Newsletter of the

WESTERN DISTRICT OF WISCONSIN BAR ASSOCIATION

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Practice Tips Compliments of the Seventh Circuit

Several recent decisions of the United States Court of Appeals for the Seventh Circuit highlight the court's impatience with attorneys who fail to follow rules, or otherwise exercise questionable judgment. In the following paragraphs just a few important practice tips are highlighted.

District court decisions have little persuasive effect. In *RLJCS Enterprises, Inc. v. Professional Benefit Trust Multiple Employer Welfare Benefit Plan and Trust,* __F.3d__ (7th Cir., May 2, 2007) (Chief Judge Easterbrook) the court chastised counsel for debating the significance of a district court decision, stating:

> What's more, decisions of district judges have no authoritative effect. See, e.g., *Old Republic Ins. Co. v. Chuhak & Tecson, P.C.,* 84 F.3d 998, 1003 (7th Cir. 1996); *Colby v. J.C. Penney Co.*, 811 F.2d 1119, 1124 (7th Cir. 1987). District judges' opinions often contain persuasive observations, but these can be incorporated into the parties' briefs. It is never helpful to have an lengthy exchange on what a particular district court's opinion "really means" and whether that case was correctly decided. The parties should learn what the opinion has to teach and weave its wisdom into their own presentations.

Don't forget the appendix. In *A.M. v. Butler,* 360 F.3d 787 (7th Cir. 2004) (Judge Terence T. Evans) the court reminded counsel about the importance of compliance with Seventh Circuit Rule 30 which mandates that appellants provide an appendix containing important opinions cited. The court threatened dismissal of the appeal and imposed a $1,000 fine on the offending attorney (which was later rescinded).

Don't make "unnecessary and pointless" motions. In *Custom Vehicles, Inc. v. Forest River, Inc.*, 464 F.3d 725 (7th Cir. 2006) (Chief Judge Easterbrook), appellant filed a motion to strike portions of appellee's brief, rather than addressing the purported errors in appellants' reply brief. The motion was not authorized by rule, and was deemed "unnecessary and pointless" by the court. The court denied the motion, and ordered that the permissible length of appellant's reply brief would be shortened by 2,400 words, twice the length of appellant's "absurd" motion to strike.

Less than perfect jurisdictional statements may result in sanctions. *Magdalene M. Smoot, et al. v. Mazda Motors of America, Inc. et al.*, 469 F.3d 675 (7th Cir. 2006) (Judge Posner) involved an appeal of the dismissal of a diversity personal-injury lawsuit. The court chastised counsel for their imperfect jurisdictional statements, noting that the court has been "plagued by the carelessness" of many lawyers in the circuit with regard to the required contents of jurisdictional statements in diversity cases. The court announced "it is time . . . that this malpractice stopped," and directed the parties to show cause why they should not be sanctioned for violation of Rule 28(a)(1) and mistaking the requirements of diversity jurisdiction. The court instructed counsel to specifically consider the appropriateness, as a sanction, of compulsory continuing legal education in federal jurisdiction. *See also, Thomas v. Guardsmark, LLC*, No. 05-3865, 2007 WL 1598105 (7th Cir. June 5, 2007).

An instruction not to answer at deposition is only proper with an assertion of privilege. In *Erik Redwood, et al. v. Elizabeth Dobson, et al.*, 476 F.3d 462 (7th Cir. 2007) (Chief Judge Easterbrook), the court censured or admonished attorneys for their conduct at deposition. Despite the clearly improper nature of deposition questions, the court deemed the attorney's instruction not to answer such questions untenable, absent assertion of privilege.

Continued on next page

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(608) 283-2460 gte@quarles.com
Robert E. Shumaker, Vice President/ President-Elect
(608) 283-5602 res@dewittross.com
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(608) 283-1741 szylstra@boardmanlawfirm.com
Jennifer Sloan Lattis, Past-President
(608) 267-3519 lattisjs@doj.state.wi.us

Committee Chairs
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Jennifer Sloan Lattis, Co-Chair, Communications
(608) 267-3519 lattisjs@doj.state.wi.us
James Troupis, Alternative Dispute Resolution/ Co-Chair, Communications
(608) 257-3501 jrtroupis@mbf.com
David Harth, Pro Bono / Pro Se
(608) 663-7470 dharth@hewm.com
Theresa Andre, Membership
(608) 258-4235 tandre@foley.com
Richard Moriarty, Courthouse Facilities
(608) 267-2796 moriartyrb@doj.state.wi.us
Kenneth B. Axe, Rules, Practice & Procedure
(608) 286-7207 kaxe@lathropclark.com
Andrew Clarkowski, Website
(608) 283-6705 aclarkowski@axley.com

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Practice Tips

Continued from Previous Page

The court observed "a profusion of motions and cross-motions for sanctions—and the conduct underlying some of these motions—demonstrates the extent to which counsel have allowed personal distaste to displace passionate legal analysis" and concluded, "unless counsel maintains professional detachment decorum can break down."

The court instructed that the proper course would have been to stop the deposition and seek a protective order (with sanctions) relating to the questions designed to harass the witness pursuant to Rule 30(d)(4). In the court's words: "It is precisely when animosity runs high that playing by the rules is vital."

Don't be greedy. In *Budget Rent-A-Car System, Inc. v. Consolidated Equity LLC*, 428 F.3d 717 (7th Cir. 2005) (Judge Posner), the court vacated its previous Order granting a motion to award fees, describing the appellee's fee request to be "not merely excessive, but so exorbitant as to constitute an abuse of the process of the court asked to make the award." The appeal involved a four-page jurisdictional memo citing five cases at a cost of $4,626.50. The request for fees also sought $4,354.00 for preparing the sanctions motion and fees statement. The court found it "inconceivable that this is the going market price for such exiguous submissions." The statement of costs included a request for a $165 filing fee, which was actually the fee for admission of one of appellee's attorneys to practice before the court. The court noted that the "mischaracterization" undermined the validity of appellee's submissions.

Visuals speak louder than words. In *Frank T. Coffey v. Northeast Regional Commuter Railroad Corporation (Metra)*, 479 F.3d 472 (7th Cir. 2007) (Judge Posner), the court affirmed the dismissal, on a defendant's motion for summary judgment, of negligence claims brought under the Federal Employers Liability Act and alleged violation of the Locomotive Inspection Act. The court described the case as remarkable chiefly for the lack of investigation by plaintiff's attorney, criticizing plaintiff's attorney for failing to conduct even the perfunctory investigation that would have filled-in the "missing links" in the case. The Court lamented "the curious and deplorable aversion of many lawyers to visual evidence and exact measurements…even when vastly more informative than a verbal description." The court warned: do not "think a word is worth a thousand pictures."

Highlights of 2007 Annual Meeting

The 2007 annual meeting of the Western District of Wisconsin Bar Association was held on Friday, May 4.

The highlight of the program was a keynote address by the Honorable Richard D. Cudahy, senior Judge of the United States Court of Appeals for the Seventh Circuit. Judge Cudahy, who is also a former Commissioner and Chairman of the Public Service Commission of Wisconsin, reflected on his experience on the court since being appointed by President Carter in 1979.

Seventh Circuit Senior Judge Richard D. Cudahy was the Keynote Speaker for the Western District Bar Association Annual Meeting on May 4, 2007

Following lunch there was CLE program including a report from Clerk of Court, Theresa M. Owens, who reviewed statistics regarding the caseload in the Western District and also talked about plans for the new electronic case filing system scheduled to be implemented in early 2008.

Brady C. Williamson, Jr. presented a program titled "Iraq: A Legal Update." Richard Briles Moriaty and John W. Vaudreuil presented a program on "Supreme Court Trends & Cases—Civil and Criminal."

Lynn Stathas presented a program on "7th Circuit Pet Peeves (Don't Be This Lawyer)." Tim Edwards presented a program on "Federal Rule Changes & E-Discovery."

The final portion of the CLE program was a "Panel Discussion on Discovery: Practical Problems and Issues" with Hon. Stephen Crocker, James R. Troupis, and Sarah Anne Zylstra.

The formal program concluded with a question and answer session with Judge Crabb, Judge Shabaz, and Magistrate Judge Crocker. A reception followed.

New WDBA President Greg Everts presides at the Annual Meeting

WDBA President for 2006-07, Jennifer Lattis.

Board Welcomes Federal Public Defender

Michael W. Lieberman, Supervisory Associate Federal Defender, and head of the Western District office of the Federal Defender Services was elected to the Board of Directors in May. The Board is pleased to have the benefit of Mike's perspective as it enters the 2007-2008 term.

The Federal Defender Services has the chief mission of ensuring that criminal defendants are provided their Sixth Amendment Rights. Prior to the recent establishment of the office in the Western District, the court had relied solely upon community attorneys who accepted appointments for this important duty. While Criminal Justice Act attorney appointments will remain an important part of the federal criminal defense bar in the Western District, these are now overseen by the federal defender's office.

Western District News

Western District Bar Association
Post Office Box 44578
Madison, WI 53744-4578

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It is the mission of the Western District of Wisconsin Bar Association to promote the just, speedy, respectful and efficient determination of every action filed in the District Court: by acting as an effective liaison among the District Court, federal practitioners, litigants and the public; by encouraging, fostering and supporting educational opportunities that improve the practice of law in this District; and by serving the needs of the District Court, federal practitioners, litigants and the public.