

Lawyer Representatives in the Ninth Circuit Activities and Accomplishments 2008-2009

I. The Ninth Circuit's Lawyer Representatives

Lawyer Representatives, chosen to represent attorneys practicing in each of the Ninth Circuit's fifteen districts in nine western states and two Pacific Island jurisdictions, play an important role in the administration of justice in the Ninth Circuit. Currently 164 Lawyer Representatives work to foster open communications between judges and attorneys, and provide support and advice in the functioning of the courts. This year saw the appointment of the first group of Appellate Attorneys. These attorneys were appointed by the Ninth Circuit Judges and report to the Ninth Circuit Court of Appeals. The 18 Appellate Attorney Representatives and 4 alternates will serve 3-year terms, with these first appointees being staggered to serve 1-3 years. At this time, they are assessing the role they will play in working with the Court of Appeals. District Lawyer Representatives will communicate with the Appellate Lawyer Representatives and Alternates about district-related programs and activities. Through the years, attorney support and contributions to the administration of justice in the Ninth Circuit have been invaluable and have resulted in positive changes that have improved functioning of the courts.

II. The Lawyer Representatives Coordinating Committee ("LRCC")

The LRCC functions as a separate committee and is composed of the chairperson or co-chairs of each delegation of Lawyer Representatives from each of the fifteen districts. The LRCC acts as a liaison for the Lawyer Representatives to the Ninth Circuit Judicial Council's Conference Executive Committee.

Pursuant to Judicial Council Order, LRCC members are required to communicate periodically with the Conference of Chief District Judges to "plan and accomplish such activities within the districts as shall be requested by the Executive Committee or as shall be necessary and proper to accomplish the purpose of the conference." *See* Council Order adopted December 12, 1978, as amended through 1994, paragraph 4.

The LRCC has three officers: Vice Chair, Chair-Elect and Chair. During the past year, Debora Kristensen (District of Idaho) has served as Vice Chair, Robbin Itkin (Central District of California) has served as Chair-Elect and Christopher Latham (Southern District of California) has served as Chair. The three officers are also members of the Conference Executive Committee, where they take an active role in planning the Ninth Circuit conference on behalf of the Lawyer Representatives with the other Executive Committee members.

Members of the LRCC plan two education programs for annual meetings with the Conference of Chief Bankruptcy Judges and the Conference of Chief District Judges. In addition,

The LRCC has sent a representative to meet with the Executive Board of the United States Magistrate Judges of the Ninth Circuit.

A. Conference of Chief Bankruptcy Judges/LRCC Meeting

On December 2, 2008, the LRCC presented a half day program to the Chief Bankruptcy Judges in Honolulu, Hawaii. The program took place after the onset of one of the most challenging economic times faced by our country. In light of the collapse of the credit markets, unprecedented bankruptcies of the size and magnitude of Lehman Brothers, and following the crash of the subprime real estate mortgage market upon which our prior year's presentation had focused, the program these topics of interest to the judges:

1. Overview of the (then) current financial climate, presented by Thomas B. Walper of Plainfield Asset Management, LLC. While intended to be a very brief introduction to the day's program, the Judges were very interested in the current state of the economy and this presentation turned into an interactive discussion among the Judges and lawyers in attendance.
2. Following the introduction, the first panel, *Bankruptcy Hot Spots Caused by the 2008 Financial Conflagration*, was presented by Margaret Mann, Sheppard Mullin Richter & Hampton LLP; David Agler, Grobstein Horwath & Company LLP; and Nancy Isserlis, Winston & Cavatt. This program was a natural extension of the prior year's program, also led by Margaret Mann, dealing with the crash of the subprime real estate market. The content focused on the issues affecting the enforceability of notes sold in the securitization market, the impact of the government bailout bill and bankruptcy, foreclosure and bankruptcy and tax implications, and consumer issues as a result of the mechanics of the foreclosure process.
3. The second panel was *Selective Issues In Claims Trading*, presented by Robbin L. Itkin, Steptoe & Johnson LLP (Moderator); Gary E. Klausner, Stutman, Treister & Glatt Professional Corporation; Thomas B. Walper, Plainfield Asset Management LLC; and David Agler, Grobstein Horwath & Company LLP. This panel discussed the legal issues and business strategies concerning trading of claims in bankruptcy, including the tax ramifications, fiduciary obligations of counsel serving in different roles in the bankruptcy process (debtors' counsel, creditors' committee counsel, etc.), ethical walls and confidentiality issues.

B. Conference of Chief District Judges/LRCC Meeting

The LRCC presented three highly successful programs at the Chief District Judges Conference in Newport Beach in February 2009. The LRCC worked closely with Chief Judge John Sedwick of Alaska, the presiding Chief District Judge for the conference, to develop programs of interest to the chief district judges from throughout the Ninth Circuit.

The first panel was entitled "The Pro Se Challenge: Balancing Access to Justice with Efficient Administration of the Courts." The participants were all LRCC members, including Andrew Jacobs (AZ), Tracy Morris (WAW) and Paula Pearlman (CAC). They covered three main areas, including general problems in providing pro se legal services, challenges for

chambers staff and an overview of pro se appointment programs in the various districts in our circuit. Debora Kristensen (Vice Chair) chaired the LRCC subcommittee that worked on the panel.

The balance of the program was devoted to criminal law topics, including a presentation styled “Child Exploitation: The Facts Behind the Cases.” The panelists were:

1. Nancy Koppe (NV), Co-Chair of the Nevada delegation, Assistant U.S. Attorney and panel moderator
2. Dean R. Gits, Chief Deputy Federal Public Defender in Los Angeles, and
3. Kenneth V. Lanning, 30-year veteran and former FBI Special Agent and a nationally recognized expert consultant in the area of crimes against children

The discussion covered the various types of child exploitation cases, the psychology of offenders, the difficult aspects of these cases for court staff and jurors, and the typical means of detecting and investigating these disturbing crimes. Christopher Latham (Chair) led the LRCC subcommittee that organized the panel.

The third program was entitled “Developing Issues in Securing, Examining and Presenting Electronic Evidence.” The speakers were:

1. Ovie Carroll, the director of the Department of Justice’s Cybercrime Lab
2. Colin Fieman, Assistant Federal Defender in the Western District of Washington, and
3. Barry McHugh (ID), Co-Chair of the Idaho delegation, the Kootenai County Prosecuting Attorney (Coeur d’Alene) who was panel moderator

This program analyzed the technological, evidentiary and constitutional issues posed by the use of electronically housed information in criminal trials. Debora Kristensen (Vice Chair) directed the LRCC subcommittee that worked on the panel.

C. Meeting with Chief Magistrate Judges

Commencing in 2006, the Executive Board of the Magistrate Judges of the Ninth Circuit invited the LRCC to send a representative to its fall meetings on a yearly basis. The designated liaison is the LRCC’s Chair-Elect.

In October, 2008, Robbin Itkin attended the Magistrate Judges’ Executive Board meeting in Rancho Bernardo. She presented the Magistrate Judges with a report on the LRCC’s planned activities and conference schedule for 2009.

In addition, the Judges appeared very interested in a summary of views and suggestions that Robbin presented on behalf of the LRCC members. The areas of consideration included: (i) Magistrate Judges' involvement in mediation and how best to foster successful mediations;

and (ii) best practices regarding electronic discovery and how to resolve electronic discovery disputes and compliance issues where parties have limited financial resources to comply with preservation of documents and other discovery requirements. These topics fostered a spirited discussion among the Magistrate Judges. At the end of the discussion, the Magistrate Judges said they were going to pursue further discussion of these topics at future meetings with the Executive Board and general meetings with the circuit's magistrate judges.

D. Other Activities

1. Welcoming Lunch for New Lawyer Representatives

LRCC members have organized a special welcome lunch for new Lawyer Representatives to give them a better understanding of their role and how the conference functions.

2. Planning the Annual Ninth Circuit Judicial Conference

In September, 2008, the LRCC participated in the first planning meeting with the Conference Executive Committee for the 2009 Ninth Circuit conference. The LRCC attends the initial meeting of the Conference Executive Committee to provide input and participate in a brainstorming session to develop topics and discuss options for speakers.

The Conference Executive Committee is comprised of the Chief Judge of the Ninth Circuit, three active Ninth Circuit judges, three active district judges, one bankruptcy judge, one magistrate judge and nine lawyer representatives (the three LRCC officers plus six at-large members, although there are currently seven owing to a temporary adjustment of the staggered terms). The following lawyer representatives served on the Conference Executive Committee in 2008-2009: Christopher Latham (LRCC Chair), Robbin Itkin (LRCC Chair-Elect), Debora Kristensen (LRCC Vice Chair), Gary Grimmer (HI), Wendy Holton (MT), Jo Saxe Levy (OR), Lloyd B. Miller (AK), Judith Ramseyer (WAW) and Leonard Simon (CAS) and Robert Torres (NMI).

3. Ninth Circuit Rules Committee

A member of the LRCC is an ex-officio member of the Ninth Circuit Rules Committee. This past year Andrew Jacobs (AZ) has served as the LRCC's liaison to the Ninth Circuit Rules Committee.

4. Ninth Circuit Advisory Board

The LRCC Chair is the liaison to the Ninth Circuit Advisory Board. This past year Christopher Latham served as the liaison. Peg Toledo served as the Advisory Board's liaison to the LRCC.