

Materials Submitted
in Support of Application to Receive
Continuing Legal Education Credit for:

***“Increasing Diversity Among
Federal Magistrate Judges”***

April 12, 2016

4:00pm to 5:15pm

U.S. Courthouse, J. Waties Waring Judicial Center

Hon. Sol Blatt, Jr., Courtroom

83 Meeting Street, Charleston, S.C.

THE FEDERAL MAGISTRATE JUDGES ASSOCIATION
The FMJA Board and Diversity Committee
PRESENT a free CLE:
INCREASING DIVERSITY AMONG FEDERAL
MAGISTRATE JUDGES

Please join members of FMJA's Diversity Committee for a conversation with esteemed Federal Judges and colleagues as we discuss the significance of diversity on the bench, efforts to increase diversity among Magistrate Judges, the path to becoming a Magistrate Judge, life as a Magistrate Judge, and more!

DISTINGUISHED SPEAKERS:

The Honorable Leo Brisbois

U.S. District Court Magistrate Judge, District of Minnesota – Moderator

The Honorable Joseph Riley

Former Mayor of Charleston – Introductory Remarks

The Honorable J. Michelle Childs

U.S. District Court Judge, District of South Carolina (Columbia) - Panelist

The Honorable Kaymani D. West

U.S. District Court Magistrate Judge, District of South Carolina (Florence) - Panelist

The Honorable Mary Gordon Baker

U.S. District Court Magistrate Judge, District of South Carolina (Charleston) - Panelist

Mr. Matthew Hubbell, Esq.

Chair of the Magistrate Judge Selection Committee, District of South Carolina (Columbia) - Panelist

When: Tuesday, April 12, 2016; 4:00 to 5:15pm | check-in begins at 3:30pm
Cocktail reception from 5:15pm to 6:30pm in the Courthouse

Location: U. S. Courthouse, J. Waties Waring Judicial Center
83 Meeting Street, Charleston | Hon. Sol Blatt, Jr. Courtroom

Register: Space is limited. Register by April 4, 2016. Contact Nick Bianchi for questions and registration via email at Nick.Bianchi@usdoj.gov

Supported by:

U.S. District Court, District of South Carolina
Federal Bar Association of the District of South Carolina
1.25 CLE Credits - South Carolina

Presenting and Supporting Organizations

The Federal Magistrate Judges Association is composed of active, retired and recalled United States Magistrate Judges. The purpose of the FMJA is to promote the efficient administration of justice, to protect integrity, dignity, independence, and impartiality of the federal judiciary and to educate the public about the important role that federal magistrate judges play in criminal and civil cases that come into the federal court system.

The United States District Court for the District of South Carolina is the federal district court whose jurisdiction is the state of South Carolina. Court is held in the cities of Aiken, Anderson, Beaufort, Charleston, Columbia, Florence, Greenville, and Spartanburg. Appeals from the District of South Carolina are taken to the United States Court of Appeals for the Fourth Circuit.

The Federal Bar Association – South Carolina Chapter was initially chartered in 1964 with subsequent charters being issued in 1975 and 2001. While it maintains its original purpose, it continues to grow and evolve, currently serving more than 200 members from private practice, government agencies, military branches, local law schools, and the courts. The chapter is committed to serving as the liaison among federal lawyers and judges.

Panelists and Panelist Biographies

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Panelist

Hon. LEO I. BRISBOIS – SUMMARY BIOGRAPHY (as of 2/24/16)

Magistrate Judge Leo I. Brisbois currently serves as a United States Magistrate Judge for the U.S. District Court, District of Minnesota. He was sworn in as a Magistrate Judge on August 30, 2010. He is principally chambered at the Gerald W. Heaney Federal Building and U.S. Courthouse and Customhouse in Duluth, MN, but he also regularly hears cases at the Federal Courthouses in Minneapolis and Fergus Falls, MN.

Magistrate Judge Brisbois is a member of the bar of the Minnesota State Supreme Court, the United States District Court for Minnesota, the 8th Circuit Federal Court of Appeals, and the United States Supreme Court.

Magistrate Judge Brisbois was born in Aurora, Minnesota, on October 6, 1961. He is the son and grandson of enrolled members of the White Earth Band of Ojibwe Indians. Magistrate Judge Brisbois grew up in Hibbing, MN, and graduated from Hibbing High School in 1980. He graduated (*magna cum laude*) with a Bachelor of Arts Degree from Hamline University in St. Paul, MN, in 1984. In 1987, he graduated 19th in his class (*cum laude*) from Hamline University School of Law.

After graduating from law school, Magistrate Judge Brisbois served as a trial counsel prosecuting criminal cases from 1987 to 1990 with the Judge Advocate General's Corps, United States Army, Europe. He received several awards and commendations during his military service. Following his active duty military service and another year clerking for the Minnesota Intermediate State Court of Appeals, Magistrate Judge Brisbois joined the Minneapolis firm of *STICH, ANGELL, KREIDLER, DODGE & UNKE, P.A.*, in August 1991. His private practice principally involved litigation and appellate work for insurance companies and corporate clients in the areas of personal injury, product liability, construction litigation, employment discrimination and insurance coverage disputes. He also regularly served as an arbitrator for the American Arbitration Association, as a Conciliation Court Judge for the Hennepin County District Court, and he provided services as a private mediator upon request. Magistrate Judge Brisbois was also appointed by the Minnesota State Supreme Court to serve from January 2007 to August 2010 as a member of the Minnesota Commission for Judicial Selection which conducts merit interviews and recommends individuals to the Governor for possible appointment to fill judicial vacancies on the Minnesota State District Court. Magistrate Judge Brisbois served as the President of the almost 17,000 member Minnesota State Bar Association from July 1, 2009 to June 30, 2010.

Magistrate Judge Brisbois is a member of the Minnesota American Indian Bar Association, the National Native American Bar Association, the Minnesota State Bar Association, the Douglas K. Amdahl Inn of Court, the Federal Bar Association-MN Chapter, the Federal Magistrate Judges Association, and the American Bar Association where he presently serves on the Executive Committee of the National Conference of Federal Trial Judges. He is also a past member of the Minnesota Defense Lawyers Association, the Defense Research Institute, and the National Conference of Bar Presidents.

Magistrate Judge Brisbois is married and has two children.

Joseph P. Riley, Jr.

Joe Riley was first elected mayor of Charleston in December 1975, and went on to serve an unprecedented ten terms. During Riley's forty-year tenure as mayor, the City of Charleston saw a substantial decrease in crime, a revitalization of the historic downtown business district, the creation and growth of Spoleto Festival U.S. A., an expansion of the city's park system, and the development of nationally-acclaimed affordable housing. An important part of Riley's legacy will be his leadership prior to and during the aftermath of the Emanuel Nine shooting; Mayor Riley spent his entire public service career building bridges among diverse sectors of the community, which many consider important groundwork that aided the city's response to the tragedy. A recipient of numerous awards, Mayor Riley received the Outstanding Mayors Award from the National Urban Coalition and the Distinguished Citizen Award by the National Association of Realtors. He received many awards for urban and community design and was named the 1991 Municipal Leader of the Year by American City & County. He has received the Order of the Palmetto, was named South Carolinian of the Year, and was given the 1982 Elizabeth O'Neill Verner Award by the S.C. Arts Commission for outstanding contributions to the arts. Along with Governor Nikki Haley, he was the joint recipient of the Riley Institute's 2015 Wilkins Award for Excellence in Civic Leadership. At the end of his final term as Mayor in January of 2016, he joined the faculty of The Citadel as the first occupant of an endowed Professorship of American Government & Public Policy created in his honor with the mission of documenting, and teaching, lessons of principled, bipartisan, and effective leadership in pursuit of excellence for the public good.

Judge Childs was appointed to the United States District Court for the District of South Carolina in August 2010. She holds a B.S. in Management from the University of South Florida Honors College, a J.D. from the University of South Carolina School of Law and a Masters in Personnel and Employment Relations from the University of South Carolina's Darla Moore School of Business. She is currently enrolled in the Masters of Judicial Studies Program at Duke University.

Prior to the federal court she served as an At-Large Circuit Court Judge, including having responsibilities as the Chief Administrative Judge for General Sessions and Business Court for the Fifth Judicial Circuit of Richland and Kershaw Counties. Judge Childs also had the distinct honor of gubernatorial appointments as a Workers' Compensation Commissioner (2002-06) and as the Deputy Director for the South Carolina Department of Labor, Licensing and Regulation's Division of Labor (2000-02) overseeing programs for Wages and Child Labor, OSHA, OSHA Voluntary Programs, Elevators and Amusement Rides, Migrant Labor, and Labor-Management Mediation. Judge Childs was formerly a partner with the law firm of Nexsen Pruet Jacobs & Pollard, LLP, in Columbia, South Carolina, where she practiced in the areas of employment and labor law and general litigation. Judge Childs is very active with various local, state and national bar organizations, and community organizations.

As a practicing lawyer and judge, she has lectured and served frequently on panels for topics regarding litigation and trial techniques, courtroom practices and procedures, discovery and expert witness issues, evidence, and various topics for new lawyers.

U.S. Magistrate Judge Kaymani “Kay” West was appointed to the bench on January 1, 2012, and serves in the Florence Division of the District of South Carolina.

Judge West earned her Bachelor of Arts degree, *summa cum laude*, from Columbia College in Columbia, South Carolina, and her Juris Doctor degree from the University of South Carolina School of Law. After graduating from law school, she served for one year as judicial law clerk to The Honorable Joseph F. Anderson, Jr., U.S. District Judge for the District of South Carolina. She then began practicing law with the civil defense law firm of Nelson Mullins Riley & Scarborough in Columbia, South Carolina, where she was a partner at the time of her judicial appointment. Active in the profession, Judge West is a member of the South Carolina Bar; the American Bar Association, where she serves on the editorial board for the Tort Trial & Insurance Practice Section (TIPS) publication *The Brief*; and the Federal Bar Association, where she served as President of the South Carolina Chapter from 2009-2010.

MARY GORDON BAKER

Mary Gordon Baker is a native of Charleston, South Carolina and graduated from the University of South Carolina with a B.A. in political science in 1981. Ms. Baker attended the University of South Carolina Law School from 1983 to 1986.

After graduation from law school, Ms. Baker worked as an associate at Nexsen, Pruet, Jacobs & Pollard in Columbia, South Carolina, where she practiced law for four years. Her practice areas were business litigation and the defense of civil rights actions. While at Nexsen, Pruet, she worked on the Pro Bono subcommittee of the South Carolina Bar and worked with Young Lawyers' Division of the South Carolina Bar.

She left private practice in June of 1990 for a position as an Assistant U.S. Attorney at the U.S. Attorney's Office in the criminal division. She served as a Senior Litigation Counsel and as a Deputy Chief of the Criminal Division while with the U.S. Attorney's Office. She served as First Assistant U.S. Attorney from March of 1997 until November of 2001. She served on the Attorney General's Advisory Committee in 2000 and 2001. She worked at the U.S. Attorney's Office until September of 2006.

From October of 2006 through June of 2013, she served as an Assistant Federal Public Defender in Charleston. Mary Gordon retired from federal service in 2013 and joined the law firm of Duffy & Young in Charleston. She was appointed United States Magistrate Judge in January of 2015.

HUBBELL LAW FIRM, LLC

MATT HUBBELL, ATTORNEY AT LAW

With well over 20 years of litigation experience, Matthew R. Hubbell defends clients in white-collar criminal prosecutions, False Claims Act litigation, and enforcement proceedings. As an Assistant United States Attorney in South Carolina from 1991 to 2000, he prosecuted complex white collar cases. Since 2001, Hubbell has represented companies, corporate executives, and other individuals in federal and state white collar matters, including antitrust, health care, environmental, tax, bank fraud, and securities cases. He regularly represents clients in internal investigations, grand jury investigations, and trials.

Hubbell is the President-Elect of the South Carolina Chapter of the Federal Bar Association and Co-Chair of its newly created Qui Tam Practice Group. He also serves on the Board of the FBA's national Qui Tam section, and as an officer of the Health Care Law Section of the South Carolina Bar. Hubbell has an AV rating from Martindale-Hubbell and is a permanent member of the Fourth Circuit Judicial Conference. He has co-authored several books regarding white-collar criminal law, including *Health Care Fraud and Collateral Consequences, 2d Edition* (S.C. Bar 2011), *Federal and State Securities Enforcement* (S.C. Bar 2008), and *Computer and Intellectual Property Crimes* (S.C. Bar 2003). Hubbell has also served on the Executive Committee of the Charleston County Bar, and he recently served as Chair of the Merit Selection Panel for the United States Magistrate Judge in Charleston.

General Outline for Program Presentation

I. Introduction by Moderator

Thank You to all Sponsors/Supporters:

Thank You to and Introduction of Panelists:

[By Name, Title, Position only – later a detailed bio/intro used as part of program]

Thank You to audience for their attendance and recognition of the important of diversity on the Federal Bench (especially, the Magistrate Judge's Bench)

II. A. Why Diversity on the Bench is Important – Philosophical

1. "Special Guest" introductory remarks regarding importance of diversity.

The Hon. Joseph P. Riley, Jr., Mayor of Charleston, SC (retired).

2. "Actual Justice" and "Perception of Justice" – what are they and are they interrelated?

Actual Justice = arriving at the correct results as best as possible based upon the facts and the law without the interjection of passion or prejudice.

Perception of Justice = that the parties feel they had a full and fair opportunity to be heard and were respected by the Court regardless of the outcome.

Each is a necessary element of the continued vitality of the "Rule of Law" upon which our societal foundation relies. "Actual Justice" can be strived for, but the public's acceptance of the result (i.e., adherence to the "Rule of Law") can be nonetheless undermined by a negative "Perception of Justice."

For litigants from communities of color, the "Perception of Justice" can also be impacted by the diversity of the Court before whom they appear. Minnesota State Courts as an example:

- (1) @ 315 Judges and Justices at all levels of the State Court;
- (2) Nearing gender parity on the State Court, but less than 30 Judges and Justices who are from communities of Color;
- (3) Minnesota State Courts routinely ranked nationally in the top 5 for impartiality and competence among state court systems;
- (4) Minnesota population demographic as of 2010 was @ 86 % majority and 14 % minority;
- (5) United States population demographic as of 2010 was @ 77 % majority and 23 % minority;
- (6) By @ 2050, the United States population demographic will become more than 50 % minority.

Polling - -

In @ 2005 - 2006, the Minnesota State Courts undertook to survey the citizens' view of the State Courts. [Keeping in mind that national surveys ostensibly view the Minnesota State Courts as delivering "actual justice,"] when considering all respondents, @ 80% of the citizens polled perceived the Minnesota State Courts as fair and impartial, but, [keeping in mind that only @ 10 % of the Judges and Justices on the state bench are from communities of color,] when considering only respondents from communities of color, only @ 50 % of those citizens polled perceived the Minnesota State Courts as fair and impartial.

Therefore, the Minnesota State Courts' experience, as an example, suggests how the membership of any judicial bench [i.e., including the Federal Bench] that is not reflective of the diversity in the society as a whole served by that bench can negatively impact the public's "Perception of Justice" even where that bench is otherwise seen as delivering "Actual Justice."

B. *Why Diversity on the Bench is Important – In Practice*

Opportunities to serve for qualified individuals from communities of color

Magistrate Judge service as potential part of pipe line for consideration of qualified individuals from communities of color as possible Article III Judges

Briefly discuss statistical reporting by the *Office of Fair Employment Practices, Administrative Office of the U.S. Courts, Washington, D.C.*, which reflect the present status of diversity on the Federal Bench at all levels.

[*Example from similar prior public data available as to Federal Magistrate Judge's Bench in regard to diversity:*

(As of 2007) @ 514 authorized full-time Magistrate Judge positions

Total of @ 15.4 % Magistrate Judges of color

6.5 % Hispanic/Latino (34)

5.8 % African American (30)

2.7 % Asian/Pacific Islander (14)

0.19% Native American (1)]

III. Panelist Participation as Guided by Moderator Questions

A. Statement by Moderator of General Purpose of the Panel Presentation

To provide information and insight to members of the bar from communities of color who might be interested in how best to prepare for and pursue possible appointment as a U.S. Magistrate Judge; as well as, inform members of the greater bar interested in the issue of diversification of the bench how they might aide/mentor applicants for magistrate judge appointment or reach out to the appointing authorities in ways to promote diversification of the magistrate judge bench.

B. Moderator Questions (to drive the Panel discussion)

1. Do you [i.e., any attorney interested in appointment] even want to be a U.S. Magistrate Judge. Keeping in mind that each of the Federal District Courts in the U.S. use their magistrate judges bench in different ways, ask each of the magistrate judge members of the panel to briefly describe the nature of their individual duties, as well as, how those duties differ from those of the District Judges in their particular Federal District Court.

2. Keeping in mind that there is no one, correct professional path that guarantees appointment as a U.S. Magistrate Judge, ask each of the magistrate judge members of the panel to briefly discuss their educational/professional backgrounds prior to becoming a magistrate judge.

Similar question for any potential panelist who has served on a magistrate judge merit selection committee, except that they could briefly discuss the variety of educational/professional backgrounds they've observed that qualified applications they've seen generally while servicing on the merit selection committee.

3. Ask each of the magistrate judge members of the panel, as well as any Potential panelist who has served on a magistrate judge merit selection committee, to briefly discuss the statutory process (and any local variations) that were employed for the magistrate judge selection process in which they were involved.

4. Briefly, does/should diversity factor into the selection process for magistrate judges?

[Note: The Judicial Conference Committee on Judicial Resources and The Judicial Conference Committee on the Administration of the Magistrate Judges System encourages the consideration of diversity in making magistrate judge appointments].

5. Briefly, what career advice would each of the panelists give to an attorney interested in appointment as a magistrate judge so that they could best position themselves to be an attractive candidate for appointment?

[E.G., U.S. Magistrate Judges are part of the Federal District Court - a trial bench with both criminal and civil jurisdiction – so a trial attorney background in state and federal court, as well as, a background in both criminal and civil litigation would be helpful; likewise, a strong demonstrate background for legal writing would be important given the high volume of orders and reports and recommendations that a magistrate judge may be called upon to issue on an on-going basis as a part of their regular duties. A career long demonstrate commitment to public or other professional service; a strong work ethic; as well as, a reputation in the legal community for civility, professionalism, and ethics are additionally important career management aspects that may be important to magistrate judge appointing authorities. Finally, appointment to and service on a state court can be a very useful professional background attribute for obtaining an appointment as a U.S. Magistrate Judge.]

6. [*Moderator Discretion:* Any last thoughts by each of the panelists about how to prepare for and pursue an appointment as a U.S. Magistrate Judge; or alternatively, any thoughts on causes of continued under-representation of people of color on the bench and suggestions as to how to foster a continued increase in diversity (E.G., As to the latter, members of the greater bar interested in promoting judicial diversity among the federal magistrate judges' bench can reach out to District Judges to consider diversity when making their appointments to the merit selection committees they establish as part of the statutory magistrate judge appointment process).]

7. Audience Questions

IV. Moderator Closing Remarks

Outline For Charleston, SC, Panel, 4/12/16

Hon. Leo I. Brisbois
U.S. Magistrate Judge
District of Minnesota
3/3/16