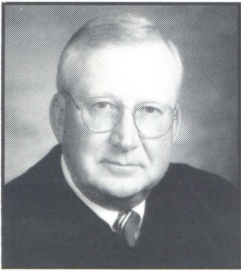




FBA newsletter

Vol. 2 No. 3
Fall 1999

Federal Bar Association - Eastern District of Michigan Chapter - 38 years of service to our Federal Bench and Bar



Honorable
Lawrence P. Zatkoff

State Of The Court Luncheon Also To Feature 25th Anniversary Of New Lawyers Seminar

The Honorable Lawrence P.
Zatkoff, Chief Judge of the United
States District Court for the Eastern

District of Michigan, will deliver his comments and observations on the state of the court at the FBA's annual State of the Court luncheon. In addition, the Eastern District of Michigan Chapter also will celebrate the 25th anniversary of its annual New Lawyers Seminar. Accordingly, the Chapter will take this occasion to honor the efforts of those who have made outstanding contributions to the success of the New Lawyers Seminar.

The Luncheon will be held on Thursday, September 16, 1999, beginning at 11:30 a.m., followed by lunch at 12:00 noon. Tickets to the luncheon are available at \$25 per person for FBA members, and \$27 per person for non-FBA members. For tickets, please contact our Program Chair, Dennis Barnes, at Barris, Sott, Denn & Driker, PLLC, 211 W. Fort Street, 15th Floor, Detroit, Michigan 48226; telephone number (313) 965-9725.

New Magistrate Judge in Flint

On May 21, 1999, Magistrate Judge Wallace Capel, Jr., 43, took the oath of office for a United States Magistrate Judge in a public ceremony held at the district

courtroom in Flint. Magistrate Judge Capel's term of office actually began on May 10, 1999, when he took an oath of office from Chief Judge Lawrence P. Zatkoff in a private ceremony. Magistrate ,

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President's Column

"No organization of lawyers can long survive which has not for its primary object the protection of the public."

Roberts P. Hudson
First President,
State Bar of Michigan

President Hudson's observation is as true today as when originally spoken, perhaps more so given the skepticism and even cynicism with which the public increasingly views all of society's institutions.

As the FBA Eastern District of Michigan Chapter enters a new year of service to the public, the Officers and Executive Board intend to build on the strong foundation of the past and look to provide quality programs and services with the ultimate goal of protecting the public.

It promises to be a busy and productive year.

Our Bench-Bar Conference, conducted jointly with the Western District of Michigan FBA Chapter, is scheduled for October 29-31, 1999. Co-chaired by Michael Leibson and Leonard Niehoff, many have worked long and hard to plan this conference, where through dialogue we seek to improve the Court's and our own service to the public.

Historically, our luncheons have provided diverse speakers on stimulating topics from affirmative action to issues confronting the Eastern District of Michigan to the Oklahoma City bombing while at the same time honoring outstanding members of the legal community who always remembered that service to the public is our duty. This year will continue the tradition.

In September, we will hear about the State of the Court and honor the many individuals who have contributed to the success of our New Lawyers Seminar over the years. We appreciate the work they have done to train new lawyers in the best traditions of public service.

In November, we will award scholarships to

(cont'd on page 2)

President's Column *(cont'd)*

worthy law students at our Rakow Luncheon in partnership with the Court Historical Society.

Next winter, we will honor the memory of Wade McCree and recognize the contributions of pro bono lawyers. Finally, in the spring, we will gather to remember former U.S. Attorney Len Gilman. Nobody better exemplifies public service than Wade McCree and Len Gilman.

We will continue a wonderful recent addition to our programming, the celebration of Dr. Martin Luther King, Jr.'s birthday, at FocusHope in January. Those who have attended have experienced a superb exploration of civil rights issues from such notables as Assistant Attorney General for Civil Rights Bill Lann Lee, among others. This event has especially reminded us of how the cause of civil rights has been advanced by lawyers serving the public.

And throughout the year our Sections and Committees will offer programs of value to practitioners, all designed to enhance our professional service to the public.

Finally, I want to salute someone who has rendered great service to the public, John Mayer, who recently retired after more than 20 years of service to the Court and the public as Court Administrator/Clerk of the Court. John also served ably as a President of our Chapter and was one of the first Presidents I served under when I began working for the Chapter. He always has been a paragon of civility and professionalism, and has been a role model for me. We thank him for his outstanding service and wish him well in his future endeavors.

President,
Mark Brewer

judges are appointed for eight-year terms, and Magistrate Judge Capel's current term ends on May 9, 2007. In this position, he replaces Magistrate Judge Marc L. Goldman as the presiding magistrate judge in Flint. Magistrate Judge Goldman was reassigned as the Executive Magistrate Judge for the Eastern District of Michigan, and moved to Detroit. Magistrate Judge Capel was chosen from among 93 applicants for this position.

Magistrate Judge Capel is a Flint resident who prior to this appointment served as a deputy federal defender in Flint since 1995. His diverse and distinguished career has included work as an assistant attorney general in the U.S. Virgin Islands, private practice, work as both prosecutor and criminal defense attorney, and work with the Legal Aid and Defenders' Association of Detroit and the Wayne County Neighborhood Legal Services. He was one of the first two federal defenders to work in the newly opened Flint Federal Defender Office.

The son of a military flight surgeon, Magistrate Judge Capel was born on the Fort Bragg, North Carolina Army installation. As the Army transferred his father from one installation to the next, he had the opportunity to live in Colorado, Kansas, New Jersey, Texas, and Germany. He earned a Bachelor's degree in Political Science from the University of Utah in 1977, a Master's in Public Administration from Auburn University in 1979, and a J. D. from Wayne State University in 1982.

In his present position, Magistrate Judge Capel assists the judges of the United States District Court for the Eastern District of Michigan with the handling of cases

FBA Practice Manuals

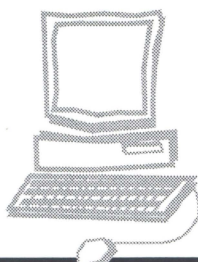
Whether you appear regularly in federal court, or only on a limited basis, this manual provides helpful information for your practice. The manual, in substantially similar format to its predecessor, contains updated profiles of the members of the bench, including the Bankruptcy and Magistrate Judges. In addition it contains valuable information on the Judge's chamber and courtroom practices on issues including the applicability of recent amendments to the Federal Rules of Civil Procedure, removal practices, standing orders, temporary restraining orders and preliminary injunctions, pretrial and status conferences, mediation, class actions, pleas and sentences, and trial.

For more information, contact Barb Radke at 313-234-5210.

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filed in the district. He will hold criminal arraignments in his courtroom in Flint, rule on some motions filed with the court, and issue recommendations to district judges on a wide range of legal issues. He may be reappointed to another term after his present term expires.

Magistrate Judge Capel is married to Fiona Capel. Although they have no children, they do have four cats, a dog, and two horses which keep them both quite busy. He applied for the position because he had done most of the things he could do as an attorney and wanted to make a change on the other side of the bench. Magistrate Judge Capel's favorite quote is from Mark Twain – "Always do right, and it'll gratify some people and astonish the rest." He keeps a copy of the quote on his desk and pledges to always follow this guidance in his judicial rulings.



Judge DeMascio and his wife, Margaret.

Robert E. DeMascio United States District Judge Eastern District Of Michigan 1923 - 1999

The Honorable Robert E. DeMascio, United States District Judge for the Eastern

District of Michigan, and a long time member of the Federal Bar Association, passed away on March 23, 1999, after a lengthy battle with lung cancer. Judge DeMascio was 76 years old. The Judge was an influential jurist and mentor, especially to those attorneys who had the privilege to serve as his law clerks.

Since Judge DeMascio's death on March 23, 1999, much has been written, and spoken, about the Judge's legal and judicial career. As a local newspaper reported in one of the Judge's obituaries, his life "could read as a fever chart for social upheaval and political passions." At an Extraordinary Session of the United States District Court for the Eastern District of Michigan on June 7th, Philip Mason, of the Federal District Court's Historical Society, spoke eloquently about Judge DeMascio's ascent to the federal bench, his impact on the court and,

most notably, his great love for the Article III courts. Frank D. Stella, the Honorable George E. Woods, the Honorable John Feikens, Marshall Anthony Bertoni, Richard Bisio and Judge Geraldine Bledsoe Ford also spoke that day of their long friendships with Judge DeMascio and of aspects of the Judge's life — his charitable activities, his golf game, and his kindness and compassion — that are not included in the "official" court record and rarely spoken about publicly, if at all.

The thirty attorneys who had the opportunity to serve as law clerks for Judge DeMascio not only shared in the preparation of the many opinions and decisions handed down over the Judge's twenty-eight years on the bench, they also benefitted from his thoughtfulness, wit, loyalty and mentorship long after their clerkships officially concluded. Since his death, many of the Judge's clerks have recounted their interesting and memorable experiences with him and how he kept in contact with them over the years. The Judge actively followed the careers of his former clerks, offering advice and counsel, when solicited, on how to be a better lawyer, spouse, parent or adult child. The Judge, and his wife Margaret, who passed away in 1996, never forgot to send his clerks a birthday card or a holiday greeting and they rarely missed a clerk's wedding.

The passing of Judge DeMascio has left a void in the Eastern District of Michigan and in the lives of his law clerks. Our loss is great.

Annual Dinner

The FBA's annual dinner was held on May 6 at the Detroit Institute of Arts. The event, attending by numerous members of the bench and bar, was once again a rousing success, thanks in part to A (Habeas) Chorus Line's production of "Peter Panned." Also, outgoing president Michael Leibson was honored for his leadership
(cont'd on page 6)

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Practice Tips

Fumblerules for Brief Writing

by: M Bryan Schneider & Christina Farinola

A “fumblerule,” created by language maven William Safire, is a grammar rule which violates itself, thus calling attention to the rule. For example, Mr. Safire counsels, “Don’t use no double negatives.” With apologies to Mr. Safire (and with firm reliance on the fair use doctrine of copyright law), here are our top eight (ten is just too boring) fumblerules for brief writing in the federal court:

1. **Never! use an exclamation point in legal writing!!!**

—Unless you are quoting someone else’s exclamation as part of the facts of the case, an exclamation point only serves to make you sound whiny or overzealous.

2. **If counsel for defendant weren’t such a moron, he would know to avoid ad hominem attacks.**

—Particularly evident in discovery disputes, ad hominem attacks by counsel serve only to make the lawyers look childish. Remember, a lawsuit is a proceeding to determine the legal rights of parties, not a personal battle between lawyers.

3. **Use only one form of emphasis, and don’t OVEREMPHASIZE**

—Emphasis should be used only to highlight a particularly important word or phrase in a block quote, and should be used only sparingly. Most lawyers and judges will be able to get the point of the quote even without its being emphasized. Overemphasis causes the main point to be lost, and using different forms of emphasis just looks bad.

4. **Be careful about what you do to avoid page limitations**

—Especially in the era of the modern computer, attorneys can be very creative in their attempts to avoid page limitations. For example, excessive footnoting (in

single space rather than double spaced text), as well as reduced font size and margins do not fool too many judges, and are likely to lead to either your brief being stricken or you being cursed behind your back.

5. **As the Supreme Court has explained, “if you quote or paraphrase something that was said in a case,” you should give a citation**

—It is amazing how often attorneys will cite a legal principle without giving a citation establishing that principle. If a court said it, give that information. Without a citation, it looks like you are making it up.

6. **your thoughts writing. before Organize**

—Organize your thoughts before writing. Many attorneys and even judges would benefit from outlining a brief before actually writing it. The little bit of extra time will help you clarify your presentation to the court.

7. **Clearly, no proposition is so clear that it can’t use some elaboration**

—Many attorneys skip over the “analysis” portion of IRAC by stating the rule of law and then writing something like “clearly, the facts in this case do not rise to meet this test,” without providing further elaboration. If it is clear, take a sentence or two, or provide some authority, to show why it is so clear.

8. **Attorneys who use dictation should proofread their briefs to make sure there are no transcription errors**

—Many spelling, punctuation, and misplaced word errors in briefs result from transcribed homonyms or computer spell-checking programs. Be sure to proof-read.

Following (or rather, not following) these fumblerules will help make your briefs more readable and, therefore, more persuasive. Also, the better written your brief is, the more understandable your argument will be and all the easier will be your oral presentation to the judge. Happy writing!

1999-2000 Sections and Committees

If you are interested in serving on any of the following sections or Committees, please contact President-elect Thomas W.B. Porter at Barton Malow & Co., Suite 800, 27777 Franklin Road, Southfield, MI 48034; 248-351-4610.

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- Criminal Law Section
- Criminal Defense Committee
- Government Practice And Corporate Counsel Section
- Intellectual Property Section
- Labor And Employment Law Section
- Taxation Section
- Younger Lawyers Section
- Annual Dinner Committee
- Courthouse Tour Committee
- Golf Outing Committee
- Membership Committee
- Newsletter Committee
- New Lawyers' Seminar Committee
- Pro Bono Committee
- Chapter Liaison State Bar Of Michigan Task Force On Race/Ethnic/Gender Issues
- Rules And Practice Committee
- Wade McCree Award
- Portrait Committee

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