



Supplemental Materials

4

- **Managing Pro Se Appeals**
- Monday, August 1, 2016 | 1:00 pm - 2:00 pm

8

- **A View from the Director's Chair: Lessons Learned from Two Years at the EEOC and Best Practices in Hiring**
- Tuesday, August 2, 2016 | 9:45 am - 10:45 am

10

- **Real Ethics in a Virtual World**
- Wednesday, August 3, 2016 | 8:30 am - 10:30 am

13

- **Court Structure in Germany and Technology Initiatives in European Courts**
- Thursday, August 4, 2016 | 8:45 am - 10:00 am

Managing Pro Se Appeals

Monday, August 1, 2016 | 1:00 pm – 2:00 pm

Managing the Pro Se (Appeal)

NCACC 2016

Denver CO

Panel

Betsy Shumaker

Clerk of Court

U. S. Court of Appeals for the Tenth Circuit

Sean Slagle

Self-Represented Litigant Coordinator

Colorado Appellate Court

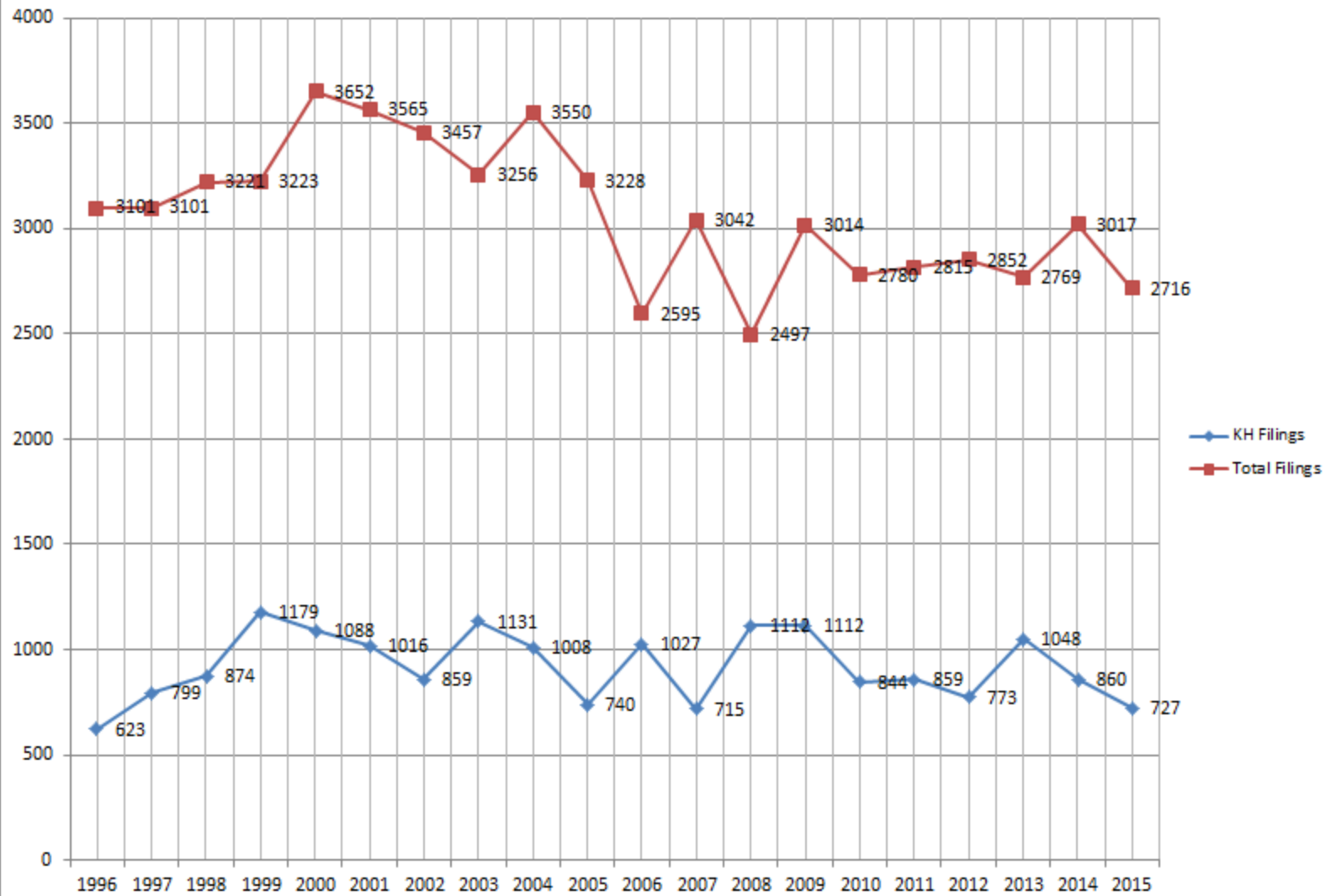
John Tarlton Olivier

Clerk of Court

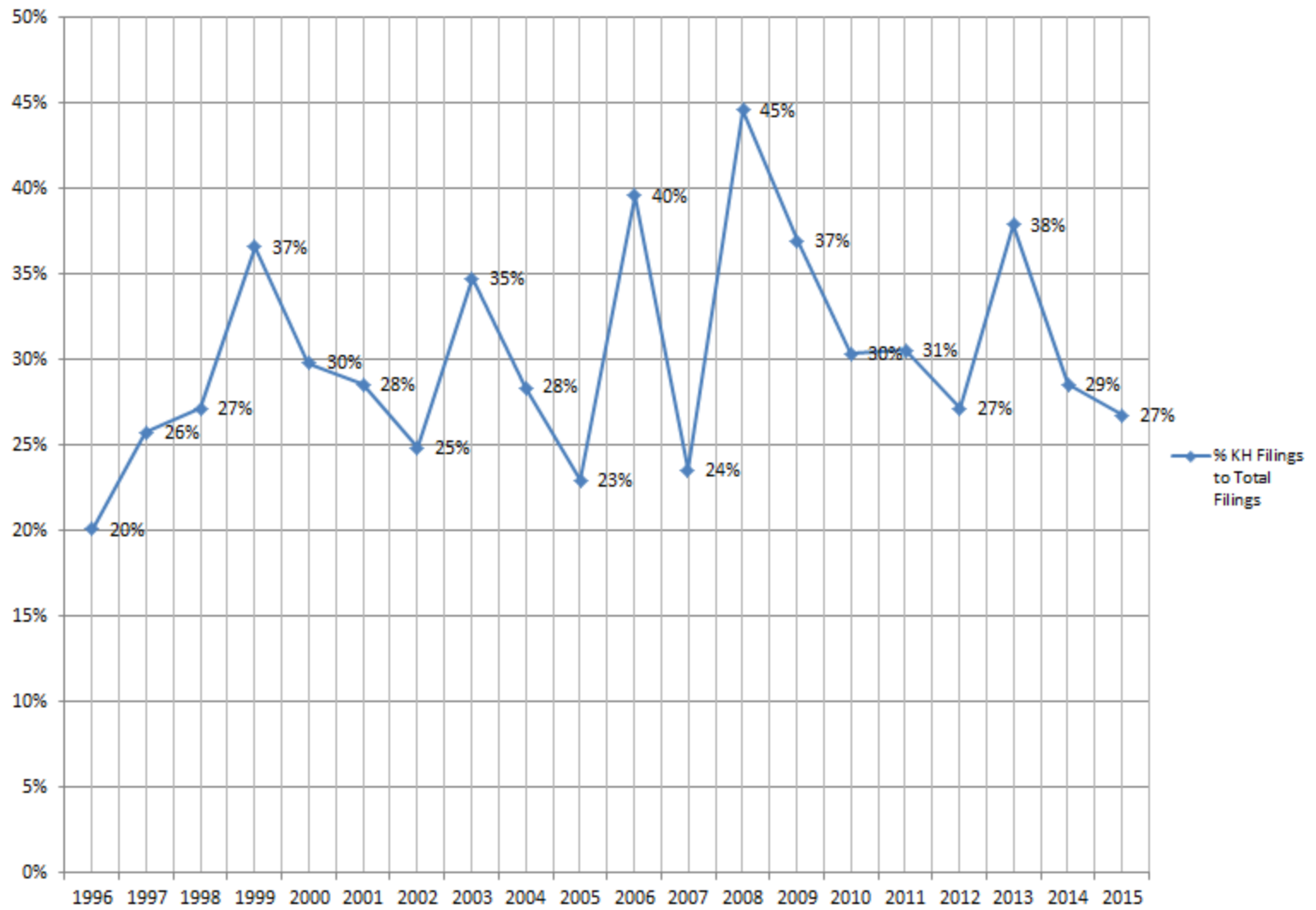
Louisiana Supreme Court

10th Circuit Court of Appeals		
12 months ending March 31, 2016		
Filings (Appeals/proceedings)		
Pro se	Total	% pro se
975	1988	49.0%
Terminations (Appeals/proceedings)		
Pro se	Total	% pro se
937	1954	48.0%

Louisiana Supreme Court - KH Filings



Louisiana Supreme Court - KH Filings



Colorado Appellate Courts

Self Represented Litigant 2015

Averages

Court of Appeals

**180 New Cases per
Month**

16% Civil SRL Filings

Supreme Court

**91 New Cert Petitions
per Month**

15% SRL Filings

Montana Supreme Court
SELF REPRESENTED LITIGANT CASELOAD REPORT
2015 January - December

- ***SELF REPRESENTED LITIGANT (SRL) CASES:***
 - **1. Appeals: 149**
 - a. Civil: 115
 - b. Criminal: 34
 - **2. Disciplinary Matters: 4**
 - **3. Original Proceedings: 115**
- **TOTAL SRL FILINGS: 268**

Percentage of Total

- SRL as a percentage of Total Caseload: **33.25%**
(268 divided by 806)

SCENARIO 1

- 1. Lily is recently divorced and looking to appeal her permanent orders decision. However, she is confused about the appellate process. She wants to know what services and resources the court has to help her with her appeal.**

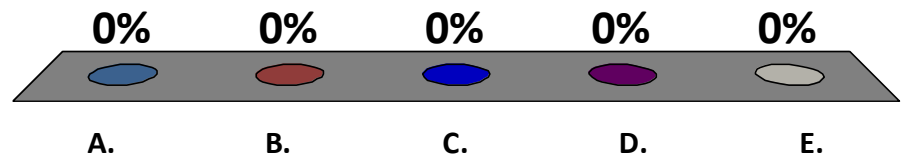
SCENARIO 1

- 1. What resources are available in your jurisdiction for pro se parties?**
 - A. Written Materials (Instructions, samples or pro se practice guides)?**
 - B. Human Resources (dedicated court staff)?**
 - C. Attorney Resources?**
 - D. All or a combination of the above?**
 - E. None of the above?**

SCENARIO 1

1. What resources are available in your jurisdiction for pro se parties?

- A. Written Materials
(Instructions, samples
or pro se practice
guides)?**
- B. Human Resources
(dedicated court staff)?**
- C. Attorney Resources?**
- D. All or a combination of
the above?**
- E. None of the above?**



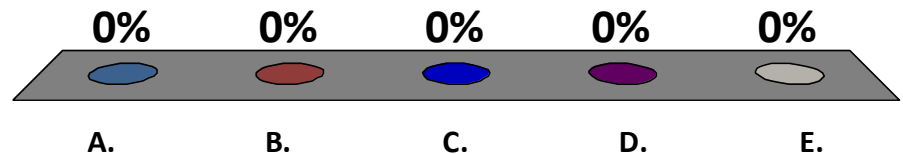
SCENARIO 1

- 2. Lily decides that the appellate process may be above her capabilities, but she doesn't have money for an attorney. Which attorney services are available to her:**
- A. The local bar association's pro-bono appellate program?**
 - B. The regularly held appellate aid clinic?**
 - C. A directory of attorneys that offer alternative fee structures?**
 - D. All of the above? OR E. None of the Above?**

SCENARIO 1

2. Which low/no cost attorney services are available in your jurisdiction:

- A. Full pro-bono representation?**
- B. An appellate legal aid clinic?**
- C. Alternative fees attorney directory?**
- D. All of the above?**
- E. None of the Above?**



SCENARIO 2

More and more courts are taking advantage of electronic access to allow pro se litigants to file and serve appellate pleadings.

In your court do you:

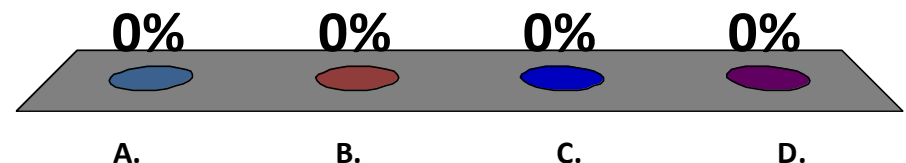
SCENARIO 2

- A. Allow pro se litigants to file electronically as a matter of course and without prior permission?**
- B. Allow pro se litigants to file electronically, but only after they receive specific and independent authorization from the court?**
- C. Not allow pro se litigants to file electronically even though attorneys file electronically?**
- D. Not allow pro se litigants to file electronically because the court does not have electronic filing available generally?**

Efiling by Self Represented?

SCENARIO 2

- A. Allow pro se litigants to file electronically as a matter of course and without prior permission?**
- B. Allow pro se litigants to file electronically, but only after they receive specific and independent authorization from the court?**
- C. Not allow pro se litigants to file electronically even though attorneys file electronically?**
- D. Not allow pro se litigants to file electronically because the court does not have electronic filing available generally?**



SCENARIO 3

Mr. Martin submits an application on a paper bag. Deputy clerk attempts to contact Mr. Martin, but the number he provided is not in working order.

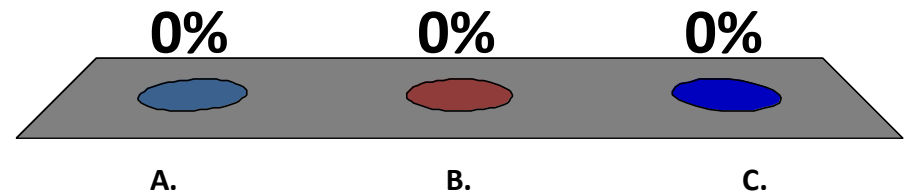
1. Do you:

- A. Return the submittal to Mr. Martin advising that his filing does not comply the rules?**
- B. File the submittal and then return it allowing time for resubmitting in compliance with the rules?**
- C. File the submittal and send it to the Justices/Judges for consideration?**

1. Do you:

SCENARIO 3

- A. Return the submittal to Mr. Martin advising that his filing does not comply the rules?**
- B. File the submittal and then return it allowing time for resubmitting in compliance with the rules?**
- C. File the submittal and send it to the Justices/Judges for consideration?**



SCENARIO 3

2. Assuming you file the submittal and send it to the Justices/Judges. Should the Court:

A. Allow Mr. Martin to supplement his filing?

B. Deny the submittal on the showing made?

2. Should the Court:

SCENARIO 3

A. Allow Mr. Martin to supplement his filing?

B. Deny the submittal on the showing made?



SCENARIO 4

Inmate has appointed counsel for his appeal. Six months pass and he has not heard anything from his attorney. Inmate gets an “Inmate Counsel Substitute” (ICS) to check on his case. The ICS learns that the Court of Appeal rendered its decision a couple of months earlier. The deadline for filing a writ application is 30 days from the mailing of the Court of Appeal decision. The ICS contacts the appointed counsel and is told that his job was finished after he filed the appeal brief. You are contacted by ICS asking how he can assist his “client”.

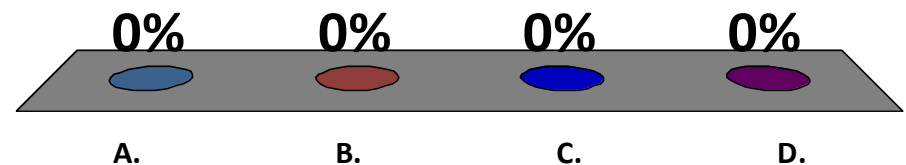
SCENARIO 4

1. How do you advise the ICS:
 - A. Sorry, Inmate can file a malpractice suit against his appointed counsel.
 - B. Contact the Court of Appeal to see what they can do since appointed counsel failed to notify Inmate of their action.
 - C. Gather all evidence of the failure of appointed counsel to notify Inmate and file with the Supreme Court.
 - D. All of the above.

1. How do you advise the ICS:

SCENARIO 4

- A. Sorry, Inmate can file a malpractice suit against his appointed counsel.**
- B. Contact the Court of Appeal to see what they can do since appointed counsel failed to notify Inmate of their action.**
- C. Gather all evidence of the failure of appointed counsel to notify Inmate and file with the Supreme Court.**
- D. All of the above.**



SCENARIO 4

2. Assuming Inmate files with the Supreme Court does the Court:

A. Reject the filing as untimely?

B. Consider the application?

C. Rule appointed counsel in to show cause why he did not advise Inmate of the Court of Appeal decision?

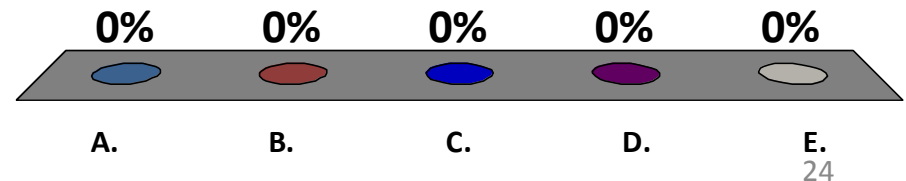
D. Both A & C

E. Both B & C

2. Does the Court:

SCENARIO 4

- A. Reject the filing as untimely?**
- B. Consider the application?**
- C. Rule appointed counsel in to show cause why he did not advise Inmate of the Court of Appeal decision?**
- D. Both A & C**
- E. Both B & C**



SCENARIO 4

3. Assuming the Supreme Court rejects the application as untimely. Inmate then files in Federal Court. Does the Federal Court:

A. Reject Inmate's filing for failing to exhaust state court remedies?

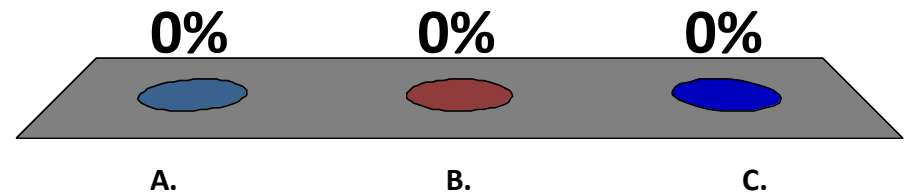
B. Accept the filing?

C. Other?

3. Does the Federal Court:

SCENARIO 4

- A. Reject Inmate's filing for failing to exhaust state court remedies?
- B. Accept the filing?
- C. Other?



SCENARIO 5

Attorney/Appellant represented herself in a case before the Disciplinary Board, which recommended that she be suspended for a year and a day.

The allegations against her were numerous, but fell into three categories: (1) improper ex parte communications; (2) dissemination of false and misleading information; and (3) conduct prejudicial to the administration of justice.

SCENARIO 5

Her defense was that she believed her First Amendment rights allowed her to say whatever she wanted, to whomever she wanted, in whatever form she wanted. This included ex parte communications with the judges involved in the cases; requesting that the public contact the courts and demand that they rule in a particular manner; and divulging confidential material regarding minors in a custody (alleged abuse) case.

SCENARIO 5

- 1. On appeal the Court, rather than affirming the year and a day suspension, disbarred the attorney. Attorney filed an Application for Rehearing on the last possible day, thus delaying the finality of the disbarment ruling. However, the filing fee for Attorney's Application for Rehearing was drawn from her Client Trust Account and was returned for insufficient funds.**

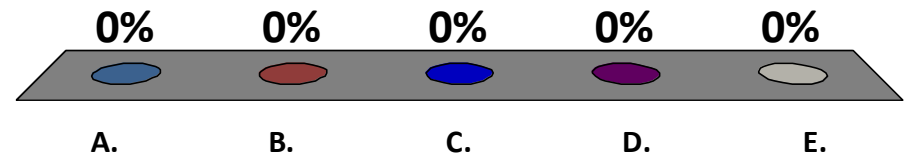
SCENARIO 5

- 1. The Court should:**
 - A. Dismiss the application for non-payment of fees.**
 - B. Deny the application for non-payment of fees.**
 - C. Address the merits of the application, then further sanction Attorney.**
 - D. Order Attorney to show cause why she should not be held in contempt of court.**
 - E. Refer the matter to Disciplinary Counsel for further action. (Disbarred attorneys can petition for reinstatement after five years.)**

1. The Court should:

SCENARIO 5

- A. Dismiss the application for non-payment of fees.
- B. Deny the application for non-payment of fees.
- C. Address the merits of the application, then further sanction Attorney.
- D. Order Attorney to show cause why she should not be held in contempt of court.
- E. Refer the matter to Disciplinary Counsel for further action. (Disbarred attorneys can petition for reinstatement after five years.)



SCENARIO 5

2. Assume the Court decided to simply deny the Application for Rehearing. However, on the very day Attorney's Application was denied, she filed a shell application for writs *for a client*, signing and mailing it on that day (which was the last day to file) and then on the next day (Saturday) mailing the rest of the application. The application was received on Monday.

SCENARIO 5

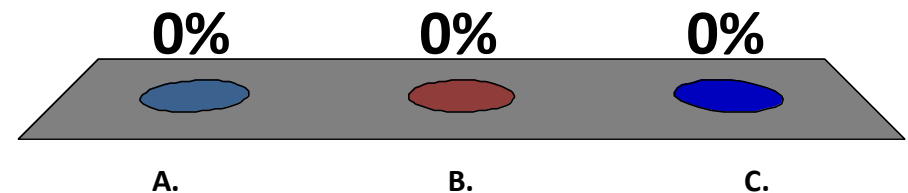
2. Should the Court:

- A. Reject the client's application because it was filed by a disbarred attorney?**
- B. Accept the client's application, but refer Attorney's actions to the District Attorney and Disciplinary Board for practicing law without a license?**
- C. Accept the client's application, but order Attorney removed from the case and permit extensions for client to obtain new attorney?**

2. The Court should:

SCENARIO 5

- A. Reject the client's application because it was filed by a disbarred attorney?
- B. Accept the client's application, but refer Attorney's actions to the District Attorney and Disciplinary Board for practicing law without a license?
- C. Accept the client's application, but order Attorney removed from the case and permit extensions for client to obtain new attorney?



SCENARIO 6

1. John is incarcerated in a state facility which does not have consistent computer access for prisoners. He has filed a civil rights (conditions of confinement) action, and is seeking to appeal the trial court's grant of summary judgment in favor of the state. He is in an intermediate court or federal court where appeal is as of right. John writes to the court and advises prison officials have confiscated his paper work and legal records, and that he cannot proceed unless the clerk's office forwards to him a printed copy of the docket and hard copies of all of the materials in the record.

1. Do you:

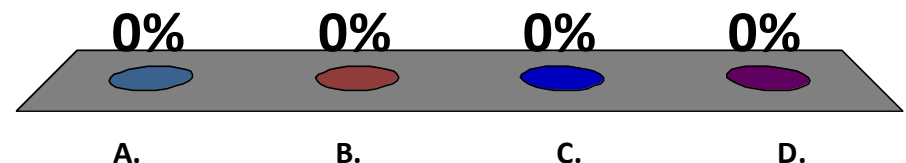
SCENARIO 6

- A. Print a copy of the docket or direct the trial court to print a copy, and mail it to John at his facility?**
- B. Respond via letter and advise John the clerk's office does not have the resources to make copies, but that he can use court-created forms to file his brief and any other pleadings required (and forwarding the appropriate forms to him with the letter)?**
- C. Calculate the cost, per the court's fee schedule, of making the copies and advise John you will forward the materials if he pays X?**
- D. Some combination of the above.**

SCENARIO 6

1. Do you:

- A. Print a copy of the docket or direct the trial court to print a copy, and mail it to John at his facility?
- B. Respond via letter and advise John the clerk's office does not have the resources to make copies, but that he can use court-created forms to file his brief and any other pleadings required (and forwarding the appropriate forms to him with the letter)?
- C. Calculate the cost, per the court's fee schedule, of making the copies and advise John you will forward the materials if he pays X?
- D. Some combination of the above.



SCENARIO 6

2. John writes back after receiving the court's correspondence, and includes a motion to appoint counsel, noting he does not believe he can proceed without the assistance of an attorney. Because this is a civil case, it is not one where counsel can be appointed.

SCENARIO 6

2. Do you:

A. Advise John counsel is not available through the court but refer him to a bar association group or law school clinic?

B. Submit the request to a court-grown pro bono program or pro bono coordinator to evaluate whether John meets the requirements for securing an attorney?

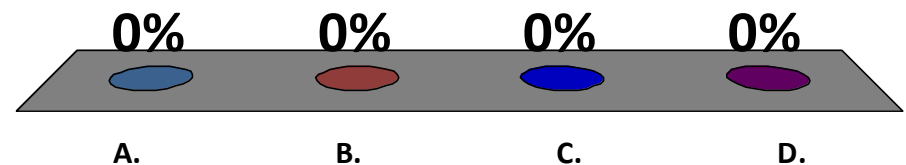
C. Simply deny the request via order or letter?

D. Parts of more than one of these options?

2. Do you:

SCENARIO 6

- A. Advise John counsel is not available through the court but refer him to a bar association group or law school clinic?
- B. Submit the request to a court-grown pro bono program or pro bono coordinator to evaluate whether John meets the requirements for securing an attorney?
- C. Simply deny the request via order or letter?
- D. Parts of more than one of these options?



SCENARIO 6

3. Pro bono counsel is not appointed or secured for John. He proceeds pro se and mails in his brief using the court form provided, and also sends a letter stating he does not have sufficient monies in his prison account to make copies to serve the defendants/appellees, and therefore cannot comply with the court's service requirements.

How does the court address a pro se litigant's failure to follow or inability to follow court rules?

SCENARIO 6

3. Do you:

A. Issue an order or other notice advising John he must serve the brief on the others parties and advising him he must comply with that rule or risk dismissal?

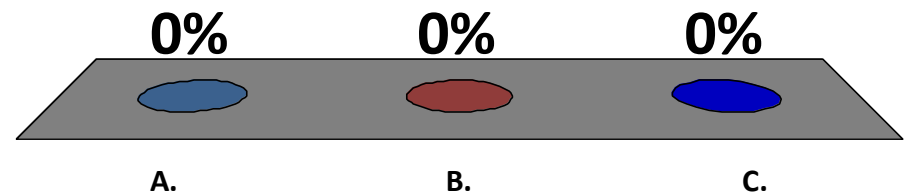
B. Waive the service requirement because, in light of electronic filing and the court's automatic scanning and docketing of pro se pleadings, the appellees will receive the brief anyway (that is, via the court's notice to counsel)?

C. Accept the brief for filing (and then set the appellees' brief deadline) but advise John he must serve the brief on the appellees within some time-certain?

3. Do you:

SCENARIO 6

- A. Issue an order or other notice advising John he must serve the brief on the others parties and advising him he must comply with that rule or risk dismissal?
- B. Waive the service requirement because, in light of electronic filing and the court's automatic scanning and docketing of pro se pleadings, the appellees will receive the brief anyway (that is, via the court's notice to counsel)?
- C. Accept the brief for filing (and then set the appellees' brief deadline) but advise John he must serve the brief on the appellees within some time-certain?



SCENARIO 6

4. John calls the clerk's office after the court renders its decision, which is not favorable to him. He wants to know how he can seek reconsideration and "appeal" to a higher court. He asks if there is any case law or other legal information available that would help him make his case.

SCENARIO 6

4. Do you:

A. Give him basic information, such as the address for the Supreme Court, but otherwise let him know you can't give him legal advice?

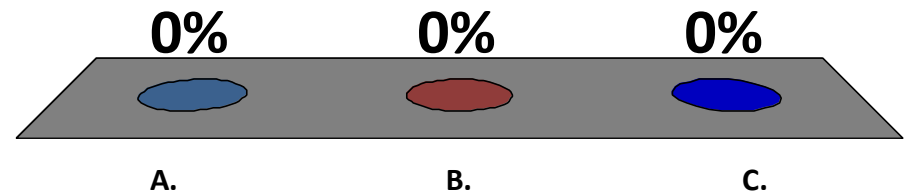
B. Talk through with him the specific appellate rules that would allow him to file a petition for rehearing or a petition for certiorari?

C. Refer him to a lawyer or other legal aid to get him additional information?

4. Do you:

SCENARIO 6

- A. Give him basic information, such as the address for the Supreme Court, but otherwise let him know you can't give him legal advice?
- B. Talk through with him the specific appellate rules that would allow him to file a petition for rehearing or a petition for certiorari?
- C. Refer him to a lawyer or other legal aid to get him additional information?



Questions?

Would you like to have “Clickers” used in future presentations?

A. Yes.

B. No.



**Thank you for your
attention and
participation.**

THE END

412 Fed.Appx. 110

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 10th Cir. Rule 32.1. United States Court of Appeals, Tenth Circuit.

Andre J. TWITTY, a/k/a Andre Twitty,
a/k/a A.J. Twitty, Petitioner–Appellant,
v.
C.D. DANIELS, Respondent–Appellee.

No. 10–1198.

|

Jan. 12, 2011.

Synopsis

Background: Federal prisoner, incarcerated in Colorado, petitioned for § 2241 habeas corpus relief to challenge his conviction and sentence, following affirmance thereof, 31 Fed.Appx. 934, in the Northern District of Georgia. The United States District Court for the District of Colorado, Christine A. Arguello, District Judge, for Zita Leeson Weinshienk, Senior District Judge, 2010 WL 1302951, denied petition and, 2010 WL 1565564, denied reconsideration. Prisoner appealed.

[Holding:] The Court of Appeals held that challenge was not properly brought as § 2241 petition.

Affirmed.

West Headnotes (2)

[1] Habeas Corpus

🔑 Post-Conviction Motions or Proceedings

Habeas Corpus

🔑 Federal Courts

Federal prisoner's challenge to his conviction and sentence, alleging prosecutorial misconduct and actual innocence as well as

“judicial coverup,” was not proper in petition for § 2241 habeas corpus relief in district in which he was incarcerated, and instead prisoner had adequate and effective remedy under § 2255 as a motion to vacate, set aside, or correct sentence in district in which he was convicted. 28 U.S.C.A. §§ 2241, 2255.

Cases that cite this headnote

[2] Injunction

🔑 Restrictions on litigation and filings

Federal prisoner's repeated use of § 2241 habeas petition to bring pro se challenge to his conviction and sentence, despite court's warnings that such petitions and appeals therefrom were frivolous, warranted imposition of filing restrictions requiring prisoner to be represented by licensed attorney or to seek permission prior to bringing any further pro se motions. 28 U.S.C.A. §§ 1651(a), 2241.

Cases that cite this headnote

Attorneys and Law Firms

*110 Andre J. Twitty, Florence, CO, pro se.

Before HARTZ, ANDERSON, and TYMKOVICH,
Circuit Judges.*

ORDER AND JUDGMENT**

PER CURIAM.

*1 Andre J. Twitty, a federal prisoner proceeding

*111 pro se,¹ appeals the denial of his application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Having jurisdiction under 28 U.S.C. § 1291, we AFFIRM. Because of Twitty's pattern of pervasive and abusive litigation, we also impose restrictions on his future filings.

I. Background

In 1999, following a jury trial in the Northern District of Georgia, Twitty was convicted of wilfully communicating a bomb threat via telephone and threatening federal law enforcement officers and their immediate family members. He was sentenced to 180 months' imprisonment and three years of supervised release.

On direct appeal, the Eleventh Circuit affirmed his conviction and sentence. *United States v. Twitty*, 31 Fed.Appx. 934 (11th Cir.2002), cert. denied 535 U.S. 1029, 122 S.Ct. 1632, 152 L.Ed.2d 642 (2002). In 2002 Twitty applied for a writ of habeas corpus under 28 U.S.C. § 2255, which the district court denied. The Eleventh Circuit subsequently denied a certificate of appealability. *Twitty v. United States*, No. 04–12805 (11th Cir. April 25, 2005).

Since then, Twitty has filed eleven petitions challenging his conviction and sentence in the District of Colorado, including the instant claim.² He has pursued many of these petitions on appeal. Each petition has been unsuccessful.

The district court dismissed the petition at issue here on the grounds that § 2241 is not a means of challenging the validity of a judgment. The court explained that “a petition under § 2241 attacks the execution of a sentence rather than its validity,” and that “[t]he exclusive remedy for testing the validity of a judgment and sentence” is a § 2255 petition filed in the district where the sentence was imposed. R. Vol. 1 at 27 (quotations omitted). The district court also denied Twitty's motion to reconsider and his motion to appeal *in forma pauperis*.

II. Discussion

A. The District Court's Denial

We review de novo the district court's denial of a § 2241 petition. *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir.1996).

[1] After careful review of Twitty's brief on appeal, his habeas petition, and the disposition below, we affirm the dismissal for substantially the same reasons articulated by the district court. On appeal *112 Twitty attacks his conviction and sentence on the grounds of prosecutorial misconduct and actual innocence. He further alleges the Eleventh Circuit engaged in a “judicial coverup.” As a challenge to the validity of his conviction and sentence,

his petition is not properly made under § 2241. If Twitty wishes to pursue these claims, he has an adequate and effective remedy under § 2255 in the United States District Court for the Northern District of Georgia.

B. Filing Restrictions

[2] This is not the first time in Twitty's extensive litigation history that he has inappropriately raised some version of these claims in a § 2241 petition. See *Twitty v. Wiley*, 336 Fed.Appx. 768, 769 (10th Cir.2009) (“Although Twitty's opening brief purports to seek relief under § 2241, the district court correctly noted that [in] the instant action Twitty once again attacks his conviction and sentence.”) (quotations omitted). In a recent appeal, we cautioned Twitty that if he persisted in filing frivolous appeals or reasserting issues ruled upon in prior litigation, his access to this court would be restricted. *Twitty v. Wiley*, 332 Fed.Appx. 523, 525 n. 2 (10th Cir.2009). Since then, Twitty has filed five similar suits, each attacking his conviction and sentence.

****2** Because we find this appeal frivolous and Twitty's pattern of litigation activity manifestly abusive, we conclude filing restrictions are necessary. “The right of access to the courts is neither absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous or malicious.” *Winslow v. Hunter (In re Winslow)*, 17 F.3d 314, 315 (10th Cir.1994) (per curiam) (quotation and alteration omitted). “[W]here, as here, a party has engaged in a pattern of litigation activity which is manifestly abusive, restrictions are appropriate.” *Id.* (quotation omitted). Therefore, subject to Twitty's opportunity to object, as described below, we impose the following reasonable restrictions on his future filings in this court “commensurate with our inherent power to enter orders ‘necessary or appropriate’ in aid of our jurisdiction.” *Id.* (quoting 28 U.S.C. § 1651(a)).

Twitty is ENJOINED from proceeding as a petitioner in an original proceeding or as an appellant in this court unless he is represented by a licensed attorney admitted to practice in this court or unless he first obtains permission to proceed pro se.

To obtain permission to proceed pro se, Twitty must take the following steps:

1. File a petition with the clerk of this court requesting leave to file a pro se action;
2. Include in the petition the following information:
 - A. A list of all lawsuits currently pending or filed previously with this court, including the name, number, and citation, if applicable, of each case, and the current status or disposition of the appeal or original proceeding; and
 - B. A list apprising this court of all outstanding injunctions or orders limiting Twitty's access to federal court, including orders and injunctions requiring him to seek leave to file matters pro se or requiring him to be represented by an attorney, including the name, number, and citation, if applicable, of all such orders or injunctions; and
3. File with the clerk a notarized affidavit, in proper legal form, which recites the issues Twitty seeks to present, including a short discussion of the legal basis for these claims, and describes with particularity the order ***113** being challenged. The affidavit also must certify, to the best of Twitty's knowledge, that (1) the legal arguments being raised are not frivolous or made in bad faith and that they are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) the appeal or other proceeding is not interposed for any improper purpose such as delay or to needlessly increase the cost of litigation; and (3) Twitty will comply with all appellate and local rules of this court.

These documents shall be submitted to the clerk of the court, who shall forward them to the Chief Judge or her designee for review to determine whether to allow the appeal to proceed on a pro se basis. If the Chief Judge or her designee does not approve the appeal, the matter will be dismissed. If the Chief Judge or her designee approves the filing, an order will be entered indicating the appeal shall proceed in accordance with the Federal Rules of Appellate Procedure and the Tenth Circuit Rules.

****3** Twitty shall have ten days from the date of this order to file written objections to these proposed sanctions. See [Winslow, 17 F.3d at 316](#). The response shall be limited to ten pages. If Twitty does not file objections, the restrictions shall take effect twenty days from the date of this order, and they shall apply to any matter filed after that time. See [id. at 316–17](#). If Twitty does file timely objections, these sanctions shall not take effect until this court has ruled on those objections.

III. Conclusion

Accordingly, we AFFIRM the district court's denial of Twitty's habeas petition. We also DENY Twitty's request for leave to proceed on appeal *in forma pauperis*, as his opening brief does not make a reasoned non-frivolous argument in support of his claim.

All Citations

412 Fed.Appx. 110, 2011 WL 94738

Footnotes

- * After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See [Fed. R.App. P. 34\(a\)](#); [10th Cir. R. 34.1\(G\)](#). The cause is therefore ordered submitted without oral argument.
- ** This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with [Fed. R.App. P. 32.1](#) and [10th Cir. R. 32.1](#).
- 1 Because Twitty is proceeding pro se, we construe his filings liberally. See [Van Deelen v. Johnson, 497 F.3d 1151, 1153 n. 1 \(10th Cir.2007\)](#).
- 2 See [Twitty v. Davis, No. 10–cv–01676–BNB, 2010 WL 3341204 \(D.Colo. Aug. 23, 2010\)](#), *appeal filed*, No. 10–1409 (10th Cir. Nov. 5, 2010); [Twitty v. Davis, No. 10–cv–01356, 2010 WL 2540105 \(D.Colo. June 22, 2010\)](#); [Twitty v. Daniels, No. 10–cv–00888–BNB, 2010 WL 1726905 \(D.Colo. Apr. 27, 2010\)](#); [Twitty v. Davis, No. 09–cv–02538–BNB, 2010 WL 97782 \(D.Colo. Jan. 11, 2010\)](#); [Twitty v. Wiley, No. 09–cv–00906–BNB, 2009 WL 1810980 \(D.Colo. June 24, 2009\)](#); [Twitty v. Wiley, No. 08–cv–02717–BNB, 2009 WL 866839 \(D.Colo. Mar. 25, 2009\)](#); [Twitty v. Wiley, No. 08–cv–02823–BNB, 2009 WL 440902 \(D.Colo. Feb. 13, 2009\)](#), *aff'd*, 336 Fed.Appx. 768 (10th Cir.2009); [Twitty v. Wiley, No. 08–cv–02119–BNB, 2008 WL 4948801 \(D.Colo. Nov. 17, 2008\)](#), *aff'd*, 332 Fed.Appx. 523 (10th Cir.2009); [Twitty v. Wiley, No.](#)

[07-cv-02441-BNB](#), 2008 WL 582188 (D.Colo. Mar. 3, 2008), *appeal dismissed*, No. 08-1118 (10th Cir. June 11, 2008), *appeal dismissed*, No. 08-1277 (10th Cir. Oct. 29, 2008); [Twitty v. Wiley](#), No. 06-cv-00177-BNB, 2006 WL 1517727 (D.Colo. Mar. 29, 2006), *aff'd*, No. 06-1234 (10th Cir. July 17, 2006), *cert. denied* 549 U.S. 968, 127 S.Ct. 419, 166 L.Ed.2d 296 (2006).

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10TH CIRCUIT COURT OF APPEALS ANSWERS TO FREQUENTLY ASKED QUESTIONS

I have filed a notice of appeal but I can't afford to pay the filing fee. What should I do?

An indigent *pro se* appellant **may** be excused from paying the filing fee by filing a motion for leave to proceed *in forma pauperis* in the district court. Contact the district court to obtain the proper form for this type of motion. If the district court denies or does not act in a timely manner on the motion, the *pro se* appellant will be required to file a renewed motion with this court.

How many copies of my documents do I need to send to the court?

The court will accept a single copy of filings from *pro se* litigants. A copy of all filings must be sent to all counsel for the parties involved in the appeal, and all documents must include a certificate of service which states when, what, and who was served.

What are the size limitations for my brief?

An opening brief and any response brief may not exceed 30 pages unless there is a certification of the number of words and that the brief contains less than 14,000 words. A reply brief cannot exceed 15 pages unless the certification states that the word count is less than 7,000 words.

I need more time to file my brief. How can I get an extension of time?

A party can generally get one 30-day extension of time beyond the initial due date without much question, but must file a motion in writing to do so. Obtaining extensions of time beyond an initial 30 days is more difficult. Litigants should plan on getting their briefs finished and filed promptly, as extensions of time to file briefs are disfavored.

Do I need to provide the court with documents/evidence supporting my appeal?

When the appellant is *pro se*, the district court will assemble a record of documents filed in that court and transmit them to this court as the record on appeal. The *pro se* appellant need not provide an appendix or copies of district court documents. This court will not consider additional evidence nor will this court consider arguments that were not raised in the district court proceedings.

How do I obtain copies of my pleadings?

Filers should always retain copies of pleadings they file in this court for their records. To receive a file-stamped copy of a document returned to you, you should include an additional copy of the pleading as well as a self-addressed stamped envelope. Any other requests for pleadings (including copies of the court's docket) should be in writing, and include prepayment for copies at the rate of \$.50 per page. For questions regarding copy requests, you can contact the court at (303) 844-3157. Alternatively, you can register for a PACER account (the court's electronic public access service) through www.pacer.gov, and obtain copies that way. Copies obtained through PACER are charged at \$.08 per page retrieved.

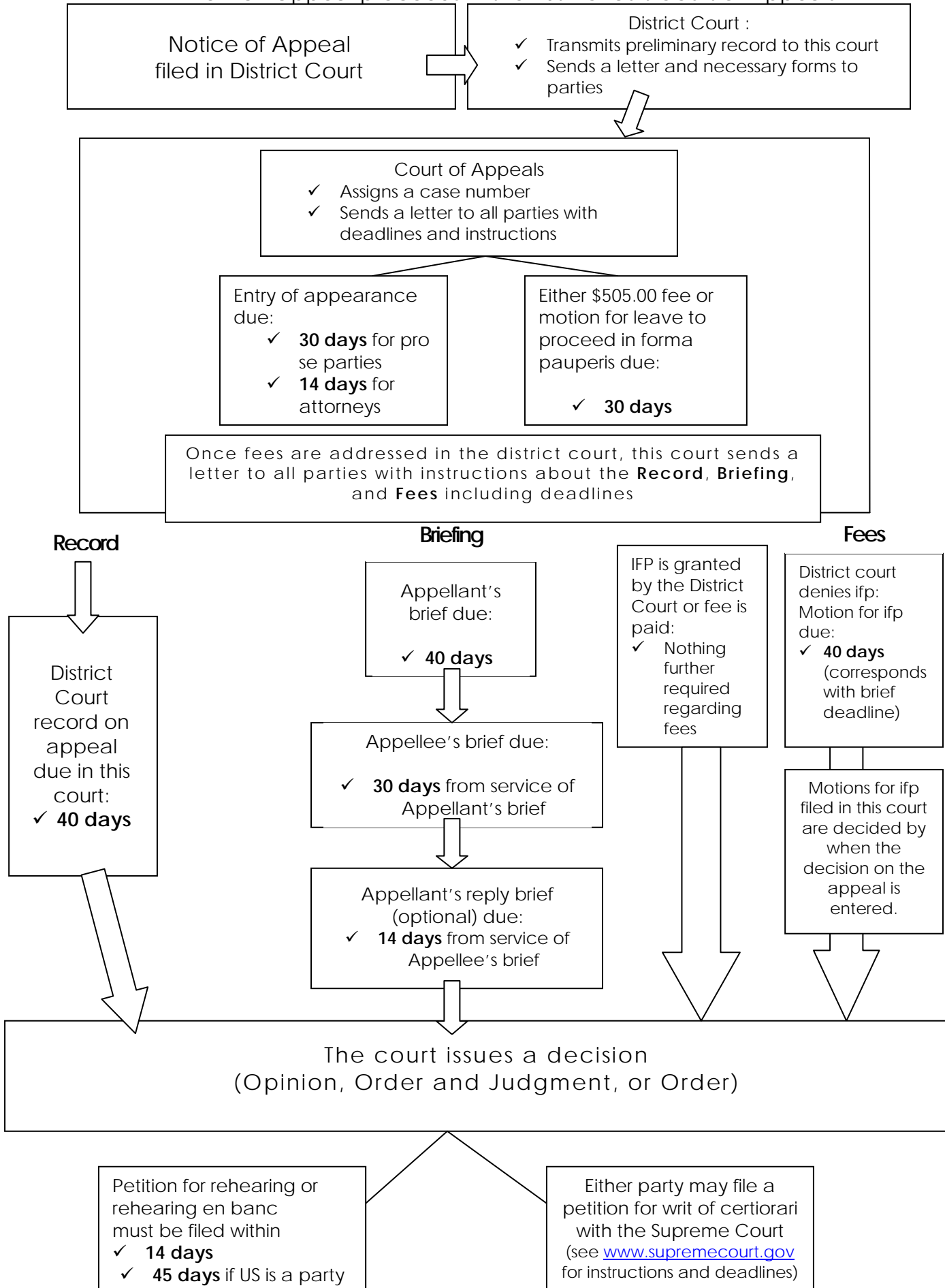
I've filed all my documents. What happens next? When will my appeal be decided?

After all the briefs have been filed, a panel of judges will be assigned to decide the appeal. The court's decision will be in writing and will be transmitted to the parties. There is no requirement that the court issue its decision within any particular time frame.

I have questions that aren't answered here. How can I contact the court?

- Visit our website at www.ca10.uscourts.gov for: the Federal and 10th Circuit appellate rules (<http://www.ca10.uscourts.gov/clerk/rulesandforms.php>), copies of all necessary forms (<http://www.ca10.uscourts.gov/clerk/showforms.php>), and information regarding filing via the court's electronic case filing system. (<http://www.ca10.uscourts.gov/clerk/casemanagement.php>), and many other resources.
- Contact the Clerk's office by phone at (303) 844-3157. The Clerk's office is open from 8:00 am to 5:00 pm Mountain Time, Monday through Friday except for legal holidays.
- All written correspondence should be mailed to: United States Court of Appeals for the 10th Circuit, The Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO, 80257.

How an appeal proceeds in the 10th Circuit Court of Appeals



Managing Pro Se Appeals
Journal Articles

Appellate Section Proposes Pro Bono Pilot Program for Pro Se Litigants in the Supreme Court of Texas, 70 TEX. B.J. 883 (2007)

Michael Correll, *Finding the Limits of Equitable Liberality: Reconsidering the Liberal Construction of Pro Se Appellate Briefs*, 35 VT. L. REV. 863 (2010-11)

Richard Zorza, *Turner v. Rogers: Improving Due Process for the Self-Represented*, FUTURE TRENDS IN STATE COURTS 2012

Meehan Rasch, A New Public-Interest Appellate Model: Public Counsel's Court-Based Self-Help Clinic and Pro Bono "Triage" for Indigent Pro Se Civil Litigants on Appeal, 11 J. APP. PRAC & PROCESS 461 (2010).

Jacinda Haynes Suhr, Ensuring Meaningful Access to Appellate Review in Non-Criminal Cases Involving Self-Represented Litigants, Institute for Court Management, Court Executive Development Program, Phase III Project, May 2009

Cynthia Gray, Reach out or Overreaching: Judicial Ethics and Self-Represented Litigants, 27 J. NAT'L ASS'N ADMIN. L. JUDICIARY ISS.1 (2007)

Rebecca A. Albrecht, John M. Greacen, Bonnie Rose Hough, and Richard Zorza, Judicial Techniques for Cases Involving Self-Represented Litigants, 42 THE JUDGES' JOURNAL Winter 2003, ABA 16 (2003).

Mark Andrews, Duties of the Judicial System to the Pro Se Litigant, 30 ALASKA L. REV. 189 (2013).

**A View from the Director's
Chair:
Lessons Learned from Two
Years at the EEOC and Best
Practices in Hiring**

Tuesday, August 2, 2016 | 9:45 am – 10:45 am

A View from the Director's Chair



Lessons Learned from Two Years at the EEOC and Best Practices in Hiring

US-Equal Employment Opportunity Commission

Denver Field Office

John C. Lowrie

Director

Challenges for a Clerk's Office?

- Limited Budgets and Resourcing?
- Lack of staff?
- Competing demands and a never ending backlog of cases?
- Lack of expertise?
- Aversion to change?
- Entrenched views of how to operate?



The EEOC

- History
- Statutes we enforce (Title VII, ADA, ADEA, GINA, EPA, Rehabilitation Act)
- How we are arranged and operate
- Interplay with the Department of Justice on state and local cases
- Interplay with state FEPAs



EEOC Challenges

- Limited budget and resourcing
- Staffing shortages and very large volume of charges
- Competing priorities
- Need for inter-governmental cooperation



EEOC Hot Button Issues

- Better DOJ collaboration and coordination
- Addressing harassment and bullying
- ADAAA
- The 50th Anniversary of the ADEA
- Strategic Enforcement!



What is the EEOC Strategic Enforcement Plan?

The EEOC's Strategic Plan for Fiscal Years 2012 - 2016 directed EEOC to develop a Strategic Enforcement Plan (SEP) that:

- establishes priorities and
- integrates all components of EEOC's private, public, and federal sector enforcement.

The purpose of the SEP is to focus and coordinate the EEOC's programs to have a sustainable impact in reducing and deterring discriminatory practices in the workplace.



SEP Priorities

Eliminating Barriers in Recruitment and Hiring

The EEOC will target class-based recruitment and hiring practices that discriminate against racial, ethnic and religious groups, older workers, women, and people with disabilities.



SEP Priorities

Protecting Immigrant, Migrant and Other Vulnerable Workers

The EEOC will target disparate pay, job segregation, harassment, trafficking and discriminatory policies affecting vulnerable workers who may be unaware of their rights under the equal employment laws, or reluctant or unable to exercise them.



SEP Priorities

Addressing Emerging and Developing Issues

The EEOC will target emerging issues in equal employment law, including issues associated with significant events, demographic changes, developing theories, new legislation, judicial decisions and administrative interpretations.



SEP Priorities

Enforcing Equal Pay Laws

The EEOC will target compensation systems and practices that discriminate based on gender.



SEP Priorities

Preserving Access to the Legal System

The EEOC will target policies and practices that discourage or prohibit individuals from exercising their rights under employment discrimination statutes, or that impede the EEOC's investigative or enforcement efforts.



SEP Priorities

Preventing Harassment Through Systemic Enforcement and Targeted Outreach

The EEOC will pursue systemic investigations and litigation and conduct a targeted outreach campaign to deter harassment in the workplace.



Americans with Disabilities Act (ADA)

To be covered an individual must have

- a physical or mental impairment that substantially limits a major life activity,
- or have a record of such an impairment,
- or must be regarded as having such an impairment.



During an interview, can employers ask about a disability (verbally or on an application)?

Basic Rule:

The ADA does not allow you to ask questions about disability or use medical examinations until after you make someone a conditional job offer.



Interview Questions

Examples of what you can ask:

- Whether s/he has the right education, training, and skills for the position.
- Whether s/he can satisfy the job's requirements or essential functions (describe them to the applicant).
- How much time off the applicant took in a previous job (but not why), the reason s/he or she left a previous job, and any past discipline.



Interview Questions

Examples of what you should not ask:

- questions about an applicant's physical or mental impairment or how s/he became disabled (for example: questions about why the applicant uses a wheelchair);
- questions about an applicant's use of medication;
- questions about an applicant's prior workers' compensation history.



Background Checks

- Employers may ask you for all sorts of background information, especially during the hiring process.
 - For example, employment history, education, criminal record, financial history, or your use of online social media.
- Unless the employer is asking for medical or genetic information, it is not illegal to ask you questions about your background, or to require a background check.
 - (Employers are not allowed to ask for medical information until they offer you a job, and they are not allowed to ask for your genetic information - including family medical history - except in very limited circumstances.)
 - http://www.eeoc.gov/eeoc/publications/background_checks_employees.cfm



Background Reports

- Some employers hire entities to conduct "background reports."
Two of the most common are:
 - credit reports
 - criminal background reports.
- Special rules apply when an employer gets a background report from a company in the business of compiling background information.
 - Generally, written permission should be obtained **before** getting the report.
 - http://www.eeoc.gov/eeoc/publications/background_checks_employees.cfm



Background Reports (cont.)

- Second, if the employer decides not to hire or retain someone because of something in the report, it must provide a copy of the report and a "notice of rights" that tells how to contact the company that made the report.
 - This is because background reports sometimes say things about people that are not accurate, and could even cost them jobs.
 - http://www.eeoc.gov/eeoc/publications/background_checks_employees.cfm



Recommendations in Hiring and the Workplace

- Hire the most qualified candidates
- Be cognizant of conscious and unconscious biases
- Follow your procedures
- Make sure job postings match the job
- Check position descriptions and policies. *See Brown, v. Smith*, No. 15-1114, 2016 WL 3536619 (7th Cir. June 28, 2016).
- Have your HR professionals and managers stay informed
- Address issues! (*i.e.*, biases, harassment, bullying)
- Be consistent and know the pulse



For More Information

Visit us online at
www.eeoc.gov



Or contact
John C. Lowrie
(303) 866-1311
john.lowrie@eeoc.gov

10

Real Ethics in a Virtual World

Wednesday, August 3, 2016 | 8:30 am – 10:30 am

Real Ethics in a Virtual World

Daniel J. Crothers, Justice
North Dakota Supreme Court

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Ethical Duties

- ABA Rule Prof. Conduct 1.1, comment [8]:
 - “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject”

Lawyer’s Duty

- “A lawyer shall act with reasonable diligence and promptness in representing a client”

ABA Model Rule Prof. Conduct 1.3

Ethical Duties

- ABA Rule Jud. Conduct 2.5(A):
 - “A judge shall perform judicial and administrative duties competently and diligently”

Ethical Duties

- “A lawyer shall not reveal information relating to the representation of the client [unless certain exceptions apply]”

ABA Model Rule Prof. Conduct 1.6(a)

Ethical Duties

- Rule 1.6:
 - “(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client”

ABA Model Rule Prof. Conduct 1.6 (c)

Ethical Duties

■ Ethics Rule 1.6

- “Paragraph (d) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision.”

ABA Model Rule Prof. Conduct cmt. 18

Ethical Duties

■ Ethics Rule 1.6 “reasonable precautions”

- “The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (d) if the lawyer has made reasonable efforts to prevent the access or disclosure.”

ABA Model Rule Prof. Conduct cmt. 18

Ethical Duties

■ Rule 1.6 “reasonable efforts” factors?

- Sensitivity of the information
- Likelihood of disclosure without additional safeguards
- Cost of employing additional safeguards
- Difficulty of implementing safeguards, and
- Extent safeguards adversely affect lawyer’s ability to represent clients (e.g., by making a device or important software excessively difficult to use)

ABA Model Rule Prof. Conduct 1.6 cmt. 18

Ethical Duties

- “A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing”

ABA Model Rule Jud. Conduct 2.10(A)

Ethical Duties

- “A judge shall require court staff, court officials, and others subject to the judge’s direction and control to refrain from making statements that the judge would be prohibited from making”

ABA Model Rule Jud. Conduct 2.10(C)



Ethics

CLOUD COMPUTING

Cloud Computing

- What is it?
 - “noun: Internet-based computing in which large groups of remote servers are networked so as to allow sharing of data-processing tasks, centralized data storage, and online access to computer services or resources”

www.dictionary.com

Cloud Computing

- Court personnel regularly use personal laptop computers and iPads for judicial work
 - Work includes transferring case-related information between devices via Dropbox or iTunes, depending on the internet connection
- Any problems or concerns?

Cloud Computing

Can judges use cloud computing resources?

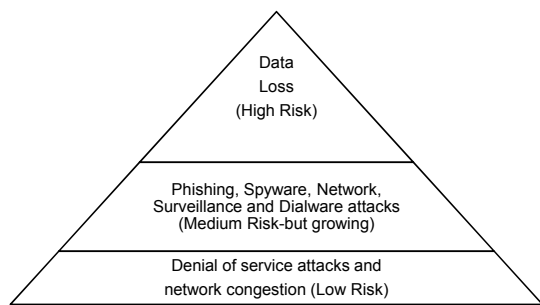
Do not know but lawyers can, usually...

- | | |
|--|--|
| ■ Alabama Bar Ethics Op. 2010-02 | ■ New York State Bar Ethics Op. 842 (2010) |
| ■ Arizona Bar Ethics Op. 09-04 | ■ Nevada Bar Ethics Op. 33 (2006) |
| ■ California Bar Ethics Op. 2010-179 | ■ North Carolina Ethics Op. 6 (2011) |
| ■ Connecticut Bar Ethics Op. 2013-07 | ■ North Dakota Bar Ethics Op. 1999-03 |
| ■ Florida Bar Ethics Op. 12-3 (2013) | ■ Ohio Ethics Op. 2013-03 |
| ■ Iowa Bar Ethics Op. 11-01 | ■ Oregon Bar Ethics Op. 2011-188 |
| ■ Illinois Bar Ethics Op. 10-01 (2009) | ■ Pennsylvania Ethics Op. 2011-200 |
| ■ Maine Bar Ethics Op. 207 (2008) | ■ Vermont Bar Ethics Op. 2003-03 |
| ■ Massachusetts Bar Ethics Op. 12-03 | ■ Virginia Bar Ethics Op. 1818 (2005) |
| ■ New Hampshire Bar Ethics Op. 2012-13/4 | ■ Washington Bar Ethics Op. 2215 (2012) |
| ■ New Jersey Ethics Op. 701 (2006) | |

Ethics

SMARTPHONES, TABLETS & OTHERS

Smartphones & Tablets



Ethics

INDEPENDENT INVESTIGATION

The Rule?

- “A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed”

ABA Model Code of Judicial Conduct 2.9(C)

The Rule?

- “The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic”

ABA Model Code of Judicial Conduct 2.9 cmt. 6

The Rule?

- “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (a) generally known within the territorial jurisdiction of the trial court or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”

United States R. Evid. 201(2)

Non-Exclusive Factors

■ Consider before internet researching:

- 1. Is the information easily available to litigants?
- 2. Has a case actually been assigned to the judge?
- 3. If 2 is "no," is it reasonably likely that the type of case will be assigned to the judge?
- 4. Is the information the type that would and could be the subject of a request for judicial notice?
- 5. Is the information akin to the definition of a word in a dictionary?
- 6. Is the information "background knowledge" of a type
 - Necessary to understand issues at trial?
 - Helpful to understand issues at trial?
 - Not reasonably likely to be evidentiary matters?
- 7. Are disclosure to the parties and the opportunity to be heard sufficient remedies?



Ethics

QR CODES

QR Codes

- Malicious QR code displayed
- Malicious QR code pasted over legitimate one
- Result:
 - Directs device to unsafe website
 - Installs app or software on device
 - Jailbreaks or root device and installs malware
 - Copies and transmits private, personal or confidential judicial information



Ethics

CYBERSECURITY

What is Cybersecurity?

- “[M]easures taken to protect a computer or computer system (as on the Internet) against unauthorized access or attack”

<http://www.merriam-webster.com/dictionary/cybersecurity>

Information at Risk

- Portable electronic devices:
 - Laptop computers
 - Tablet computers
 - Smartphones
 - Portable hard drives
 - Flash drives, CDs or DVDs
 - Printers or copy machines

Information at Risk

- Cloud computing dangers:
 - Information is transmitted over the internet
 - Information is stored on servers not owned or controlled by user
 - Servers can be located anywhere in the world
 - Information is available only when internet and third-party's servers are working
 - Information can persist after you "delete" it

Information at Risk

- Wi-Fi dangers:
 - Software to hack Wi-Fi networks is easily available on the internet
 - Rogue wireless access points can be hooked up by anyone, exposing entire computer network to unauthorized users

Information at Risk

- Other points of penetration or ESI loss:
 - Users opening maliciously linked emails, text messages or website links ("phishing")
 - QR codes linking to malicious websites
 - Transmitting documents containing metadata
 - Postings on social media, blogs or forums
 - Mixing client and personal data on BYOD

Precautions and Solutions

- Live in a cave and get off the grid
- Maintain all electronic devices
 - Current operating system
 - Meaningful password
 - Firewall to internet
 - Virus protection software
 - Consider encryption
 - Maintain timely backup of all data
 - Select WI-FI and cloud vendors carefully



Precautions and Solutions



Daniel Crothers
701-328-4205

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**Court Structure in Germany
and Technology Initiatives
in European Courts**

Thursday, August 4, 2016 | 8:45 am – 10:00 am

Curriculum vitae

of

Dr. iur. Ulrich Herrmann (married, two children 30 and 24 years old)

August 4th, 2015: Appointment to Presiding Justice of the Federal Court of Justice (Bundesgerichtshof = German Federal Supreme Court for Civil, Family and Criminal cases), Chairman of the IIIrd Civil Panel (jurisdiction for state liability, liability of notaries, service contracts, mandate law, law of private foundations and several other subjects)

Since March 2007: Beside the judicial tasks representative of the court for IT matters

December 10th, 2003: Appointment to Justice of the Federal Court of Justice, member of the IIIrd Civil Panel

December 1st, 2002: Vice president of the agency for legal exams of the state of Brandenburg

December 1st, 1999: Chief of staff of the Brandenburg Ministry of Justice

August 1st, 1998: Judge of the Higher Regional Court of Brandenburg, as presidential judge beside the judicial tasks responsible for the personal matters of the judges of the state of Brandenburg

November 1st, 1995: Appointment to Presiding Judge of the Regional Court of Frankfurt (Oder)

June 1st 1991 – July 31st, 1998: presidential judge of the Regional Court of Frankfurt (Oder) in the state of Brandenburg, beside the judicial tasks responsible for the personal matters of the judges of the district of the court

February 2nd, 1990: Appointment to judge, working at the Regional and the Local Court of Bonn

December 14th, 1989: Second legal state exam

February 3rd, 1986 – December 14th, 1989: state legal trainee

Spring 1984 – 1988: Assistant at the Institute of Civil Procedure and Insolvency Law of the University of Bonn, writing of the doctor thesis “Die Grundstruktur der Rechtshängigkeit” (“The principle structure of civil litispendency”)

February 9th, 1984: First legal state exam

Fall 1979 – winter 1983/1984: Law Studies at the University of Bonn

1966 – 1979: School

Born: July 2nd, 1960 in Bonn (state of North Rhine-Westphalia)