



# Amicus

A newsletter for employees of the  
Supreme Court of  
Appeals of West Virginia  
Volume 25 Issue 1 January 7, 2011

In this edition...

Chief Justice Davis writes about the Courts' duty to our older citizens .....	2-3
CCJ/COSCA 2014 Conference to be held at The Greenbrier.....	6
2011 legal holiday schedule.....	5
Transitions .....	7-10
Links to older Amicus newsletters	

The IRS has announced the mileage reimbursement rate for vehicles has been increased from \$.50 per mile to \$.51 per mile.

## Supreme Court issues final version of Revised Rules of Appellate Procedure

On October 19, Chief Justice Robin Jean Davis announced that the Supreme Court of Appeals of West Virginia had promulgated the Revised Rules of Appellate Procedure and that the rules incorporate many changes suggested by the public during the sixty-day public comment period.

The rules went into effect on December 1, 2010.

“The final version of the rules incorporate many changes suggested by attorneys and citizens who submitted thoughtful and substantive comments,” Chief Justice Davis said. “The Court wishes to thank the hundreds of citizens who attended the informational seminars and those who read the proposed rules online and then took the time to tell us what they thought.”

To view the rules, visit the Supreme Court website at <http://www.state.wv.us/wvsca/Rules/appellate-revisions.htm>



## *From the Chief*

### **The Court and its officers have a duty to our oldest citizens**

Each year the Chief Justice of the Supreme Court of Appeals of West Virginia chooses a theme for the Court's focus. During my previous two years as Chief, I focused on ways to improve the lives of children through our Court's rules and administrative activities. The Court's role in making sure that families are whole, that their members are healthy and safe – both in West Virginia and throughout the nation – has dramatically increased due to myriad legislation during the last two decades.

In 2010, my focus has remained family-oriented. But I have changed my attention from the youngest members of our families to our oldest. For 2010 I have asked the court system and our Administrative Office to explore issues related to West Virginia's aging population. We have been meeting and collaborating with service providers and stakeholders to determine how West Virginia law and court processes can meet senior citizens' needs better.

Elder Law generally is grouped into three areas: income and asset protection, autonomy, and health care, which includes safety. We are working with the legislative and executive branches to make strides in all these areas.

The most insidious issue facing West Virginia's elders has to be threats to their safety. In June, I participated in West Virginia's observance of World Elder Abuse Awareness Day, an event that supported a United Nations International Plan of Action recognizing elder abuse as a public health and human rights issue.

What's so insidious about Elder Abuse? It encompasses physical, emotional, or sexual abuse; neglect; or financial exploitation. Any of these can be co-occurring. Elder abuse and neglect presents a challenge for law enforcement because the situations often go unreported and the officers discover them purely by accident when responding to unrelated calls.

Perpetrators of elder abuse and neglect are not easily identifiable. Some predators target vulnerable seniors and develop relationships with them for exploitative purposes. Those people

may appear as “Good Samaritans” to outside observers. However, perpetrators often are people who normally would not be suspected of illegal or even immoral behavior. They’re often people in a trusted relationship with the senior – such as a family member or a caregiver who is under a lot of stress.

The victims themselves may be resistant or unable to report incidents, or to cooperate when an allegation is under investigation. Elder abuse victims are often in a personal relationship with their abusers and reliant upon them for their care – both financial and health. Or there may be emotional reasons why they may not be able to achieve separation from their abusers.

Victims also can feel isolated, as if they’re the only people in the world going through what they’re experiencing. It is easy for an abuser to convince a victim of elder abuse that he or she “deserves it,” and that there is no way out.

Elder abuse occurs most often in private residences. But it does occur in facility settings. Elders are harmed by well-intentioned, but stressed caregivers, by people with mental health or other conditions who can’t control aggressive impulses, and by people with abusive intent.

Elder abuse has similar dynamics to domestic violence against more youthful victims. Abusers will lie, manipulate, be charming to law enforcement officers and others, and justify their behavior by blaming the victims. Still, caregiver stress is not an excuse for domestic violence or child abuse – so it should not be accepted as a justification for the crime of elder abuse either.

When investigating elder abuse, it is important to keep the focus on victim safety. It is important for courts, the Legislature, law enforcement, and service providers to work together.

Such joint work helped lead to new legislation in 2009 that overhauled West Virginia Code Chapter 44A, the Guardianship and Conservatorship Act. Whenever there is such a legislative change, it is the Supreme Court that must administer it throughout the court system in West Virginia. The Court is committed to carrying out the new administrative procedures outlined in the Act in a way that protects and preserves senior citizens’ rights and autonomy.

The changes in Chapter 44A were endorsed by several multi-branch working groups, including the Comprehensive Behavioral Health Care Commission, on which Supreme Court Administrative Director Steve Canterbury serves. A mental hygiene commissioner and a local practitioner helped draft the bill.

In addition to general “housecleaning” of the Code, changes were made in the following areas:

- Change of venue
- Posting bond
- Temporary protective orders
- Completion of filings at clerks’ offices
- Heightened confidentiality requirements for protected persons
- Service of process

- Legal counsel for recommending whether to appoint a guardian or conservator
- Clarification of what to include in orders
- Notice requirements
- Increased penalty for the misdemeanor crime in which someone appointed as a guardian or conservator violates the provisions governing reports and accounts of a person's assets
- A new requirement on parties, attorneys, and mental hygiene commissioners to report any instances of abuse – physical abuse or abuse of fiduciary duty – to the Department of Health and Human Resources or county prosecutor.

The Court also took over from the Department of Health and Human Resources the responsibility for providing educational materials to those who are appointed to be guardians and conservators. The Court also is providing more frequent and thorough review of accounts and reports that guardians and conservators file and is managing a fund exclusively for compensation of those who conduct these examinations.

Senior citizens compose a particularly vulnerable population. They often are made parties to court procedures only when someone else petitions a court to make financial and personal decisions on their behalf.

Attorneys dedicated to elder law know that the following egregious situations unfortunately can occur:

- Senior citizens lose their assets although even a cursory review of a conservator's report would have made a significant difference.
- Seniors' assets that could be protected sooner through a quick temporary protective order are not protected, for a variety of reasons.
- Conservators try to use old powers of attorney to sell property without prior approval of a court and then keep the money themselves.
- Seniors suffer because of months-long placements in inappropriate settings.
- Seniors die in poverty despite having once lived comfortably because conservators spend their assets frivolously.

The victims of these types of situations are among the people that we, as officers of the court, have an ethical duty to protect and help. It is important for all three branches of government to continue to work to improve the Guardianship and Conservatorship Act and its administration to ensure that the rights of everyone, in every case, are protected.

After all, if we're lucky, one day we'll all be seniors ourselves!



On Monday, November 15, Thirteenth Judicial Circuit Chief Judge Tod J. Kaufman, left, delivers the oath of office to Senate President and Acting Governor Earl Ray Tomblin while Joanne Tomblin holds a Bible during a private ceremony in the Governor's Office. *Photo courtesy of Martin Valent, WV Legislative Photography*

On Tuesday, November 16, Supreme Court Chief Justice Robin Jean Davis delivered the oath of office to Acting Governor Tomblin in a public ceremony held outside the Senate Chamber at the Capitol. Beside Acting Governor Tomblin are his wife, Joanne, and their son, Brent. *Photo courtesy of Steven Wayne Rotsch*

### 2011 Legal Holiday Schedule

<b>Martin Luther King Day, Monday, Jan. 17</b>	<b>Off same day</b>
<b>Presidents' Day, Monday, Feb. 21</b>	<b>Off same day</b>
<b>Memorial Day, Monday, May 30</b>	<b>Off same day</b>
<b>West Virginia Day, Monday, June 20</b>	<b>Off same day</b>
<b>Independence Day, Monday, July 4</b>	<b>Off same day</b>
<b>Labor Day, Monday, Sept. 5</b>	<b>Off same day</b>
<b>Columbus Day, Monday, Oct. 10</b>	<b>Off same day</b>
<b>Veteran's Day, Friday, Nov. 11</b>	<b>Off same day</b>
<b>Thanksgiving, Thursday, Nov. 24</b>	<b>Off Thur. 24 and Fri. 25</b>
<b>Christmas Day, Sunday, Dec. 25</b>	<b>Off Monday, Dec. 26</b>
<b>New Year's Day 2012, Sunday, Jan. 1</b>	<b>Off Monday, Jan. 2, 2012</b>

## West Virginia to host CCJ/COSCA conference in 2014

West Virginia will play host to the Conference of Chief Justices and Conference of State Court Administrators at its annual joint meeting in West Virginia in July 2014.

Chief Justice Robin Jean Davis made the announcement on December 15, 2010, in the Supreme Court Chamber.

About 150 Chief Justices and top court administrators along with their family members, as well as judicial educators, media personalities, and others are expected to attend the event at The Greenbrier in White Sulphur Springs.

“It is rare that the West Virginia Supreme Court is in the position to help the state’s economic development, but by bringing this highly sought-after conference here, we can do so,” Chief Justice Davis said. “This is a big catch for West Virginia and The Greenbrier.”

Greenbrier owner Jim Justice said, “We are absolutely honored to host these distinguished individuals on behalf of West Virginia. This is a tremendous opportunity for all of us to showcase the very best our state has to offer from the breathtaking mountain views to our friendly, welcoming people.”

Chief Justice Davis said the Court hopes that everyone who attends will return home and talk about how beautiful, hospitable and unique West Virginia is.

“Of course, we would like them all to come back for their personal vacations,” she said.

Supreme Court Administrator Steve Canterbury added, “This is the first time West Virginia has ever been selected to host this important annual meeting. We plan to make it the best one ever.”

The Conference of Chief Justices (CCJ) was founded in 1949. The Conference of State Court Administrators (COSCA) was established in 1955. Their membership is made up of the highest judicial officers and top state court administrators of each state; Washington, D.C.; Puerto Rico; the Northern Mariana Islands; American Samoa; Guam; and the Virgin Islands.

The CCJ discusses ways to improve the administration of justice, rules and methods of procedure, and the organization and operation of state courts and judicial systems. COSCA’s goal is to improve state court systems.



Administrative Director Steve Canterbury speaks during a news conference about the CCJ/COSCA conference while Chief Justice Robin Jean Davis looks on. *Photo by Michael Switzer*

# TRANSITIONS

## Justice Thomas E. McHugh is elected

Justice Thomas E. McHugh was elected to the unexpired term of the late Justice Joseph P. Albright on November 2.



Justice Thomas McHugh is sworn in by Chief Justice Robin Jean Davis with his wife, Judy, and twin sons, John and James, by his side.

*Photo by Michael Switzer*

Justice McHugh was appointed on April 8, 2009, by then-Governor Joe Manchin III to fill the vacancy on the Supreme Court left after Justice Albright's March 20, 2009, death. Justice McHugh had been sitting by designation as Senior Status Justice since September 11, 2008, when he was appointed to serve during Justice Albright's illness.

Justice McHugh will serve out the remaining two years of Justice Albright's term, which ends in 2012.

On December 16, Justice McHugh was sworn in by Chief Justice Davis in front of his wife Judy and their twin sons, John and James, and an audience of

dignitaries that included Acting Governor Earl Ray Tomblin, Secretary of State Natalie Tennant, Judge Robert King of the Fourth U.S. Circuit Court of Appeals, U.S. District Judge John Copenhaver, and more than a dozen members of the Legislature.

During the ceremony, Justice McHugh said it has been a pleasure to serve with all the current justices, whom he said are personal friends.

"I do believe so much in the important role of the judiciary in the state today," he said. "Every member of the judiciary believes very strongly in an independent judiciary and making decisions on the merits.

"Impartiality and fairness are not mere words. They really have to be the heart and soul of the judiciary," Justice McHugh said.

## Marion County Circuit Judge retires after forty years on the bench

Sixteenth Judicial Circuit Judge Fred L. Fox II retired from the bench on November 30 after forty years of serving the citizens of Marion County.

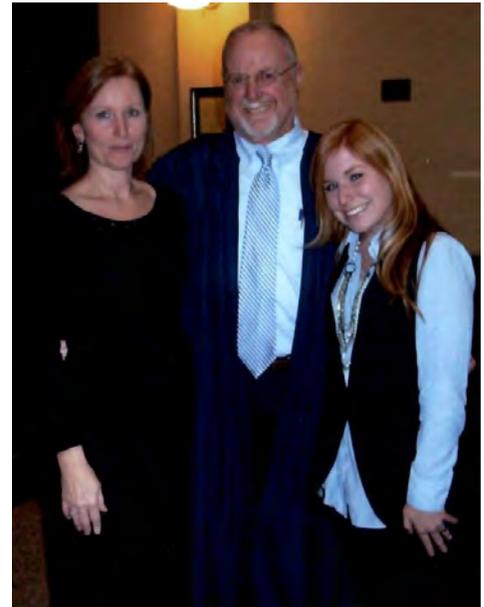
Judge Fox, 72, submitted his letter of resignation on October 13 to then-Governor Joe Manchin III. Judge Fox also sent copies of the letter to Chief Justice Robin Jean Davis and Administrative Director Steve Canterbury.

On December 1, 2010, Judge Fox became a Senior Status Judge and will continue to perform his judicial duties in the Sixteenth Circuit until his replacement is named by Acting Governor Earl Ray Tomblin.

The official application process for Fox's replacement will end January 10. Applicants will have until January 19 to submit recommendation letters and interviews will begin January 31.

The applications and letters will be submitted to an eleven-member judicial vacancy advisory committee made up of attorneys and business leaders from across the state. Legislation passed in September formed this committee to replace state judges. Under the new law, the group has 90 days to review the applications after the official seat vacancy and then submit recommendations to the governor. The governor will make the final appointment and does not have a set timeline for making the appointment.

The Marion County Commission on December 17 voted to rename the Division I Courtroom in the Marion County Courthouse the Fred L. Fox II Courtroom.



Judge Fred L. Fox shown with his wife, Debby, and daughter, Charlee. Photo provided by Marion County Circuit Clerk

## Kanawha County Circuit Judge Carrie Webster is elected



Judge Carrie L. Webster takes the oath of office from Kanawha County Chief Circuit Judge Tod J. Kaufman while her husband, Greg Skinner, holds a Bible. Photo by Jennifer Bundy

Judge Carrie L. Webster was sworn in as a circuit judge in the Thirteenth Judicial Circuit (Kanawha County) at a public investiture ceremony at noon on Friday, November 19, 2010.

Thirteenth Judicial Circuit Chief Judge Tod J. Kaufman administered the oath to Judge Webster in Courtroom Four, the historic courtroom on the second floor of the Kanawha County Courthouse.

Judge Webster was elected on November 2. She previously was appointed by then-Governor Joe Manchin III on December 2, 2009, to fill the seat left vacant by President

Obama's appointment of Judge Irene Berger to the federal court in the Southern District of West Virginia.

Before her appointment last year, Judge Webster had been a member of the House of Delegates since 2001 and chairwoman of the House Judiciary Committee since 2006.

## **Pleasants County Prosecutor new judge in Third Judicial Circuit**

Pleasants County Prosecutor Tim Sweeney was sworn in on December 30, 2010, as judge in the Third Judicial Circuit (Doddridge, Pleasants, and Ritchie Counties). He was appointed by Acting Governor Earl Ray Tomblin to fill the vacancy left by the death of Judge Robert Holland, Jr. in September.

Acting Governor Tomblin delivered the oath of office to Judge Sweeney in the courtroom at the Pleasants County Courthouse in St. Marys.

"As a judge, it's my responsibility to make good rulings in a timely fashion," Sweeney told the audience. "And that's something I pledge to do. With your help, and God helping me, we can accomplish the task."

Judge Sweeney served as Pleasants County prosecutor since 1985. He had been an attorney for nearly thirty years, including several years in private practice with law firms that include: White & Sweeney, Sweeney & Ballard, the Sweeney Law Firm, and nine years serving as the general counsel of Pleasants County Bank. He is the former president and general counsel for the Pleasants Memorial Estates and the St. Marys Motel, Inc.

Judge Sweeney is a past president of the West Virginia Prosecuting Attorneys Association, a 4-H Foundation volunteer and board member, and the president of the Pleasants County Library Board.

Judge Sweeney received a bachelor's degree in business administration from West Virginia University. In 1980, he earned his law degree from West Virginia University College of Law.

Judge Sweeney was one of three candidates selected by the Judicial Vacancy Advisory Commission. The eight-member commission considers applicants for judicial vacancies and gives the governor a list of qualified individuals. The governor then appointed someone based on the commission's recommendations. This is the first time the commission has made recommendations since its formation in September. Earlier in 2010, the Legislature approved a law, proposed by then-Governor Joe Manchin III, which required the establishment of the commission.

Judge Sweeney lives in St. Marys. He and his wife, Charlene, have four children: Daniel, David, Sarah, and Ben.

## **Fayette County has a new magistrate**

Former Fayette County Magistrate assistant Janet Wiseman became a Fayette County Magistrate on December 11, 2010, replacing Magistrate Mike Parsons, who is on medical disability.

Magistrate Wiseman was Magistrate Parsons' assistant before taking her oath of office on December 11. She then completed magistrate training and started her duties as a magistrate on December 15.

## In November 2010, the following counties elected new Circuit Clerks:

<u>County</u>	<u>Did Not Run</u>	<u>Newly Elected</u>
Braxton	J.W. Morris	Susan Frame Lemon
Grant	Betty Moomau	Nancy Berg Dayton
Hardy	Janet Ferrell	Kim Kimble Evans
Jackson	Keith Brotherton	Bruce DeWeese
Jefferson	Laura Ratteni	(had been appointed)
Logan	Alvis Porter	Vickie "Vance" Kolota
McDowell	Francine Spencer	(had been appointed)
Mineral	Mary M. Rinehart	Krista Johnson Dixon
Monroe	Julia Light	Leta Gullette
Pocahontas	Butch Michael	Connie Carr
Raleigh	Janice Davis	Paul Flanagan
Roane	Beverly Greathouse	Andrea Stockner
Wirt	Theresa Rollins	Carol Frame

## Three Justices give volunteer Court's highest honor

Justices Brent Benjamin, Menis Ketchum and Thomas McHugh awarded Wheeling resident Waneta Acker, 90, with the Court's highest award, The West Virginia Supreme Court Citizenship Award.

Ms. Acker accepted the award on September 25, during the Friends of West Virginia Northern Community College's annual dinner. Ms. Acker has dedicated herself to helping others. Some of the organizations she has volunteered with include Easter Seals, Bridgeport Child Study Club, Friends of the Northern Community College, and the Ohio County Relay for Life.

## Supreme Court Clerk to lead national association

West Virginia Supreme Court Clerk Rory Perry is preparing to lead the National Conference of Appellate Court Clerks in 2012 and 2013.

Clerk Perry currently is vice-president of the organization and will be president-elect next year. He previously has served on the executive committee and as program chairman.

The group, which was founded in 1973, includes clerks of both state and federal appellate courts.

"The National Conference has been a tremendous resource for me over the past few years, and I am proud to have the opportunity to serve in this national leadership position," he said.

## Upshur County Clerk accepting credit cards

The Upshur County Circuit Clerk's Office is one of two in the state that is accepting credit cards for payments. The West Virginia Supreme Court is sponsoring the pilot program in Upshur County and also in Kanawha County.

With this program, there are no fees attached to the payments. Upshur County Circuit Clerk Brian Gaudet said the program started at the beginning of October and payments are accepted for all transactions except for bonds. BB&T in Charleston operates the program.

## Court releases *The Time is Now* video during Adoption Month

Chief Justice Robin Jean Davis and Judge Gary L. Johnson of the Twenty-Eighth Judicial Circuit (Nicholas County) spoke at a dual-purpose press conference November 18. The Supreme Court used the event in the Court Chamber to announce the release of a new video and to celebrate National Adoption Month.



Twenty-Eighth Judicial Circuit Judge Gary L. Johnson.

*Photo by Michael Switzer*

*The Time is Now* video takes parents through the child abuse and neglect process under Chapter 49 of the W.Va. Code. The eighteen-minute film explains how the court system and professionals involved make reasonable efforts to work with parents and reunite families. It emphasizes that time is of the essence, and parents' rights may be terminated if it is in their children's best interests.

The video is intended to make the abuse and neglect court process less frightening for families "so they embrace the court system and know we are trying to reunify families. It motivates everybody in the family to work together to solve their problems," Chief Justice Davis said.

"Keeping families together is the primary goal. Most children want to be with their parents. But that is not always possible," said Judge Johnson, who is chairman of the West Virginia Court Improvement Program, which creates, identifies, and promotes initiatives that make the court system more responsible and efficient in achieving timely, safe, permanent placements for children that ensure their well-being and preserve due process for families.

Of the 4,285 children in foster care in West Virginia, more than 1,000 – or about a fourth – are waiting for adoption. Children "waiting for adoption" are age 17 or younger whose parents' rights have been terminated and/or who have adoption as their permanency plan.

*The Time is Now* may be viewed on the Court Improvement Program website, [www.wvcip.com](http://www.wvcip.com) or the Supreme Court of Appeals website, [www.state.wv.us/wvsca](http://www.state.wv.us/wvsca). Anyone who would like a copy of the video may contact the Division of Children's Services of the Supreme Court at (304) 558-0145.

*The Time is Now* was paid for by a CIP grant from the federal Administration for Children and Families and matching funds from the Supreme Court of Appeals of West Virginia.

## Robes to Schools: Still going strong

Judges and magistrates around West Virginia continue to embrace the idea of civic education in the *Robes to Schools* program sponsored by the Supreme Court. As they do, they find they enjoy visiting schools and universities to talk about the justice system as much as the students enjoy meeting them and learning about the courts.

Supreme Court Public Education Coordinator Kandi Greter and the Public Information Office would like to know when judicial officers visit schools and universities. Please-mail us at [kandi.greter@courtswv.gov](mailto:kandi.greter@courtswv.gov) and [jennifer.bundy@courtswv.gov](mailto:jennifer.bundy@courtswv.gov).

On October 12, Harrison County Magistrate Warren E. Davis spoke at Bridgeport High School for Career Day. He talked to the law class in which his son, Rafe Davis, is a student, and to the civics class. Magistrate Davis also spoke on Career Day to the fifth- and sixth-grade classes at Johnson Elementary School in Bridgeport, where his wife, Karen Davis, is the school secretary.

On October 14, Ninth Judicial Circuit Judge Omar Aboulhosn led about fifty students from Montcalm Elementary School on a tour of the new Federal Correctional Institution in McDowell County. The facility eventually will house 1,152 medium-security inmates and 128 minimum-security inmates.

Judge Aboulhosn regularly leads students on tours of the Mercer County Courthouse and once a year takes Montcalm Elementary sixth-grade students to the regional jail in Raleigh County. He has been a mentor to sixth graders at the elementary school for the last twelve years and this year has recruited other volunteers to expand his mentoring program throughout the county.

On October 15, Judge Aboulhosn also participated in Concord University's second annual career symposium.

Also in October and November, several judicial officers from Putnam and Kanawha Counties were guest lecturers at paralegal studies classes at the Kanawha Valley Community and Technical College in Institute. Twenty-Sixth Family Court Circuit (Putnam County) Judge William M. Watkins, III, lectured to the Introduction to Law class on October 6. Kanawha County Magistrate Julie Yeager spoke to the Introduction to Litigation class on October 12. Twenty-Ninth Judicial Circuit (Putnam County) Judge Phillip M. Stowers talked to the litigation class on November 2.

On November 10, Eleventh Circuit Family Court Judges presided over mock trials presented by high school students from around Kanawha County at the Robert C. Byrd United States Courthouse in Charleston. This is the sixth year that Family Court Judge Mike J. Kelly has written a mock trial scenario for county high school students that involves domestic violence, a topic Family Court Judges often handle and that, unfortunately, affects the lives of many students.

"Some of the students are as good as young lawyers," Judge Kelly said. "It gets very competitive. The feedback I get from the teachers is that the kids love it."

The Kanawha County program precedes, and complements, the West Virginia Supreme Court's *West Virginia Law Adventure* mock trial program for middle school students. Other Family Court Judges participating include Judge Ken D. Ballard, Judge Robert M. Montgomery, and Judge Sharon M. Mullens.



Eleventh Circuit Family Court Judge Mike Kelly talks with students during their mock trial performance. *Photo by Michael Switzer*

On Nov. 12, Thirteenth Judicial Circuit Judge (Kanawha County) Duke Bloom was a pronouncer for a spelling bee at Central Elementary School in St. Albans.

On December 7, Tenth Judicial Circuit Chief Judge John A. Hutchison spoke to a sociology class at Concord University's Beckley Campus. Instructor Lori Pace has invited the judge to speak to her fall criminology class for the last several years, and he in turn has invited her and the students to visit his courtroom and sit-in on sentencing days.

"He always allows time for the students to ask questions and better understand what they have seen and heard. My goal as the instructor is to connect the students to people in the criminal justice system and help them get away from the media influence and have a more realistic idea of the courts and judicial system," she said. "He has been great and always engages the students."

## **Magistrate Joe Roxby: Historian, re-enactor, author**

Ohio County Magistrate Joe Roxby spends every Labor Day weekend making history come alive as a participant in Wheeling's Fort Henry Days.

"If nothing else, it makes us (judicial officers) look like three-dimensional people," said Magistrate Roxby, who usually portrays a Revolutionary-era civilian while he mans the microphone and does the play-by-play during the two-day encampment on the grounds of Oglebay Park.

Magistrate Roxby is a past president of Fort Henry Living History, the group that organizes the annual re-enactment and Sept. 11, 1782, siege of Fort Henry. He co-wrote the book, *The Heroic Age, tales of Wheeling's Frontier Era* and a video entitled *Fort Henry Days: Defend or Perish*. The 135-page book was published about eleven years ago and it and the video, created by Shooters Productions in Bridgeport, Ohio, are available in the Wheeling area.

Fort Henry was located where the 1000 block of Main Street Wheeling is today. The wooden fort was used only from 1774 to 1782 but played a crucial role in the area's history. It withstood a British and Indian siege on Sept. 1, 1777, during which time Sam McCullough and his horse famously escaped capture by leaping from Wheeling Hill to water three hundred feet below; both survived. Patriots survived a second siege by British, Provincial, and Indian forces in 1782 with the help of 16-year-old Betty Zane, who made a successful 60-yard dash for gunpowder, bringing it to the fort from an outbuilding in her apron.

Magistrate Roxby is a lifelong resident of Ohio County who was a Wheeling Police Officer for 25 years before he was elected magistrate in 2008. During his years as a police officer, he was a long-time Highpower Rifle competitor (he also runs the Highpower matches at the Lewis Wetzel Rifle and Pistol Club) and a staff writer for *Precision Shooting* magazine. An assignment for that magazine sparked his interest in local history.

He was assigned to do a story on Lewis Wetzel, an Ohio River frontiersman who hunted Indians. That led to more stories related to frontier history, book reviews, and eventually Magistrate Roxby got involved in Fort Henry Days, now an annual historical festival.

"When these re-enactors come here, they really step into their roles. You have Indian re-enactors who will act like Indians for the entire weekend. You have French traders who take on that persona for the entire weekend. They sleep under the stars or in a small lean-to," Magistrate Roxby says in the video. "I don't know whether you call it all-immersion or role immersion, but it works."

# West Virginia State Courts Foreign Language Interpreters

## Policies and Procedures

- I. Mission Statement: West Virginia state courts are to provide foreign language interpreters and interpretation/translation services to all persons of Limited or No English Proficiency (LEP), including parents of non-LEP minors, in criminal or civil settings, in both preparation for and during all hearings, trials and motions, and in important interactions with court personnel. Interpreters are to be provided at no cost to the user, regardless of his or her ability or perceived ability to pay, as meaningful access to the courts is the right of all citizens, in particular LEPs under Title VI of the Civil Rights Act of 1964.
- II. West Virginia State Court Policies Regarding Interpreter Services (spoken language): The Administrative Office of the West Virginia Supreme Court of Appeals is building a qualified in-state interpreter corps. These in-state interpreters will ultimately be required to *qualify for service* by training and passing a certification test provided by the Consortium for Language Access in the Courts (CLAC.) Until West Virginia's LEP Services plan is fully integrated, however, the following procedures are to be followed. All instances implicating civil or other rights, (for example, where deportation, VISA status, green card status, or child custody is at issue) court personnel must arrange for an interpreter to be *present in person* to provide services for the LEP individual demonstrating need.

For **Spanish language interpretation services only**, make contact with and arrange services from current, in-state resources.

1. The party requiring services is to submit a Request for Foreign Language Interpreter/Translator Services (form SCA-C805 Rev. 04/2010.) **Note, however, that failure to submit a written request does not dispense of the right of the party, witness, parent, or other LEP person to interpretation or translation services.** The Request form is administrative in nature.
2. The judge's assistant or other designated person is to contact a Spanish language interpreter using existing resources. The AOS is maintaining a searchable Excel database of in-state interpreters, so if one exhausts his or her current resources for Spanish language interpreters, please contact Jennifer Singletary at (304) 340-2934 at the AOS for assistance in locating a Spanish interpreter.

3. Upon party agreement and determination that the selected interpreter is in no way related to, socially connected to or otherwise familiar with any party, witness, family member or other social connection involved in the case, the Judge shall issue and enter an Order of Appointment (form SCA-C807 Rev. 04/2010.) This Order identifies the LEP person, the interpreter, the LEP person's role in the proceedings, and determines an hourly fee for services.
4. Hourly fees for in-person Spanish interpreter services are set at the Judge's discretion. On average, foreign language interpreters are paid \$55 per hour plus travel expenses. The amount of reimbursement per mile traveled changes each year. For 2011, the reimbursement rate is fifty-one cents per mile, plus meal reimbursement at per diem rate, plus hotel if necessary.
5. At agreed-upon intervals or at the close or termination of need of service, the Judge is to submit a signed Invoice for Interpreter or Translation Service (form SCA-C803 Rev. 04/2010) along with entrance of a **timely** Order of Payment: Interpreter/Translator Service (form SCA-C804 Rev. 04/2010) by mail to the AOS Division of Financial Management, Bldg. 1, Room E-100, 1900 Kanawha Blvd., E, Charleston, WV 25305, or by fax at (304) 558-1212.

**For all languages other than Spanish, you must arrange with Fluent Language Solutions, INC., (Fluent) to provide an in-person interpreter in the above noted instances.**

Corporate Headquarters phone: 1-800-225-6056

Otto Zellman, Interpreter Manager: otto@fluentls.com

Customer Service: Tara Bland: tbland@fluentls.com

Corporate Contact: Matt Horgan, [mhorgan@fluentls.com](mailto:mhorgan@fluentls.com)

Please be prepared to provide the following information for Fluent:

- |                                 |                                       |
|---------------------------------|---------------------------------------|
| - Language requested            | - Assignment date and time            |
| - Estimated assignment duration | - Nature of assignment (hearing type) |
| - Case number                   | - Judge's name                        |
| - Consumer's name               | - Where to report                     |
| - Physical address              |                                       |

The hourly fee for invoicing, when Fluent provides an in-person interpreter, will be set by Fluent and approved/submitted in the usual manner by the Judge (Order of Appointment, Order for Payment accompanying invoice).

**For All Languages other than Spanish**, and in all other court proceedings and instances *not* involving civil or parental rights, use Fluent Language Solutions, INC., and arrange for video delivery of the interpretation services.

First, complete a “Video Interpreting Reservation Form” (copy attached)

Then, call Fluent at 1-888-225-6056 to reserve an interpreting session

The Fluent representative will request a fax or copy of the form to otherwise be transmitted to the location the representative specifies.

III. West Virginia State Courts Policies Regarding Translator/Translation Services (written language)

The following documents set a minimum standard for those documents which shall be provided in written translation for the LEP person’s first or native language:

1. Consent and complaint forms
2. Intake forms that have potential consequences
3. Notices of eligibility criteria, rights, denial, loss, changes/decreases in benefits
4. All Final Orders

For translation services, contact Fluent Language Solutions, INC.

**Document Translations:** Daniel Roux: [translations@fluentls.com](mailto:translations@fluentls.com)

IV. All grant applications, and any other similar correspondence implicating LEPs must contain the following language: “The Supreme Court of Appeals of West Virginia (WVSCA) makes every effort to ensure competent interpretation for all individuals exhibiting limited or no English language proficiency during all hearings, trials, and motions, and in important actions with court personnel. These services are provided indiscriminately at the Court’s expense, regardless of a user’s ability or perceived ability to pay for the services.”

Please call Jennifer Singletary, Director for Special Projects, with any questions or for additional assistance at (304) 340-2934.

## Treatment courts continue to flourish

Adult and juvenile treatment courts continue to open and celebrate graduations throughout West Virginia. The next opening is planned for 1 p.m. January 24 in Romney, when the adult drug court will open to serve the 22<sup>nd</sup> Judicial Circuit (Hampshire, Hardy, and Pendleton Counties).

Justice Brent D. Benjamin spoke at the treatment court graduations on December 14 in Cabell County and October 12 in Kanawha County, as he does at most drug court openings and graduations.

"There aren't many programs that get the bang for the buck that drug courts do," he told the audience in Kanawha County, according to a story in *The Charleston Gazette*.

West Virginia currently has eleven regional adult treatment court programs serving twenty-seven counties and ten juvenile treatment courts serving twelve counties. Six of those juvenile drug courts have been established since June 2010.

Kanawha County graduate Kelly Cottrell was one of two people who completed GEDs while enrolled in that program last year. "I just want to say thanks for everything. Drug court really has changed my life," she said.

James Paris, a Vietnam veteran, said the Kanawha County program broke his cycle of addiction. "Jail is not the answer, because when you go in as an addict you come out as an addict," he said.

"Part of what we do as judges is having the opportunity to serve the public," Seventh Judicial Circuit Judge Jennifer Walker told the Gazette. "I think it's important that we have a positive impact on people's lives. We take those individuals and treat them with dignity and respect, and we ask them to be honest with us."

Adult treatment court participants undergo substance abuse treatment and are heavily supervised by probation officers, law enforcement, and the sentencing court. If needed, they may also undergo treatment for mental illnesses. Participants may be forced to repeat certain phases if they have positive drug screens or if they refuse to cooperate. The judge may impose jail time if he feels it is necessary to make a participant follow the protocol.

Juvenile treatment courts operate in much the same fashion. A juvenile in a drug court program usually stays in the program an average of seven and a half months; each case is unique.

A juvenile drug court program costs about \$5,000 per participant for the entire span of time, compared to \$44,100 per participant to house a juvenile in the Olympic Center Preston substance abuse treatment center (\$245 a day for six months), or \$99,000 to house a juvenile in River Park Hospital in Huntington (\$550 a day for six months).

There are approximately 6,200 youths under court-ordered supervision at any given time in West Virginia. Annual probation reports indicate that since 2006, controlled substance violations are the third most common type of offense committed by juveniles, behind property offenses and assault and battery.

Heidi Flynn, Chief Probation Officer in Randolph County, which opened a juvenile drug court in early November, said she especially likes that the program requires parent participation.

Parents "are involved in every step of the treatment. It's not for the kids who are chronic substance abusers, with pills, marijuana and alcohol. It's trying to catch them before they reach that point. It can be a great tool for prevention," she told the *Inter-Mountain* newspaper of Elkins.

"These are courts that take a great deal of time and effort, but they're worth it because they work," Justice Thomas McHugh said October 15 at the opening of the Northern Panhandle Juvenile Drug Court in Weirton.

"Not everyone will succeed . . . but the cost of not trying is simply too high," Justice McHugh said, according to a story in *The [Wheeling] Intelligencer*.

## Sex Offender Intensive Supervision Officers Hired

The Supreme Court has hired another set of specialized sex offender intensive supervision officers, or SOISOs. The most recently hired officers work in Region Three, which consists of Brooke, Ohio, Hancock, Marshall, Wetzel, Tyler, Pleasants, Ritchie, Doddridge, Wirt, and Wood Counties.

Supreme Court Chief Justice Robin Jean Davis swore in the six new probation officers on Tuesday, November 9, in a ceremony in the Supreme Court Chamber.

Officers John Barker of Fairmont, Robert “Brent” Hurley of Wheeling, Team Coordinator Terry Layfield of Clarksburg, Sherri Krampe of Parkersburg, and Charles Rose and Michael Rose of Moundsville work under provisions of the Child Protection Act of 2006 (House Bill 101, passed June 14, 2006). The law requires extended supervision for sexual offenders, especially those convicted of crimes against children.

The officers' only duty is to provide extended supervision of sex offenders. They work out of their cars, not offices, and work holidays, weekends, and evening hours. The officers also work with circuit court judges and treatment providers to make sure offenders are complying with court orders.

The first group of sexual offender probation officers was hired in November 2008. The supervision program is being expanded one region at a time throughout the state. A total of thirty probation officers eventually will be hired to carry out provisions of the law. With the hiring of the most recent officers, there are now twenty-one SOISO officers in thirty-five counties.



From left: Terry Layfield, Michael Rose, Robert Hurley, Sherri Krampe, Caren Bills (Deputy Director of Probation Services), Charles Rose, and Mike Lacy (Director of Probation Services). *Photo by Michael Switzer*

## Business Court Committee holds public information forum

The Business Court Committee established by the Supreme Court held a public information forum in the House of Delegates Chamber on November 12 to hear from a North Carolina judge who is a national expert on business courts.

Judge Ben F. Tennille, Chief Special Superior Court Judge for Complex Business Cases in North Carolina, recommended in his speech that if West Virginia does establish such a court, the panel should be transparent, inclusive, and be designed to help small businesses.

Judge Tennille created one of the nation's first modern, statewide business courts after he took his position in January 1996. He helped found the American College of Business Court Judges and has been instrumental in helping other states develop business courts.

Judge Tennille said North Carolina's Business Court was first suggested by a state commission charged with improving the economy. The commission recommended it as a way to attract investment and create jobs, and it was later created by North Carolina Supreme Court rule.



Judge Ben F. Tennille Photo by Michael Switzer

The North Carolina Business Court is a specialized court division composed of Superior Court Judges who are appointed by the governor and designated to work on the business court by the Chief Justice. The business court has mandatory jurisdiction over certain types of cases: those involving a material issue related to the law of corporations, securities, antitrust law, state trademark, unfair competition, intellectual property as well as certain cases involving technology.

Other cases can be moved to business court through a Notice of Designation, including certain tax cases and disputes concerning the rates, terms, and conditions associated with the use of poles, ducts, and conduits of communication service providers. There are no dollar limitations and no waiver of jury trial is required. Consumer litigation is not allowed.

"I spend the vast majority of my time with small business," Judge Tennille said. "They create jobs and our economy relies on small businesses. These are the people who need our services more than anybody else."

Business courts are necessary because businesses and attorneys are becoming more specialized, access to electronic discovery information has expanded, and that has created a demand for judicial expertise, Judge Tennille said. Providing that expertise and a faster litigation process makes it more cost-effective for a company to do business in a state.

Business courts also are a good way for a court system to experiment with new technologies, like electronic filing, the judge said. "We realized we could not do our job without technology. I can run my business court off my iPad, and I sometimes do."

The Supreme Court of West Virginia established the Business Court Committee in its administrative conference in June 2010 in response to House Bill 4352, which the Legislature passed in March 2010.

Members of the West Virginia Business Court Committee are Circuit Judge Darrell Pratt of the Twenty-Fourth Judicial Circuit (Wayne County), Chairman; Circuit Judge Donald Cookman of the Twenty-Second Judicial Circuit (Hampshire, Hardy and Pendleton Counties); Circuit Judge Rudolph J. Murensky, II of the Eight Judicial Circuit (McDowell County); Circuit Judge James J. Rowe of the Eleventh Judicial Circuit (Greenbrier and Pocahontas Counties); Circuit Judge Susan B. Tucker of the Seventeenth Judicial Circuit (Monongalia County); Circuit Judge Christopher Wilkes of the Twenty-Third Judicial Circuit (Berkeley, Jefferson, and Morgan Counties).

Supreme Court Administrative Director Steve Canterbury said that while the November meeting was an informational forum, the committee likely will have future meetings at which public comment will be sought.



## Request to Chief Circuit Judges' secretaries

The Administrative Office is requesting all chief circuit judges' secretaries advise Mary Greene who the chief judge will be in 2011 so the AO has accurate information for the multi-judge circuits.

Please contact Mary no later than January 31, 2011, by calling 304-558-0145 or e-mail [mary.greene@courtswv.gov](mailto:mary.greene@courtswv.gov).

## United States Senate Youth Program visits Court

The United States Senate Youth Program was established in 1962 by U.S. Senate Resolution. It is a unique educational experience for outstanding high school students interested in pursuing careers in public service. The 49th annual program will be held in Washington, D.C., from March 5 - 12, 2011. Two student leaders from each state, the District of Columbia, and the Department of Defense Education Activity will spend a week in Washington experiencing their national government in action.



Pictured from left to right, front row: Kandi Greter, Ryan Zahalka, Eva Guidarni, Priscilla Haden, (State Board of Education), Justice Thomas E. McHugh, Justice Menis E. Ketchum. Back row: Betty Jo Jordan, (Department of Education), Zack Asbury, Thomas "T.J." Lucas, Colin Frosch, Sean Hill, (Secretary of State's Office), Tom Tinder, (West Virginia Bar Foundation). *Photo by Jake Glance, Secretary of State's Office*

# Toys for Tots

The Marines from Alpha Company 4th Combat Engineer Battalion in Cross Lanes collected Toys for Tots from the Supreme Court at the Court's fall *sine die* ceremony on November 23. Deputy Clerk Eydie Gaiser, coordinated the toy collection for the Court, as she has the previous five years.



Sgt. Juan Ovalle, 25, of New York City; Deputy Supreme Court Clerk Eydie Gaiser; Staff Sgt. Don Snyder, 27, of Los Angeles pose in front of toys collected by Supreme Court employees. *Photos by Michael Switzer*



Director of Probation Services, Mike Lacy, second from left, presents Roger Beverage, left, with the 2010 Probation Officer of the Year Award. Next to Mr. Lacy is Vice President of the Probation Officers Association Danica Burrett and far right is Association President Kevin Runyon. *Photo by Jennifer Bundy*

Probation Officers from around the state donated \$3,000 in toys to Mountain Mission on October 21 during their fall conference at the Charleston Marriott Town Center. The toy donation is part of the officers' annual training meeting, which is held in a different location each year.

The toys were given to the charity during an annual awards luncheon that was attended by Justice Menis Ketchum and Justice Thomas McHugh. This is the fourth year the probation officers have done a toy donation. Cabell County Probation Officer Kevin Runyon said there is a need for the toys in each area in which the group meets. "We enforce rules on people in legal trouble," Mr. Runyon said. "When we meet once a year, we decide to hold a toy drive to help those less fortunate and to show a softer side."

About 230 probation officers attended the Charleston meeting.



## Probation officers receive awards for service

Roger Beverage, Chief Probation Officer of the Twenty-Eighth Judicial Circuit (Nicholas County), received the 2010 Probation Officer of the Year award during the annual West Virginia Association of Probation Officers awards luncheon at the Charleston Marriott Town Center on October 21.

Mr. Beverage has been a probation officer since December 19, 1977, when he began as a



Nicholas County Probation Officer Roger Beverage speaks after being awarded the 2010 Probation Officer of the Year award. Photo by Jennifer Bundy

juvenile officer under the Department of Welfare in Nicholas County. On January 7, 1985, he was appointed adult probation officer through the Supreme Court in Nicholas County. He previously had been an income maintenance worker with the Department of Welfare in Webster County, and he held various positions such as foster care worker and child protective service worker in both Webster and Nicholas Counties.

Mr. Beverage has been instrumental in developing and receiving funding for many programs within Nicholas County such as the DARE Program, the Community Service Program, the local Court Improvement Program, the Day Report Center, the Home Confinement Program, and the Nicholas County Litter Control Program. He is the executive director of the Nicholas County Day Report Center and the community services supervisor for the Twenty-Eighth Judicial Circuit.

Mr. Beverage is a 1966 graduate of Richwood High School and a 1970 graduate of the West Virginia Institute of Technology in 1970. While employed by the Supreme Court, he received a Master of Arts Degree in Correctional Counseling through the University of West Virginia College of Graduate Studies in 1991 and a Master of Arts Degree in Leadership Studies through Marshall University in 1997.

He enlisted in the West Virginia Army National Guard in 1970 and retired with the rank of State Command Sergeant Major for the state of West Virginia; the highest rank that can be obtained by an enlisted soldier within the National Guard. Between December 2003 and February 2005 he was deployed to Iraq where he oversaw convoy security.

About 230 probation officers from across West Virginia attended the annual mandatory training session during which Mr. Beverage received his award. Also receiving awards at the same luncheon were

- Debra Fogle and James Lee for thirty-five years of service,
- Phyllis Stewart for thirty years of service,
- Fletcher Bowden, Diana Castle, Mark Hofe, and Fred Taylor for twenty-five years of service,
- Jane Barnes, Nona Black, Jerry Swanson, and Deborah Wiles for twenty years of service
- Charlotte Crowe and Charles McCann for fifteen years of service,
- Danica Barrett, Jawanda Gravely, Scott Mealy, Kevin Runyon, Robert Taylor, Manda Teter, and Franklin Wolfe for ten years of service,
- And retirees Judson Childs, Susan Christian, and Fletcher Bowden.

## Supreme Court Probation Officer is also Mrs. West Virginia

Hardy County Probation Officer Manda Teter wears many hats, but one is unique for this court employee: Mrs. Teter is the reigning Mrs. West Virginia.

"I really didn't know (what to think). I was so excited, I wanted to scream really loud and jump up and down," Mrs. Teter said of the day she found out she would assume her title. She was the first runner-up in the February 2010 competition. Last summer, she got a call that the winner was stepping down, and she would represent West Virginia in the 2010 Mrs. America Pageant in September.

When Mrs. Teter got the call, she said she had to sit down. "I was so shocked."

Growing up, Mrs. Teter says she was more a sports player than a beauty queen. She went to college on a volleyball scholarship. She attended Potomac State for two years and then transferred to Glenville State. She also threw shot and discus at track meets. Before the Mrs. West Virginia pageant, she had only been in one other beauty pageant, and that was in high school.

As Mrs. West Virginia, Mrs. Teter visits schools to promote music and teach children how important it is to have a music education. She also is working to fight childhood obesity and find good homes for homeless pets.

"We try to help the community. The biggest thing I have done is emceed several pageants. We just try to help our communities."

Mrs. Teter started her career as a probation officer in January 2000. She worked in Pendleton County before working in Hardy County. She is a lifelong resident of Franklin and is married with one five-year-old son.

"The best part of my job is helping people," Mrs. Teter said. "That is why I took this job."

Her work and pageant worlds only recently collided for the first time. A juvenile she once monitored on probation was in a pageant she was emceeding. Mrs. Teter said she was a little worried at first what the girl and her family's reaction would be, but everything was fine.

"It was neat to see the girl in the pageant. She looked so beautiful. It shows you anybody can be a queen."

That is the message Mrs. Teter wants all young girls she meets during her reign to remember, that if being in pageants is your dream, go for it.

"If there is any female that thinks they can't do it, and they really want to deep down, they should do it. It's been a wonderful experience for me. I hate to see March come, to give my crown up."



Hardy County Probation Officer and Mrs. West Virginia Manda Teter. Photo by Jennifer Bundy

## Family Court Parent Education Invoicing Forms have changed

Due to changes in the invoicing requirements, new invoice forms have been distributed to the Parent Educators, Parent Education Coordinators, Security Guards, and Family Court Staff along with a memo explaining the changes. Effective January 1, 2011, only new invoices will be accepted for processing payments. All outdated forms submitted will be returned to the vendor for correction. We ask that all Family Court office staff make the forms available to their Parent Education vendors.

Photos from the Circuit Judges Fall Conference in Martinsburg, and the Family Court Judges and Magistrates Conferences in Charleston.



**Administrative  
Office  
celebrates  
Pink Day  
during the  
month of  
October**



Top: Items brought in for Pink Day Raffle  
Left: Justice Thomas H. McHugh draws names from a jar for the Pink Day Raffle with assistance from cancer survivor and Deputy Director of the Administrative Office Kathleen Gross  
Bottom: Administrative Office employees pose for a picture during the Pink Day luncheon.  
*Photos by Debbie Henley*

