (4) expressly authorize the court to enter a general forfeiture order when it is not possible to identify all of the property subject to forfeiture; and (5) make various clarifying and technical changes.
Criminal	33	New Trial	Time to file for new trial on grounds other than newly discovered evidence changes from 10 days to 14 days.
Criminal	34	Arresting Judgment	Time for defendant to move to arrest judgment changes from 7 days to 14 days after the court accepts a verdict or finding of guilty or after a plea of guilty or nolo contendere.
Criminal	35	Correcting or Reducing a Sentence -	Time for the court to correct a clear error changes from 7 days to 14 days.
Criminal	41	Search and Seizure	Clarifies the application of the rule's warrant provisions to the search and seizure of electronically stored information. The amendment establishes a two stage process, authorizing (1) the seizure of electronic storage media or the seizure and copying of electronically stored information and (2) a subsequent review, consistent with the warrant, of the storage media or electronically stored information. Time for a warrant to commend the office to execute changes from no longer than 10 days to no longer than 14 days. Computation Change - Issuing the Warrant - Contents of the Warrant - changes from 10 days to 14 days. Adds a rule regarding the procedure for warrants seeking electronically stored.
Criminal	45	Computing and Extending Time	This rule changes to counting each day including weekends; clarifies definitions.
Criminal	47	Motions and Supporting Affidavits	Time for a party to serve a written motion, other than ex parte, and any hearing notice changes from at least 5 days to at least 7 days before the hearing date unless a rule or court order sets a different period.
Criminal	58	Petty Offenses and Other Misdemeanors	Time for filing an interlocutory appeal of an order of a Magistrate judge to a district judge changes from 10 days to 14 days. Time for defendant to appeal a magistrate's judgment of conviction or sentence to a district judge changes from 10 days to 14 days of the entry of the judgment.
Criminal	59	Matters Before a Magistrate Judge	Time for objecting to a magistrate's determination on a nondispositive or a dispositive matter changes from 10 days to 14 days.
Criminal § 2254	8	Amendments to Rules Governing Section 2254 cases in the United States District Courts	Time for objecting to proposed findings and recommendations in § 2254 cases changes from within 10 days after being served to within 14 days after being served.

Criminal § 2254	11	Certificate of Appealability - Time to Appeal	Consolidates and clarifies the requirements for certificates of appealability. The amendment requires the district court to rule on the certificate of appealability when a final order is issued, rather than later after a notice of appeal is filed.
Appellate	4	Appeal as of Right - When Taken	Eliminates an ambiguity arising from the 1998 restyling. Changes the time in which an FRCP 60 motion can be filed from no later than 10 days to no later than 28 days after the judgment is entered for purposes of determining the time to file an appeal in FRCP 4(A)(vi). Changes outer limit for a motion for extension of time to 30 days after the prescribed time or 14, rather than 10 days, after the date when the order granted the motion is entered, whichever is later. Changes the conditions for reopening the time to file an appeal from either 180 days after judgment or 14 days, rather than 7 days, after the moving party received notice of entry of judgment. Changes the time for filing a notice of appeal in a criminal case from 10 to 14 days. Changes time from 10 to 14 days for filed a notice of appeal from a judgment of conviction when certain timely motions are made.
Appellate	5	Appeal by Permission	Changes to time to file an answer in opposition to an appeal by permission from 7 to 10 days after the petition is served. Changes the time for the appellant to pay the district clerk fees and file a cost bond from 10 to 14 days.
Appellate	6	Appeal in a Bankruptcy Case from a Final Judgment, Order or Decree of a District Court or Bankruptcy Appellate Panel	Changes the time in which the appellant must file and serve a statement of issue to be presented on appeal and a designation of the record from 10 days to 14 days.
Appellate	10	The Record on Appeal	Changes the time in which an appellant has a duty to order or file a certificate indicating that no transcript will be ordered from 10 days to 14 days. Changes the time for an appellee to designate other parts of the record from 10 to 14 days. Changes the time for responding to a statement of evidence when a transcript is unavailable from 10 to 14 days. Changes the deadlines relating to partial transcripts from 10 to 14 days.
Appellate	12	Docketing the Appeal; File a Representation Statement; Filing the Record -	Changes the time the attorney who filed the notice of appeal must filed a statement with the circuit clerk naming the parties that the attorney represents from 10 days to 14 days.
Appellate	12.1	Remand After an Indicative Ruling by the District Court on Motion for Relief that is Barred by a Pending Appeal	Dovetails with proposed new Civil Rule 62.1 to provide for a party to request an "indicative ruling" in the district court on a motion that the district court lacks authority to grant because of a pending appeal. The proposed Appellate Rule facilitates remand to the district court for a ruling on the motion when the district court has indicated that the motion raises a substantial issue or that the district court would grant the motion if the court of appeals remanded for that purpose.
Appellate	15	Review or Enforcement of an Agency Order - How Obtained; Intervention	Changes the time for filing an answer to an application for enforcement from 20 days to 21 days.
Appellate	19	Settlement of a Judgment Enforcing an Agency Order in Part	Changes the time a party who disagrees with the agency's proposed judgment to file a different proposed judgment from 7 to 10 days.

Appellate	22	Habeas Corpus and Section 2255 Proceedings	Conforms to the proposed new Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 or 2255 by deleting the requirement that the district judge issue a certificate of appealability or state why a certificate should not issue. That requirement will now be set out in the proposed new Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 or 2255.
Appellate	25	Filing and Service	Removes the word "calendar" from the three day time computation for service by third party commercial carrier and from the provision that allows for three days to be added to service if a paper is not delivered on the date of service. Clarifies the operation of the three-day-rule is a "days-are-days" approach under which all intermediate days are counted, no matter how short the period.
Appellate	26	Computing and Extending Time	Significant changes to this rule were made to simplify and clarify the provisions that describe how deadlines are computed. This change is significant and affects counting under any rule that contains a timing provision and cannot be completely summarized here. In addition, Rule 26(c) was amended to eliminate uncertainty about application of the 3-day rule.
Appellate	27	Motions	Changes the time to file response to a motion from 8 days to 10 days after service of the motion unless the court shortens or extends the time and that motions authorized by Rules 8, 9, 18 or 41 can only be granted before the 10 day period expires unless the court gives notice of its intent to act sooner. Changes the time for reply to a response from within 5 days of service to 7 days of service.
Appellate	28.1	Cross-Appeals	Changes the time to serve and file the appellee's reply brief so that it must be filed at least 7 days before argument unless the court allows a later filing for good cause.
Appellate	30	Appendix to the Briefs	The time periods in which the appellant must serve the appellee with a designation of parts of the record and a statement of issues to present from review and in which the appellee can designate additional parts of the record have been extended from 10 days to 14 days,
Appellate	31	Serving and Filing Briefs	Changes the time period before oral argument that a reply brief can be filed from 3 days to 7 days.
Appellate	39	Costs	Changes the time that objections must be filed after service of the bill of costs from 10 days to 14 days.
Appellate	41	Mandate: Contents; Insurance Effective Date; Stay	Removes the word "calendar" from the time computation. This comports with the new "days-are-days" approach under which all intermediate days are counted, no matter how short the period.



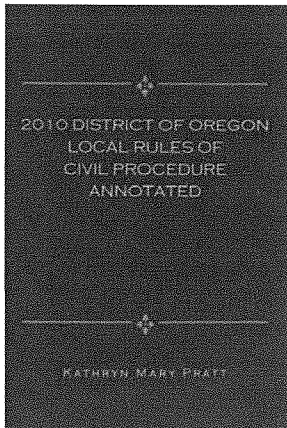
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## NINTH CIRCUIT JUDICIAL CONFERENCE 2009: “NAVIGATING THROUGH TURBULENT TIMES”

This year’s annual Ninth Circuit Judicial Conference was anything but turbulent, taking place at the cool but sunny Hyatt Resort in Monterey, California. Highlights of the program included a Supreme Court 2008-2009 Term review by Kathleen Sullivan, recent Dean of the Stanford Law School. Sullivan discussed several surprising cases that involved questions of federalism and civil rights, and she noted that a new Title VII decision (*Gross v. FBL Financial Services*) will prompt amendments to pattern civil jury instructions.

Another highlight was a guest appearance by Homeland Security Secretary Janet Napolitano, a former law clerk to Ninth Circuit Judge Mary Schroeder and former U.S. Attorney for the District of Arizona. Napolitano described her top five priorities for the Department of Homeland Security (DHS): (1) minimizing the risk of terrorism (she noted that the problem is far more complex than most people realize); (2) securing our nation’s borders; (3) enforcing immigration laws directed at employers; (4) preparing for natural disasters (including an anticipated widespread outbreak of the H1N1 flu); and (5) figuring out how to best create a single department comprising over 22 different agencies. Napolitano explained that DHS is now the third largest federal department (Defense and Veterans Affairs are #1 and #2, respectively), and efforts are underway to establish a national headquarters for DHS in the former St. Elizabeth’s Hospital building in Washington, D.C. Specific actions to accomplish her five primary objectives include increasing use of science and technology – for example, Napolitano said that DHS is working toward 100% cargo screening and increasing the use of partnerships with other federal, state, local, and tribal agencies. DHS’s current annual budget is \$50 billion, and Napolitano is also working to cut unnecessary expenses and improve operating efficiencies.

The final day’s program included a conversation between Chief Ninth Circuit Judge Alex Kozinski and U.S. Solicitor General Elena Kagan. Kagan explained that the United States applies the same standard to determining whether to seek certiorari for a case that is employed by the Supreme Court itself – she looks for circuit splits and

cases of exceptional importance, and any cases in which a federal statute has been declared unconstitutional, so her criteria differs from that employed by private parties. The difference in rates of certiorari grants is stark – for most parties, the chances of convincing the Supreme Court to grant certiorari are between 1% and 2%, while certiorari petitions from the S.G.’s office are granted 70-80% of the time. Kagan explained that she approaches the job with the basic philosophy that the S.G. is an advocate for the executive branch – she is part of the President’s team and her primary responsibility is to defend the executive’s policies. She acknowledged, however, that her client is ultimately the United States and that she and her office have an obligation to the courts, and particularly to the Supreme Court, to be candid and fair. Kagan will make her first argument as the S.G. on September 9, representing the United States in a case involving campaign contributions and whether restrictions on independent campaign contributions by corporations and unions violate the First Amendment. She explained that the selection process for who, among her staff of 22 lawyers, will actually argue a case before the Supreme Court depends in part upon the import of the case. The campaign limitation case involved Secretary of State Hillary Clinton, and Kagan’s presence at the podium should convey the import of the outcome. While Kagan was willing to share some of her oral argument preparation strategy, she said that whether she will wear the traditional morning suit remains a closely guarded secret.

Anyone concerned about attendees working too hard at this conference may rest assured that several social events lightened the mood and provided an informal chance for judges and lawyers to meet family members and have fun. One evening featured a Ninth Circuit talent show hosted by former Highwayman and Ninth Circuit Judge Steve Trott. Oregon’s own Bankruptcy Judge Randy Dunn is a clarinet player who has performed with the Portland Opera Orchestra and the Oregon Symphony, and he performed *Variations for Clarinet and Piano* by Rossini. During the opening ceremony, Judge Steve Trott and Michael Hawkins played out a scene from what might have represented a conversation that took place during the final meeting between President Lincoln and General Grant just prior to Lincoln’s assassination. (Trott played Lincoln, and Hawkins played Grant.) Their exchange showed just how committed both men were to finding a peaceful and compassionate resolution to reconstruction.

The District of Oregon sent a number of judges to the conference: Ninth Circuit Judge Susan Graber; Chief District Judge Ann Aiken; Senior Judge Robert Jones; Judges Anna Brown and Michael Mosman; Bankruptcy Judges Elizabeth Perris, Frank Alley, Trish Brown, Randall Dunn, and Albert Radcliffe; and Magistrate Judges John Jelderks and Janice Stewart. Lawyer representatives included LRCC Chairs Suzanne Chanti and Richard Vangelisti; Advisory Board Liaison Roxanne Farra, Joel DeVore, Bryan Gruetter, and Kelly Zusman; and new lawyer representatives Tom Christ and Lynn Hampton.

For anyone unfamiliar with the Ninth Circuit Lawyer Representatives, this is the group of people selected by the District Judges to assist in organizing the Annual District Conference and to act as liaisons between the bench and bar. Anyone with a comment, suggestion, or concern about the administration of justice or a specific concern about a judge should contact a lawyer representative. One of the primary tasks recently taken on by the lawyer representatives for this most recent conference was to gather comments from lawyers about the federal judiciary. All of these comments were solicited anonymously, then compiled into a single report that was presented to the entire Ninth Circuit Judicial Conference. The survey revealed that there are three primary areas of concern and complaints by lawyers about federal court (both trial and appellate): (1) delay; (2) judicial demeanor; and (3) lack of uniformity in local rules and local practice. The judges were well aware of the delay concerns, and for the Ninth Circuit much of the problem was attributed to the still overwhelming number of immigration appeals. Lawyers were specifically encouraged by judges and court staff to write letters and let them know if and when delays are impacting cases so that they can try to address those cases most affected by the backlog. As for judicial temperament, the number and consistency of the complaints came as some surprise, but the response was one of genuine concern for making improvements. There was universal agreement that a videoclip of a TV judge screaming at and belittling an attorney was simply not appropriate or acceptable judicial behavior. If confronted with inappropriate behavior, lawyers were advised to do two things: (1) order a transcript; and (2) bring it to the attention of a lawyer representative or the Chief Judge.

## **INSIDE THE DEPARTMENT OF JUSTICE**

When Karin J. Immergut resigned as the U.S. Attorney for the District of Oregon to be sworn in as a Multnomah County Circuit Court Judge, she also left her job as the Chair of the Attorney General's Advisory Committee. This Committee is composed of U.S. Attorney representatives from each of the 11 circuits, and its primary role is to serve as the voice from the field when questions regarding national criminal policy arise. Attorney General Eric Holder relies upon this group of U.S. Attorneys for guidance on critical decisions affecting Department of Justice (DOJ) practices throughout the country. Since the last election, and Holder's appointment as the Attorney General, the Committee has taken on an even more important and active role in reviewing current national criminal charging and sentencing practices. Right now, the DOJ is looking at closing Guantanamo, whether the Ashcroft Memo – that directs prosecutors to charge the most serious provable offense in every case – should stand, sentencing policies in general, crack cocaine sentencing, the role of mandatory minimum sentences, and alternatives to incarceration. Immergut's role as the Chair brought Oregon to the forefront of this national debate, and her involvement meant that Oregon's Drug Re-Entry Court has been used as a model by the DOJ for other districts throughout the country.

Oregon continues to play an active role in this review and debate because, largely through Immergut's leadership and influence, several other Assistant U.S. Attorneys from Oregon have also been named to several key committees. The current Acting U.S. Attorney, Kent Robinson, serves on the committee examining incarceration alternatives. Robinson also served on the post-Senator Stevens Criminal Case Management Committee that recently delivered a 70-page report and recommendation to the Deputy Attorney General. Pam Holsinger, the Chief of the Criminal Division, serves on the Criminal Chiefs Work Group, and Kelly Zusman was recently appointed to become the Ninth Circuit Representative to the Appellate Chiefs Work Group.

## ANNOUNCEMENTS

### Federal Practice CLE November 13, 2009

The FBA and the Oregon Law Institute will be presenting two half-day programs on federal court practice on Friday, November 13, 2009: Federal Practice 101 for new federal lawyers, and Federal Practice 201 for more experienced federal practitioners. This event takes place in the Jury Assembly Room at the Mark O. Hatfield Courthouse and features the following speakers: U.S. District Chief Judge Ann Aiken; U.S. District Judges Garr M. King and Michael W. Mosman; U.S. Magistrate Judges Donald C. Ashmanskas, Thomas M. Coffin, Dennis J. Hubel, Paul Papak, and John V. Acosta; and local federal practitioners Chris Kitchel, Frank Langfitt, Peter Richter, Jolie Russo, Richard Vangelisti, and Kelly Zusman. For more information, contact oli@lclark.edu.

### November 2009 FBA Luncheon with David Lat

On November 19, 2009, David Lat of Breaking Media will discuss how media coverage of the courts and of the legal profession has changed in recent years with the advent of blogging and social networking.

Lat began his media career in 2004 when he launched the website *Underneath Their Robes* (UTR), a blog about the federal judiciary. UTR became widely popular with judges and their law clerks, who found its mixture of judicial celebrity sightings and gossip (including a “superhotties of the federal judiciary” contest) irresistible. In January 2006, Lat became editor of *Wonkette* (a Washington, D.C. blog), and in August 2006, he became editor-in-chief of *AboveTheLaw.com*. After two years, *Above The Law*’s owner Breaking Media promoted Lat and he returned to New York, where he runs Breaking Media’s blogs and develops new blogs. Before his media career, Lat had a more traditional legal career: clerking for Ninth Circuit Judge Diarmuid O’Scannlain; working at Wachtell, Lipton, Rosen & Katz; and serving as a prosecutor in the U.S. Attorney’s Office for the District of New Jersey.

Lunch is at noon at the University Club. Cost is \$18.00 for FBA members and \$20.00 for non-FBA members. Please make reservations for either a vegetarian or meat lunch entree by e-mailing afallihee@barran.com. The RSVP deadline is the Tuesday before the lunch.

**Filling U.S. Senate Vacancies: Lessons from the Massachusetts Experience and Beyond—Free Brown**

### Bag Lunch with Professor Vik Amar on December 10, 2009

Join the Federal Bar Association as it welcomes Professor Vikram Amar, who will give a free lunchtime presentation from noon to 1:00 p.m. on December 10, 2009 in Judge Anna Brown’s courtroom. Professor Amar is a nationally recognized scholar on constitutional law issues. He will be discussing recent controversies—in Illinois, Massachusetts, and elsewhere – over how best to fill vacant U.S. Senate seats. The U.S. Constitution’s Seventeenth Amendment permits state legislatures to empower governors to fill Senate vacancies by appointment until an election is held. There are questions about exactly what the Seventeenth Amendment means and permits, and also proposals in Congress to amend the Constitution and/or pass statutes to alter the way the Seventeenth Amendment currently operates.

Professor Amar is the Associate Dean for Academic Affairs and a Professor of Law at UC Davis. He is a 1988 graduate of Yale Law School and a former clerk to Justice Harry Blackmun. Before teaching, Professor Amar practiced at the firm of Gibson, Dunn & Crutcher, devoting half of his time to federal white-collar criminal defense and the other half to complex civil litigation. Professor Amar writes, teaches, and consults in the public law fields, especially constitutional law, civil procedure, and remedies. He is a co-author (along with William Cohen and Jonathan Varat) of *Constitutional Law: Cases and Materials* (Foundation Press, 12th ed. 2005), and is a co-author on a number of volumes of the *Wright & Miller Federal Practice and Procedure* treatise (West Publishing Co.). In addition, he has published in a variety of journals, including the *Yale Law Journal*, the *Stanford Law Review*, the *Cornell Law Review*, the *Virginia Law Review*, the *Vanderbilt Law Review*, the *California Law Review*, the *William and Mary Law Review*, the *Hastings Law Journal*, *Constitutional Commentary*, the *Hastings Constitutional Law Quarterly*, and the *Green Bag Journal*. He authors a biweekly column on constitutional matters for findlaw.com (the most frequently visited website devoted to legal issues). He is a frequent commentator on local and national radio and TV, and has written dozens of op-ed pieces for newspapers and magazines.

Please RSVP to Liani Reeves at liani.j.reeves@doj.state.or.us or 503-947-4700.

### Congratulations to Nancy Moriarty

The Oregon Chapter of the Federal Bar Association

wishes to congratulate Nancy Moriarty on her receipt of this year's U.S. District Court Historical Society Lifetime Service Award. You deserve it, Nancy!

**New FBA Website Is Up and Running**

The new FBA website is up and running at <http://oregonfba.org>. It is a work-in-progress but will include the following features in the near future: a calendar of events and links to sign up and pay for monthly luncheons, CLEs, and the like; a payment system for purchasing FBA publications, handbooks, and other materials; helpful links to websites of interest to federal practitioners; and other information about the organization. We are also open to suggestions for website content. Please contact Johnathan Mansfield ([jmansfield@schwabe.com](mailto:jmansfield@schwabe.com)) with comments or suggestions.

## 2009-2010 FBA OREGON CHAPTER OFFICERS AND DIRECTORS

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## Missing Electronic Notices and Change of Address?

We have been sending the electronic notices via our listserv. Although we have made every effort to obtain our members' email addresses, we need your help to keep our list accurate and current. For those members without email, we are providing the electronic notices by fax. If you have an email address or fax number and have *not* been receiving electronic notices, or if your email address changes, please contact our listmaster: **Chelsea Grimmus**, [chelseagrimmus@yahoo.com](mailto:chelseagrimmus@yahoo.com). For a change in physical address, please notify **Tim Snider**, [twsnider@stoel.com](mailto:twsnider@stoel.com), to ensure you continue to receive mailings from the Oregon Chapter of the Federal Bar Association. All address changes will be forwarded to the national Federal Bar Association.

## Call for Submissions/Publication Schedule

*For the District of Oregon* welcomes submissions from everyone as well as our regular contributors. The deadlines are December 15, 2009, March 15, 2010, June 15, 2010, and September 15, 2010. We ask only that you inform us in advance if you are preparing a submission. Please direct inquiries to Timothy Snider at 503-294-9557 or [twsnider@stoel.com](mailto:twsnider@stoel.com).

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## **New FBA Members Welcome**

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*Membership Eligibility.* FBA membership is open to any person admitted to the practice of law before a federal court or a court of record in any of the states, commonwealths, territories, or possessions of the United States or in the District of Columbia, provided you are or have been an officer or employee of the United States or the District of Columbia, or you have a substantial interest or participate in the area of federal law. Foreign Associate Status is open to any person admitted to practice law before a court or administrative tribunal of a country other than the United States. Law Student Associate Status is open to any law student enrolled at an accredited law school. If you wish to join, please visit [www.fedbar.org](http://www.fedbar.org) and click on the "Join Now" link.

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