



# Bar & Bench

Your Western Michigan Chapter Federal Bar Association Newsletter

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## President’s Letter

Bryan Walters, President  
Federal Bar Association, W.D. Michigan

Thank you for the opportunity to serve as Chapter President this year. I am privileged to work with an outstanding Executive Committee. I am particularly grateful for the efforts of Sarah Howard, our immediate past president, and Katherine Smith Kennedy, Chair of the Steering Committee for our upcoming Bench/Bar Conference to be held this September on Mackinac Island.

It was a very busy year for our FBA chapter, featuring several opportunities to celebrate special occasions and milestones, including: (i) celebrating the Honorable Robert Holmes Bell, who transitioned to Senior Status-Inactive after nearly 30 years as a United States District Judge; (ii) honoring the reappointment of the Honorable Ellen S. Carmody to a third term as Magistrate Judge; (iii) celebrating the retirement of Magistrate Judge Hugh W. Brenneman, Jr. after 35 years of service; (iv) celebrating the retirement of the Honorable R. Allen Edgar who retired from service on the Northern Division court; (v) honoring the investiture of the Honorable Ray Kent as our newest Magistrate Judge; and (vi) welcoming Tom Dorwin as the new Clerk of Court. It is a privilege to be part of an organization that helps foster and preserve the strong relationship between our bench and bar in this district.

We also offered a number of excellent educational programs throughout the year. In January, the Hillman Advocacy Program had yet another successful year under the leadership of David Centner as Steering Committee Chair. The Hillman Advocacy Program has seen a noticeable increase in the number of attorneys interested in participating in the advanced section, reflecting a growing demand for continuing education on trial advocacy skills and techniques. In reflection of this interest, our chapter has focused its “Brown Bag Lunch” series for 2016-17 on trial advocacy skills. Our first program, on voir dire,

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**Your  
Western Michigan  
Chapter Federal Bar  
Association**

[www.wdfba.org](http://www.wdfba.org)

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President's Letter  
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took place in November and featured Matthew Turner from the Sommers Schwartz firm and Chief Judge Robert Jonker. Our next program, on March 15, 2017, was a presentation and discussion on opening and closing statements by Bob Byman, former president of the American College of Trial Lawyers and a senior partner with Jenner & Block in Chicago. A third lunch program, on direct and cross examination, is scheduled for May 17.

Finally, we will wrap up this program year on September 14-16, 2017 with our Bench/Bar Conference. By popular demand, the conference will again be held at the Mission Point Resort on Mackinac Island. As we did three years ago, we are encouraging attendees to consider bringing their spouses and children, and are scheduling the conference to allow the opportunity for attendees to stay an extra day at the resort should they wish to do so.

Once again, thank you for the opportunity to serve as your Chapter President this year. If you have any ideas about future programming or are interested in getting involved in chapter leadership, please do not hesitate to contact me.

*—Bryan Walters, President*



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## Meet Your President—Bryan Walters

Bryan Walters was elected President of the Western District of Michigan Chapter of the Federal Bar Association at the Chapter's Annual Meeting on September 22, 2016. Prior to becoming President, Bryan served on the Chapter's Executive Committee for five years in a variety of roles, including as Secretary, Treasurer, and Vice President of Programs.

Bryan is a litigation partner at the Grand Rapids office of Varnum LLP. He represents clients from a wide range of industries in business disputes in federal and state courts in Michigan and across the country. A sig-

nificant portion of Bryan's practice involves intellectual property litigation, focusing on trademark, copyright, and trade secret disputes.

Bryan lives in East Grand Rapids with his wife Angie and their two sons, Ethan and Jackson. Bryan is a volunteer coach for the East Grand Rapids Middle School Science Olympiad team and is currently running for a seat on the East Grand Rapids City Commission this fall. Outside of the office, Bryan is an avid baseball fan and enjoys spending time with his family at their cottage on Eight Point Lake. ■

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## FBA Annual Meeting a Success

Approximately 100 members of the Western District Federal Bar Association met for the chapter's Annual Meeting at the Amway Grand Plaza Hotel's Imperial Ballroom on September 22, 2016. The meeting featured a fun lunch with other lawyers, judges, and court staff, and a speech by incoming FBA president, Bryan Walters.

The meeting was capped off with an interesting and powerful presentation by Sam Finklestein, the founder

and CEO of Legal Prep Charter Academies, a charter high school in Chicago dedicated to improving diversity in the legal profession by improving access to educational opportunities for at-risk students. Mr. Finklestein spoke of the importance of attorney volunteer involvement, which has been an essential component of the success that charter school to date. More information on Legal Prep Charter Academies can be found at [legalprep.org](http://legalprep.org). ■



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# When Worlds Collide: New Developments for Mediators in Navigating the Intersection of Lawyer and Mediator Ethics

By Dale Iverson<sup>1</sup>

## Introduction

We've thought they could, and now they have: the Grievance Administrator for Michigan's Attorney Grievance Commission ("GA") has filed a formal complaint against an attorney serving as a mediator/arbitrator who failed to disclose to one side's attorney her close relationship with opposing counsel.<sup>2</sup> Chances are the allegations raise nothing new about mediator behavior. And most certainly this complaint doesn't signal a new grievance process for mediators. Even though the alleged conduct, if proven, would violate both the Michigan's Standards of Conduct for Mediators ("MSCM") and the ABA Model Standards of Conduct for Mediators, there isn't a process in Michigan for disciplining mediators under either set of standards. What's new in this case, however, is that Michigan's GA has alleged that mediator behavior in violation of mediator ethics standards could violate Michigan's Rules of Professional Conduct for lawyers ("MRPC"). What are the implications for us as lawyer/mediators?

## Brief Procedural History

In December 2016, the GA filed a formal complaint against a Michigan lawyer who served as mediator and arbitrator (the "neutral"), arising out of a divorce case which was the subject of an unpublished Michigan Court of Appeals decision, *Hartman v Hartman* ("*Hartman*").<sup>3</sup> As this article was being written, a response to the grievance complaint wasn't available.

In *Hartman*, the parties were referred to mediation in 2010. Over the course of a year, the neutral mediated two separate sessions, and at the parties' request arbitrated a number of issues on several occasions between and after the mediation sessions. Ultimately, the judge decided a few remaining issues that were never arbitrated or mediated. A judgment was entered based

on the mediated settlement agreement, the arbitration awards, and the judge's decision.

The husband's second lawyer, who was retained before the entry of judgment, motioned to set aside the judgment and settlement agreement, and the trial court's denial of that motion was appealed. The Court of Appeals affirmed, and upheld the agreement and the judgment. The husband's efforts to set aside the settlement agreement and judgment were based on many of the same allegations that are the basis for the on-going grievance. Some of the allegations pertain to the neutral's role as mediator, and some to her role as arbitrator. The focus of this article is on the neutral's alleged conduct as mediator.

## Factual Background

The shortest way to summarize the underlying facts is to begin at the end: by February 2011, the neutral had mediated and arbitrated, and was in the process of scheduling another arbitration session. By then, husband had a new attorney. Alerted to the possibility that there was some kind of relationship between wife's attorney and the neutral, husband's new counsel probed further during a phone call with the neutral to schedule the next arbitration hearing. The neutral disclosed that she and her husband were travelling to Florida to vacation with wife's attorney and spouse. Gleaned from the COA opinion and the grievance complaint, it appears that: (1) up until the inquiry by husband's second attorney, the neutral had not disclosed to that attorney anything with regard to her relationship with wife's attorney, and had disclosed to husband's first attorney at the first mediation session only that she was a business colleague of wife's attorney; (2) the neutral accepted the invitation to vacation in between the two mediation sessions and after arbitrating several issues; (3) the neutral scheduled an arbitration for the remaining issues for a date after she returned from Florida

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## When Worlds Collide ...

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over objections by husband's attorney, including a motion to remove her as arbitrator. Without ruling on the motion, the judge ruled on the remaining issues herself.

### What's worth noticing about this Grievance Complaint?

There are several important things to note about the Grievance Complaint:

1. Historically, parties in Michigan have challenged mediators' behavior through actions to set aside mediated settlement agreements. These challenges have not been successful. The effort by the husband to set aside the mediated settlement agreement in *Hartman* was no exception.
2. The grievance complaint filed this past December is the first of which I'm aware arising out of a lawyer's conduct as a mediator.
3. The grounds for discipline in the formal complaint, which focus on sections of MRPC 8.4 and MCR 9.104, including
  - conduct prejudicial to the administration of justice,

- conduct exposing the legal profession to obloquy, contempt, censure, or reproach, and
- conduct involving deceit or misrepresentation, don't distinguish between the neutral's conduct as a mediator and as an arbitrator. Mediators might wonder whether the GA would have been as concerned if the neutral had served only as mediator.

4. While there are complicated ethical landmines in serving as mediator and arbitrator in the same case, those aren't implicated in this grievance complaint.

### Knowing as little as we do at this stage of this grievance process, what should we be thinking about?

Some questions and observations come to mind about the grievance process:

1. Are there norms in our various jurisdictions and practice areas that are apt to lead us to believe that mediator conduct in clear violation of mediator standards is acceptable in practice? If so, how big is the risk to lawyer/mediators in following those norms?

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Norms can vary widely. For example, if domestic and general civil mediators were surveyed, how many would, as a matter of practice:

- Never disclose the relationship alleged in *Hartman* as long as the Florida trip took place upon the conclusion of the arbitration?
- Never disclose the relationship as long as an arbitration never took place?
- Never disclose the extent of mediator's business relationship with counsel including, hypothetically, frequent mutual referral of mediations?
- Do exactly what was alleged in the grievance complaint?

In my experience as a mediator trainer, when norms and practices on disclosure are shared among peers and compared to mediator standards, lawyer/mediators frequently report they intend to change their practices to conform to the standards.

2. What should a lawyer/mediator do when they mediate under circumstances where the Michigan Standards of Conduct don't apply by their own terms, e.g. federal courts, government agency-connected mediation programs, pre-suit, or where litigation isn't contemplated? Would the GA reference the Michigan Standards or, perhaps, the ABA Model Standards of Conduct, which are referenced in at least one Michigan federal court mediation program, and in some instances are more stringent? Anticipating this issue, and for other reasons, some of us as mediators specifically reference a specific set of standards in our retention agreements.
3. Can we begin to identify areas of lawyer/mediator conduct most likely to concern the GA? Doing so would probably be a stretch based on one grievance complaint, but notably the focus of the new complaint is on mediator behavior which, if proven, goes to the heart of MRPC 8.4, the "catch-all" attorney ethics rule. MRPC 8.4 addresses behavior most apt to impact public perception about the integrity of lawyers, and which forcefully raises questions about a lawyer's ability to comply with lawyer ethical standards. Wherever there are strong

intersections between lawyer and mediator ethics rules, we might expect more scrutiny. These would probably include allegations of mediator misconduct involving conflicts of interest, confidentiality, impartiality, and misrepresentation.

## Conclusion

Ethical mediator practice, like ethical advocacy, may not be the shortest route to professional success but it's likely the only route to enduring success and professional satisfaction. But without a formal mediator grievance process in Michigan, like those in Florida and Georgia, for example, we don't have guidance from a dedicated panel of experts or a body of written opinions interpreting mediator ethics standards. Scrutiny from Michigan's Grievance Administrator isn't a substitute for that kind of guidance on mediator ethics. Fellow mediators and mediator trainers may be a better source for practical and informed advice and feedback. But the perspective brought to our work by the GA could be valuable as we navigate ethical challenges at the intersection of our lawyer and mediator roles. ■

## Endnotes

- 1 Dale Ann Iverson is founder and principal of JustMediation PLC, a professional corporation offering dispute resolution and collaboration services. Dale mediates through private referral and court and agency-connected ADR programs nationally and state-wide. She is an approved mediator in numerous Michigan circuit courts, the Michigan Department of Civil Rights, the EEOC, the U.S. Postal Service, the Special Education Mediation Program of the Michigan Department of Education, and the U. S. District Court for the Western District of Michigan. Building on her 19-year practice as a trial lawyer before devoting her work exclusively to dispute resolution, she mediates extensively in a wide range of matters. For more information, see <http://www.justmediation.com/>
- 2 *Grievance Administrator v Paletz*, Case No. 16-143-GA, [www.agcmi.org](http://www.agcmi.org).
- 3 Case No. 304026, decided 2012

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# Standing-Room-Only Crowd Gathers for Retirement Celebration for Magistrate Judge Hugh Brenneman, Who Retired After an Extraordinary 35 Years of Service to the Court and our Community

By Joseph A. Kuiper

On July 31, 2015, Magistrate Judge Hugh Brenneman, Jr. retired after a long and dedicated 35 years of service to the court, the bar, and the community at large. A fun and moving celebration was held at the Gerald R. Ford Federal Courthouse in Grand Rapids, where a crowd of around 200, many standing, squeezed into the Jury Assembly Room. Those present included many members of the bench, bar, court staff past and present, and family and friends, “all gathered,” as Chief Judge Robert Jonker observed, “to honor Judge Brenneman, someone who embodies the highest ideals of what we hope to achieve as judges and as a court.”

Among those who spoke to celebrate Judge Brenneman’s extraordinary service were Chief Judge Jonker, Judge Paul Maloney, Andy Portinga on behalf of the Federal Bar Association, Chip Chamberlain, and Don Davis.

Chief Judge Jonker spoke first. Given Judge Brenneman’s strong interest in history, Jonker began with a painting of an historic British ship that was featured in the movie *Skyfall*. That movie, Jonker said, “was all about coming to terms with time and the melancholy, inevitable passage of time, with things like grand retirements, grand ships, and grand people like Judge Brenneman. So it was a fitting piece for today’s occasion.”

Judge Jonker pointed out that, over his 35-year career as a judge, Judge Brenneman had become “part of the DNA of the court.” For perspective, Jonker joked that “when Judge Brenneman started as a judge, I was a sophomore in college. There were no fax machines available in the United States. There was no such thing as a computer.” As a testament to the sheer length of his career, Jonker noted that, over the 150 year history of this District, Judge Brenneman was the only judge whose tenure had overlapped with a majority of all the judges who ever served there. “So this man truly embodies the living history of the court,” Jonker said.

Jonker stated that “we could sit there all day listing all of Judge Brenneman’s past glories as a judge.” Among other things, the Court’s ECF Department estimates that Judge Brenneman entered *36,000 orders* during his time as a judge.

Beyond the utter volume of his work, however, Judge Brenneman also excelled at the job of judging itself, especially working toward settlements, which many lawyers and colleagues on the bench believe to be his greatest strength. Jonker joked that he personally lacks the patience to settle cases because he just expects the parties to accept his reading of the case and settle within a half an hour or so. But Judge Brenneman is very different -- as Jonker sees it, his great success in settling cases is attributable not only to his incredible patience but his remarkable listening skills and his ability to make people feel comfortable.

Judge Jonker recalled many times when all the other judges and court staff had long left for the day but Judge Brenneman was still hard at work, sometimes late into the night, trying to settle a case. He settled “countless cases I certainly didn’t want to see go any further,” Jonker joked. As a memento to all the trials Judge Brenneman saved the court from with his settlement skills, Jonker presented him with a wooden chest full of little pieces of paper, one for each of the hundreds of settlements Judge Brenneman had achieved in the eight years since Jonker was a judge.



Hon. Hugh Brenneman, Jr.

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The speakers were unanimous in celebrating Judge Brenneman’s friendly, funny, down-to-earth qualities. As Judge Maloney stated, “One of the hallmarks of a masterful judge is after 35 years of service his first name didn’t become ‘judge,’ and that is true of my colleague Hugh Brenneman.”

Jonker had similar sentiments, noting that although Judge Brenneman had far more experience as a judge, “he always treated me as an equal partner on the court,” and did much to make Jonker a better judge. “That is one of the characteristics that he embodies so well -- that patient teacher, that ability to convey what he knows in words and even more importantly in the way he behaves -- the way he behaves towards adversaries, towards colleagues on the bench, the way he behaves towards all of us as lawyers, whether we deserve the courtesy or not.”

Those characteristics served him well as a judge, Jonker noted: “So when you walk into his courtroom he is every bit the kind of judge you would expect him to be under the robe, but he’s also the real person you would want to have over for coffee if you were a neighbor, because he has never lost that sense of down-to-earth, common man, courteous, the kind of thing we all aspire to.” Jonker added, “This celebration shows that no matter how long you wear the robe, you don’t have to, and in fact you shouldn’t, lose that down-to-earth sense that transcends your job as a judge, even after 35 years.”

Andy Portinga agreed, stating: “Judge Brenneman once joked that his robe made his jokes funnier. Although that might be true, his robe never made him turn arrogant or conceited. Judge Brenneman took his job very seriously, but never took himself too seriously -- he approached the job with great humility.”

In this vein, many speakers shared examples of funny stories or jokes the judge had told. Among other things, an old lawyer friend of the judge’s recalled how, when a personal conflict came up during a settlement conference one time, Judge Brenneman had told him it was okay for him to leave early and that the shortest way out was to use the “side entrance,” which ended up being the judge’s bathroom.

Fond memories were also shared by Chip Chamberlain, who grew up with Judge Brenneman and recalls

the skinny, redheaded Hugh Brenneman, who had dated Chip’s older sister. “In grade school,” Chamberlain revealed, “Hugh skipped the book bag most kids carried and went straight to the briefcase! He also wore wing-tips.” But Chip’s mom loved everything about Hugh Brenneman, and to this day, at 95 years old, still asks Chip why he can’t be “a little more like Judge Brenneman.”

Judge Brenneman was also praised for his involvement in the founding of local bar associations, including the Federal Bar Association, the American Inns of Court, and the Western District Historical Society. He was the co-founder of the Western District FBA and served as its first President. “So he’s sort of the George Washington of our FBA,” Portinga joked. Not only that, but he possessed an unrivaled devotion to the FBA and its membership, attending the vast majority of Board meetings and other events over the years, which took countless hours of time and attention, but he was always there with characteristic humor and helpful input. He played the same role with the Western District Historical Society, serving as founder and first President.

As Portinga noted, “When we think about these three organizations -- the FBA, the Inns of Court, and the Historical Society -- it really tells us a lot about Judge Brenneman, who he is and what he values.” First, he has deep respect for the court as an institution. Being a magistrate judge for 35 years, and before that as an assistant U.S. attorney, “Judge Brenneman has seen the profound impact the court has on our society, our communities and the people who live in them, and through his work at the Historical Society, Judge Brenneman works to preserve that legacy, to preserve that history.” The second thing his activities tell us is “that he has deep respect for the bar -- he likes lawyers.”

Portinga said the third thing the bar activities tell us about Judge Brenneman is that he recognizes the importance of having a strong and positive relationship between the bench and bar. Portinga observed that, “We are very fortunate to practice in the Western District of Michigan -- our bar isn’t that big, it is very intimate, those of us who practice in the federal courts here on a regular basis are a pretty limited number. The bench treats us with respect and we give respect in



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## “Standing Room Only” ...

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return.” Portinga believes “that positive relationship exists largely because of organizations like the FBA, the Historical Society, and the Inns of Court -- organizations that Judge Brenneman was instrumental in forming and promoting.”

Judge Maloney noted that Judge Brenneman was especially vital to the operation of the court because he took on so many duties aside from just being a judge. Among other things, he serves as the court’s official

historian, a role he plans to continue. In fact, Judge Brenneman and Judge Bell will be helping an historian write a book about the court. As Andy Portinga stated, “The history book being written about the court would not have happened without Judge Brenneman’s efforts.”

For all of these remarkable efforts and traits, we, as members of the bar and bench, extend our thanks and eternal gratitude to Judge Brenneman. We wish him health and happiness for his well-deserved retirement. ■

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# Exciting Plans Underway for 2017 Bench/Bar Conference at Mission Point Resort

By Kathy Smith Kennedy, Chair of 2017 Bench/Bar Committee

Mark your calendars for the Western District of Michigan Federal Bar Association’s Bench/Bar Conference that will take place at the Mission Point Resort on Mackinaw Island on September 14-16, 2017. In 2014, we had our last Bench/Bar Conference at Mission Point, and it proved to be a wonderful venue. Now with new owners and millions of dollars in renovations, this time it should truly be tip-top!

The conference features fun social events and continuing education breakout sessions for federal criminal and civil practitioners and our esteemed judges. As we have in past Bench/Bar conferences, we will have a day

of simultaneous break-out sessions for both criminal and civil practitioners, where our participants can select from a variety of subject matters. This year’s break-out sessions include: (i) Effects of Cooperation and Proffers in Plea Agreements; (ii) Cyber Security/Data Breaches; (iii) Cell Phone Discovery; and (iv) the Intersection of Immigration and Criminal Law.

Also on the agenda for the weekend are the following presentations:

- The disaster of the Eastland Steamship in the Chicago River in the early 20th Century was easily the

Mission Point Courtesy Photo





greatest loss of life in the Great Lakes, and one of the worst in American shipping history. Presenting on the trial associated with the disaster will be Caitlyn Dial, PhD, director of the Michigan Women's Center and Hall of Fame in Lansing, and attorney Bill Jack, who authored an article for the Stereoscope about the tragedy and its relationship

to a Western District of Michigan lawsuit involving such notable counsel as Clarence Darrow.

- John Mooy will present the Art of Storytelling. Mr. Mooy is a speaker, educator, author, storyteller, sculptor, and songwriter. He has worked with a variety of professionals in business, education and the arts. His thought-provoking and original ideas for generating and holding audience interest have led him to be in demand as a keynote speaker at events and seminars throughout the country, and as a guest lecturer at the university level. Mr. Mooy promotes trial-and-error, out-of-your-comfort-zone strategies, and believes each of us can dramatically and significantly impact our world. He will not only be presenting at our conference but will be present throughout the weekend to offer advice and connect with attendees.

Your Bench/Bar 2017 Committee continues to work hard to make this event as successful as it has been in the past, so please consider attending and reaching out to other attorneys in your firms, places of work and others in the legal community that would enjoy this event.

See you there! ■

## Hillman Advocacy Program Enjoys Another Outstanding Year

By David W. Centner, Program Chair 2016 and 2017

On January 18 through 20, 2017, our FBA Chapter in collaboration with the United States District Court for the Western District of Michigan, once again co-sponsored the Hillman Advocacy Program. This was the 36<sup>th</sup> consecutive year of the Program.

The 2 ½ day program began on Wednesday, January 18, at the Courtyard by Marriott hotel in downtown Grand Rapids with opening remarks from Chief Judge Robert J. Jonker and this year's Program Chair, David W. Centner. The Wednesday program also featured a presentation entitled "Techniques for Effective Communication" by international communications expert Brian K. Johnson, who is the co-author of numerous books,

a regular presenter at NITA's trial skills program, and a long-time contributor and presenter at the Hillman Program. As in the past, Mr. Johnson not only presented on Wednesday, but offered critiques and commentary to the students throughout the Program. His practical tips and strategies on how to effectively communicate with a jury were universally well-received by everyone and immediately enhanced the student experience.

The Program continued on Thursday and Friday and occupied each of the courtrooms in the Gerald R. Ford Federal Building, along with the jury rooms and many other areas. In addition to the workshop, students took part in a "Lunch with the Judges," where

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## Hillman Advocacy Program ...

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an Article III District Judge or U.S. Magistrate was assigned to each class of students. Over lunch in the judges' chambers or jury room, the students had an opportunity to converse with the judges on an informal basis. Year after year, students and judges alike rank this lunch as one of the highlights of the program.

A total of 62 students participated in this year's Program, with 50 students in the Basic Sections (four civil teams and one criminal team) and 12 students in the Advanced Sections (one civil team and one criminal team). Total applications were up this year, with an increased number of applicants applying for a spot in the Advanced Sections, as evidenced by a wait-list. The level of interest in the Advanced Civil Section has increased steadily over the past few years. It was also noticeable that more and more interest for the Hillman Advocacy Program is coming from areas outside of West Michigan, alluding to the Program's growing state-wide and national reputation.

The 2017 Program was staffed with 21 full-time instructors/faculty members who were selected from solo practitioners, small and large firms throughout Michigan, and the U.S. Attorney's Office for the Western District of Michigan. As in the past, volunteers from various law firms and court staff acted as lay and expert witnesses, students from WMU-Cooley Law School acted as videographers and jurors, current and retired federal and state judges offered comments, and many court staff and others volunteered their time and talent to make this year's Program another resounding success.

Many believe the Hillman Program is one of the best trial advocacy programs in the country due in large part to the fact that instruction occurs in the courtroom

with the assistance and support of the federal judges and magistrates. This year, the FBA gave nine scholarships to young lawyers who are in public service or otherwise unable to pay the program fee. Many law firms and corporate contributors also generously underwrote this worthwhile program.

One of the notable highlights of the Program was a presentation on electronic evidence by the Hon. David W. McKeague of the U.S. Court of Appeals for the Sixth Circuit. Judge McKeague, along with his judicial assistant, Bonnie Kipp, provided over an hour of instruction on the use of technology in the courtroom and demonstrated how evidence can be presented in a compelling way through the use of technology.

Another highlight of the Program, which was particularly poignant in hindsight, was the awarding of the Hillman Award. The past recipients of the Hillman Award are Bill Jack, the Hon. Robert Holmes Bell, Jon March, Don Davis, Fred Dilley, and the Hon. Joseph G. Scoville. This year's recipient was Robert D. VanderLaan, who was awarded the Hillman Award for his 30-plus years of leadership, teaching, and selfless commitment to the Program. Due to a hospitalization, Bob could not attend the Hillman Advocacy Program this year, which was the first program in decades that he missed. Bob was presented with the award on February 7 shortly after he was released from the hospital, and he was thrilled and honored to receive it. Unfortunately, Bob lost his battle with cancer a few weeks later, on February 28, 2017. Bob's presence, talent, and contributions to the Program, as a faculty member, Steering Committee member, moderator, and friend, will be greatly missed by all. ■

**Past issues of *Bar & Bench* can be found  
at**

**<http://www.westmichiganfederalbar.org/11-documents-newsletters>**

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## A Time of Transition at U.S. Attorney's Office

*The following press releases appeared on the U.S. Attorney's Office website and have been edited for length and clarity.*

Patrick A. Miles, Jr., U.S. Attorney for the Western District of Michigan, announced his resignation effective with the end of the Obama administration. "I am extremely blessed and grateful for the opportunity to serve the public in this capacity over the past four and a half years," Miles, 49, stated. "It's been an honor and a privilege to lead such an outstanding team of crime-fighters and people who work hard every day to protect the interests of America and its citizens." Miles became U.S. Attorney on July 9, 2012, after 21 years in private law practice in Grand Rapids as a business attorney.

Andrew Birge assumed the duties of Acting U.S. Attorney by operation of law following Miles's resignation. Birge has been with the U.S. Attorney's Office for over

sixteen years. Until now, Birge has served as the First Assistant, the senior-most management position in the office. Miles said of Birge: "I know I am leaving the office in good hands." Miles described Birge as "extremely knowledgeable" and a person of "impeccable integrity." Birge expects to serve as the Acting U.S. Attorney until President Donald Trump nominates and the U.S. Senate confirms a successor U.S. Attorney.

The U.S. Attorney's Office for the Western District of Michigan has 38 attorneys and 83 total staff with offices in Grand Rapids, Lansing, and Marquette. The district covers 49 counties, including Michigan's entire Upper Peninsula. ■

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## Grand Rapids Native Thomas Dorwin Returns Home to Take the Helm as Our New Western District Clerk of Court

By Joseph A. Kuiper

A new Western District of Michigan Clerk of Court took office on January 11, 2016. Thomas L. Dorwin ("Tom") was selected following an extensive search that ensued when former Clerk Tracey Cordes left the court in 2015.

Mr. Dorwin had a very unusual and interesting path to his new position. He was born on the Northwest side of Grand Rapids, where he spent his early years, but later moved to Cedar Springs during high school. Tom graduated from Grand Valley with a business degree in 1990, University of Detroit Law School in 1993, and obtained an LL.M in transnational law from Temple University in 2009.

Tom joined the U.S. Navy JAG Corps while a law student, a role he held for the next twenty years. The first ten of that he spent as a practicing attorney, beginning in prosecution and later defense. Over the next ten years he served in numerous staff attorney positions, including stints as the attorney for the nuclear aircraft carrier USS Nimitz and a year as a member of the prosecution team for Saddam Hussein in Iraq. Tom retired from the Navy in 2009 at age 46. He then took a brief 18-month stint in private practice as a general counsel before returning to government in 2011 as a trial attorney at the Department of Justice in Washington, DC.

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Over time, Tom's duties slowly evolved into an ever-greater role for attorney supervision and management. Among other things, he managed two military courts in the Western Pacific (Japan and Guam) from 2006 to 2009 as part of his duties as a Navy JAG Corps Commander. He also supervised and mentored about a dozen Navy JAG Corps prosecutors and staff attorneys spread across Japan, Okinawa, and Guam. During that time he also obtained his LLM from Temple, so it was obviously a very busy three years for him.

After all those years away, Tom was understandably eager to get back to Michigan, and was excited when the Western District Clerk of Court position opened up last year. As Tom puts it: "DoJ was a great experience, but after five years there (and more than 23 since leaving Michigan), I really wanted to just return home to be nearer extended family. The opportunity for Western District Clerk of Court came up last year. I jumped at the chance and was fortunate enough to be selected." Tom believes the Clerk of Court role "is the perfect blend of law and management for me personally, and I feel a strong sense of purpose in the work our office does serving the public and supporting the work of our District and Federal Magistrate Judges."

Tom is a married father of three teens, ages 19, 17 and 15, so keeping up with them and their activities is a big chunk of his time. But he notes that they do manage to fit in some travel and volunteer work as well. "This summer," he says, "we are looking forward to launching a new (to us!) speed boat at the lake, and if I play my cards just right I may even get back to golf." Aside from that, he says they also do a lot of "home body" things: "My wife's family owns a farm out in Montcalm County, so last year we tried our hand at making maple syrup (it's a lot of work!), and we also made peach and blueberry jams that we gave out as Christmas gifts. We also conjured up a pretty good batch of bloody mary mix made with fresh Michigan tomatoes, so who knows what we will come up with this year!"

On behalf of the Western District FBA and all our attorneys and judges, we offer a hearty welcome to our new Clerk of Court! In the next issue of *Bar & Bench*, we will feature Mr. Dorwin's first "News from the Clerk" column, a regular feature which Mr. Dorwin has graciously agreed to write. ■

## 2016 Western District Case Filings Increase Significantly

The Western District Court recently released its 2016 Year in Review, which contains the following figures about the court's caseload and the use of various forms of alternative dispute resolution.

### Case Filing Stats

Case filings in the Western District increased last year for the first time since 2011. There were 2,017 total civil and criminal cases commenced in the District, an eleven percent overall increase from 2015. The increase can be attributed, in part, to the influx of civil cases filed by prisoners seeking a two-level reduction in their drug-related sentences under Amendment 782 of the United States Sentencing Guidelines, 18 U.S.C. § 3582(c).

Year	Civil	Criminal	Total Filings
2007	1,532	336	1,868
2008	1,526	385	1,911
2009	1,446	420	1,866
2010	1,672	435	2,107
2011	1,885	413	2,298
2012	1,894	349	2,243
2013	1,731	273	2,004
2014	1,594	278	1,872
2015	1,537	264	1,801
2016	1,741	276	2,017

### Alternative Dispute Resolution Stats

The judges of the Western District offer five alternative methods for resolving disputes: Voluntary Facilitative Mediation (VFM), Case Evaluation, Early Neutral Evaluation (ENE), Summary Jury and Bench Trials, and Settlement Conferences. Of the 1,741 civil case filings in 2016, 746 cases were eligible for referral to some form of ADR. Of the eligible cases, 71% were referred to the following: 163 cases to VFM, 45 cases to Case Evaluation, and 326 cases to Settlement Conference. ■

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# Announcements

## Bar and Bench Conference – Save the Date!

Mark your calendars for the Western District Federal Bar Association's Bench/Bar Conference that will take place at the amazing Mission Point resort on Mackinac Island on September 14-16, 2017. For more information, see the article featured earlier this Newsletter.

## New Western District Administrative Order Regarding Citations to Record

On February 9, 2016, the Western District of Michigan issued Administrative Order 16-MS-017 regarding manner in which citations to the record are to be referenced in all court filings. As specified in the Administrative Order:

Any reference by a registered attorney to a portion of the record in which it is to be electronically filed shall be made by reference to the PageID identified thereon, following the cite form identified below, for any documents filed on or after March 7, 2016. Pro se litigants are exempt from this requirement.

To reference:	Cite form example:
A single page .....	PageID.234
Multiple sequential pages .....	PageID.234-235
Multiple pages that are not in succession .....	PageID.234, 238, 245

The Order further states that the citation form for any filing that references a portion of a different case record within the Western District of Michigan shall be preceded with the 3-digit case number for that other case (e.g., 1:15-cv-99999 PageID.234). The Court advises that failure to follow Administrative Order No. 16-MS-017 may lead to the rejection of any filing. To read the Order in its entirety, go to the court's homepage at [www.miwd.uscourts.gov](http://www.miwd.uscourts.gov)

## Changes to Fee Schedule

Please take notice that the Judicial Conference of the United States has approved inflationary adjustments to District Court fees, effective December 1, 2016. The changes can be found here: <http://www.miwd.uscourts.gov/news/changes-fee-schedule>

## W.D. of Michigan Court - Year in Review

The 2016 Year in Review for U.S. District Court for the Western District of Michigan is available at this link: <http://www.miwd.uscourts.gov/sites/miwd/files/2016%20Year%20in%20Review.pdf>

## U.S. Attorney's Office - Year in Review

The 2016 Year in Review for the U.S. Attorney's Office for the Western District of Michigan is available at this link: <https://www.justice.gov/usao-wdmi/page/file/949721/download>

