



***70th JUDICIAL CONFERENCE OF THE SIXTH CIRCUIT***

***May 4 - 7, 2010***

***Renaissance Columbus Downtown Hotel  
Columbus, Ohio***

*70th Judicial Conference of the Sixth Circuit  
May 4-7, 2010  
Renaissance Columbus Downtown Hotel  
Columbus, Ohio*

*28 U.S.C. § 333  
Judicial Conferences of Circuits*

*The Chief Judge of each circuit may summon biennially, and may summon annually, the circuit, district, and bankruptcy judges of the circuit, in active service, to a conference at a time and place that he designates, for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit. He may preside at such conference, which shall be known as the Judicial Conference of the circuit.*

*Every judge summoned may attend.*

*The court of appeals for each circuit shall provide by its rules for representation and active participation at such conference by members of the bar of such circuit.*

*See Rule 205 of the United States Court of Appeals for the Sixth Circuit.*

**2010 SIXTH CIRCUIT  
JUDICIAL CONFERENCE**

*The Honorable Alice M. Batchelder  
Chief Judge*

**Standing Committee on  
Sixth Circuit Judicial Conference Planning**

*The Honorable R. Guy Cole, Jr., Co-Chair*

*The Honorable Jeffrey S. Sutton, Co-Chair*

*The Honorable John M. Rogers*

*The Honorable Deborah L. Cook*

*The Honorable Raymond M. Kethledge*

*The Honorable Helene N. White*

*The Honorable Curtis L. Collier*

*The Honorable Robert H. Cleland*

*The Honorable Algenon L. Marbley*

*The Honorable Dan A. Polster*

*The Honorable Aleta A. Trauger*

*The Honorable David M. Lawson*

*The Honorable Jack Zouhary*

*The Honorable Thomas H. Fulton*

*The Honorable James D. Moyer*

*Douglas C. Ballantine, Esq.*

*John David Cole, Esq.*

*C. Bradford Foster III, Esq.*

*Harold Pope, Esq.*

*Thomas R. Schuck, Esq.*

**Local Planning Committee**

*The Honorable Susan J. Dlott*  
*The Honorable Edmund A. Sargus, Jr.*  
*The Honorable Algenon L. Marbley*  
*The Honorable Gregory Frost*  
*The Honorable Michael H. Watson*  
*The Honorable John D. Holschuh*  
*The Honorable George C. Smith*  
*The Honorable James L. Graham*  
*The Honorable Charles M. Caldwell*  
*Sandra J. Anderson*  
*Pierre H. Bergeron*  
*Douglas A. Berman*  
*John P. Brody*  
*Stephen E. Chappellear*  
*James D. Curphey*  
*Bryan R. Faller*  
*Kristina D. Frost*  
*James F. Flynn*  
*Frederick M. Gittes*  
*Dale Goldberg*  
*David K. Greer*  
*Jack A. Guttenberg*  
*James B. Hadden*

*Robyn Hahnert*  
*Larry H. James*  
*Janine Hancock Jones*  
*Steven R. Keller*  
*Elizabeth Kessler*  
*John J. Kulewicz*  
*Mark E. Landes*  
*John S. Marshall*  
*Alvin J. McKenna*  
*Alan C. Michaels*  
*Michael Miller*  
*Daniel J. Minor*  
*Sarah D. Morrison*  
*Steven S. Nolder*  
*Shawn Organ*  
*Kathleen Ransier*  
*Chad A. Readler*  
*Karl Schneider*  
*Roger Sugarman*  
*Alex Shumate*  
*Kathleen Trafford*  
*Robert W. Trafford*  
*Douglas Williams*

**Life Member Committee**

*Thomas R. Schuck, Esq., Chair*

*Donald J. Aho, Esq.*

*Walter A. Baker, Esq.*

*Douglas C. Ballantine, Esq.*

*Joseph T. Dattilo, Esq.*

*W. Mack Faison, Esq.*

*C. Bradford Foster III, Esq.*

*Miriam L. Siefer, Esq.*

*Peter A. Smit, Esq.*

*Hilary S. Taylor, Esq.*

*John A. West, Esq.*

*Thomas A. Wiseman III, Esq.*

***The Judicial Conference of the Sixth Circuit extends a special thank you to the Life Members of the Judicial Conference for their assistance with conference program planning and for their gracious hosting of the Life Members Reception.***

### **Conference Registration/Information Desk**

The conference registration/information desk, will be located in the foyer area on the second floor of the Renaissance Columbus Hotel.

Tuesday, May 4	8:00 A.M. - 7:00 P.M.
Wednesday, May 5	7:00 A.M. - 2:00 P.M.
Thursday, May 6	7:00 A.M. - 1:00 P.M.
Friday, May 7	8:00 A.M. - 11:00 A.M.

### **Messages**

Messages may be picked up at the conference registration/information desk. Please check the bulletin board after each session.

### **Continental Breakfasts**

Available Wednesday, Thursday and Friday mornings at 7:00 A.M. in the foyer area on the second floor of the Renaissance Columbus Downtown Hotel.

### **Continuing Legal Education**

Continuing legal education credits for attendance at the conference will be sought from the Kentucky, Ohio and Tennessee Bar Associations. Information regarding the number of credit hours will be available at the conference registration/information desk and on the judicial conference website at [ca6.uscourts.gov](http://ca6.uscourts.gov).

### **Security**

The United States Marshals Service will provide security for the conference and may be reached at (614) 533-7565. Please see message from the U.S. Marshals Service regarding conference security on page 55.

**Computer Room with DCN connection  
Meeting Room 20**

**Retirement Sessions - Meeting Rooms 31 and 32**

**Tuesday, May 4, 2010**

**8:30 A.M. - Meeting of the Library Committee**  
**10:00 A.M. Meeting Room 35**

**10:00 A.M. - Meeting of the Sixth Circuit Judicial Council**  
**12:00 P.M. Meeting Room 30**

**10:00 A.M. - Meeting of the Sixth Circuit Advisory**  
**12:00 P.M. Committee on Rules**  
*Meeting Room 33*

**12:00 P.M. - Luncheon and Executive Session for Circuit,**  
**2:00 P.M. District, Bankruptcy and Magistrate Judges**  
*Hayes Ballroom B & C*

**Remarks**

The Honorable Barbara Jacobs Rothstein, Director  
Federal Judicial Center

**2:00 P.M. - Court of Appeals Administrative Meeting**  
**3:30 P.M. Meeting Room 30**

**2:00 P.M. - District Judges' Meeting**  
**3:30 P.M. Hayes Ballroom A**

**2:00 P.M. - Bankruptcy Judges' Meeting**  
**3:30 P.M. Meeting Room 35**

**2:00 P.M. - Magistrate Judges' Meeting**  
**3:30 P.M. Meeting Room 33**

**Tuesday, May 4, 2010**

**4:15 P.M. - Presentation - Here Stood Lincoln**  
**5:30 P.M.        *The Ohio Statehouse***  
*1 Capitol Square, Columbus, Ohio*

Remarks on the speech delivered by Abraham Lincoln at the Ohio Statehouse on September 16, 1859.

**Speaker**

Harold Holzer  
Senior Vice President, External Affairs  
The Metropolitan Museum of Art

**5:30 P.M. - Life Members Reception**  
**9:00 P.M.        *The Ohio Statehouse***

***Music Performed by:***  
***The Chamber Music Connection***

**The Ohio Statehouse is within walking distance, about one block from the Columbus Renaissance Hotel and the Hyatt Hotel.**

**Wednesday, May 5, 2010**

**8:00 A.M. -**            **Welcome and Opening Remarks**  
**8:15 A.M.**            *Hayes Grand Ballroom*

**Remarks**

The Honorable Alice M. Batchelder  
Chief Judge, Sixth Circuit Court of Appeals

**8:15 A.M. -**            **Supreme Court Update**  
**10:15 A.M.**

**Moderator**

The Honorable Elena Kagan  
Solicitor General of the United States

**Panelists**

Erwin Chemerinsky  
Founding Dean and Distinguished Professor of Law  
University of California, Irvine School of Law

Paul D. Clement, Esq.  
King & Spalding  
Former Solicitor General of the United States

**10:15 A.M. -**            **Break**  
**10:30 A.M.**

**10:30 A.M. -**            **A Conversation with the**  
**11:30 A.M.**            **Honorable John Paul Stevens**  
**Associate Justice, United States Supreme Court**  
*Hayes Grand Ballroom*

**Participants and Former Law Clerks to Justice Stevens**

Jeffrey L. Fisher  
Associate Professor of Law and Co-Director  
Supreme Court Litigation Clinic  
Stanford Law School

Teresa Wynn Roseborough  
Senior Chief Counsel  
Metropolitan Life Insurance Company

**Wednesday, May 5, 2010**

**12:10 P.M. - Luncheon**  
**1:30 P.M.** *Hayes Grand Ballroom*

**Guest Speaker**

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States

**1:30 P.M. Adjournment for afternoon activities**

**6:15 P.M. - Reception**  
**7:30 P.M.** *The Archie Griffin Ballroom*  
*The Ohio Union at Ohio State University*  
*1739 North High Street, Columbus, Ohio*

**7:30 P.M. Banquet**  
*The Archie Griffin Ballroom*  
*The Ohio Union at Ohio State University*

**Guest Speaker**

John G. Roberts, Jr., Chief Justice  
Supreme Court of the United States

**Host**

E. Gordon Gee, President  
The Ohio State University

**American Inns of Court Professionalism Award**

Recipient: Mark O'Neill, Esq.  
Weston Hurd, LLP  
Cleveland, Ohio

***Music Performed by:***  
***The Ohio State Jazz Orchestra***

**Transportation to the Ohio Union will be available from the Columbus Renaissance Hotel and the Hyatt Hotel beginning at 5:45 P.M. Shuttles will run continuously between 5:45 P.M. and 7:15 P.M. and resume at the conclusion of the banquet.**

**Thursday, May 6, 2010**

**7:00 A.M. - Chief Judges' Breakfast**  
**8:00 A.M. Meeting Room 30**

**7:00 A.M. - Life Member Committee Breakfast**  
**8:00 A.M. Meeting Room 35**

**8:00 A.M. - Effects of the Economy on the Practice of Law**  
**9:45 A.M. Hayes Grand Ballroom**

**Moderator**

Alan C. Michaels  
Dean and Edwin M. Cooperman Professor of Law  
The Ohio State University Moritz College of Law

**Panelists**

Stephen J. Brogan, Esq.  
Managing Partner, Jones Day

Patricia R. Hatler, Executive Vice President  
Chief Legal and Governance Officer  
Nationwide Insurance

James W. Jones, Esq.  
Co-Managing Director  
Hildebrandt Baker Robbins

Aric Press  
Editor in Chief  
The American Lawyer

Wm. T. (Bill) Robinson III, Esq.  
Frost Brown Todd, LLC  
President-Elect Designate, American Bar Association

**9:45 A.M. - Break**  
**10:00 A.M.**

**Thursday, May 6, 2010**

**10:00 A.M. - Breakout Sessions**  
**11:00 A.M.**

**1. Sentencing**  
*Hayes Ballroom D & E*

*The panel will address recent developments in the area of sentencing, including Sixth Circuit case law and Sentencing Commission initiatives. The panelists, including the Chair of the Sentencing Commission, a United States Attorney, an Assistant Federal Public Defender and a prominent criminal law professor, will explore proposed amendments to the sentencing guidelines, new policies in the Department of Justice and judicial decisions in the post-Booker era.*

**Moderator**

The Honorable Edmund A. Sargus, Jr.  
United States District Judge  
Southern District of Ohio

**Panelists**

The Honorable William K. Sessions  
Chair, United States Sentencing Commission

Caryll S. Alpert  
Assistant Federal Public Defender  
Middle District of Tennessee

Douglas A. Berman  
William B. Saxbe Designated Professor of Law  
The Ohio State University Moritz College of Law

Carter Stewart  
United States Attorney  
Southern District of Ohio

**Thursday, May 6, 2010**

**10:00 A.M. - Breakout Sessions (continued)**  
**11:00 A.M.**

**2. Technical Issues in Litigation**  
*Hayes Ballroom A & B*

*This breakout session will focus primarily on discovery and preparation for litigation, as well as on the effective use of such material in negotiation and trial. This will include e-discovery and will discuss challenges and dangers of storing, managing, and mining electronic data in the “electronic warehouse,” whether it is the client’s or the opponent’s. Electronic warehouses are bigger, the documents cannot be effectively shredded, and all contain invisible digital DNA. This session will also discuss developing technologies in the management and analysis of electronic data.*

**Moderator**

The Honorable Robert H. Cleland  
United States District Judge  
Eastern District of Michigan

**Panelists**

David Galbenski, Esq.  
Chief Executive Officer  
Luman Legal, LLC

Peter M. Kellett, Esq.  
Dykema Gossett, PLLC

Jeffrey A. Lipps, Esq.  
Carpenter and Lipps, LLP

**Thursday, May 6, 2010**

**10:00 A.M. - Breakout Sessions (continued)**  
**11:00 A.M.**

**3. Immigration**  
*Meeting Room 35*

*The panel will focus on issues dealing with modern immigration policies and matters before the immigration courts.*

**Moderator**

The Honorable Jeffrey S. Sutton  
United States Circuit Judge  
Sixth Circuit Court of Appeals

**Panelists**

Ivan Fong  
General Counsel  
United States Department of Homeland Security

David W. Leopold, Esq.  
Leopold and Associates

Juan Osuna  
Deputy Assistant Attorney General, Civil Division  
United States Department of Justice

**Thursday, May 6, 2010**

**10:00 A.M. - Breakout Sessions (continued)**  
**11:00 A.M.**

**4. Employment Law**  
*Hayes Ballroom C*

*The focus of the breakout session will be recent employment discrimination cases decided by the Supreme Court. The panel will discuss two apparent trends by the Court: A more restrictive attitude toward straight claims of discrimination, and a more expansive attitude toward claims of retaliation.*

**Moderator**

The Honorable Dan A. Polster  
United States District Judge  
Northern District of Ohio

**Panelists**

Edward L. Gilbert, Esq.  
Edward L. Gilbert Co., LPA

Deborah L. Gordon, Esq.  
Law Office of Deborah L. Gordon

Matthew W. Green  
Assistant Professor of Law  
Cleveland-Marshall College of Law

Lee J. Hutton, Esq.  
Littler Mendelson, PC

**Thursday, May 6, 2010**

**10:00 A.M. - Bankruptcy Breakout Session  
12:15 P.M.**

- 5. Bankruptcy Practice**  
*Hyatt on Capital Square, 75 East State Street  
Congressional Room*

**Buses will transport attendees to the Hyatt Hotel**

*The panel will discuss a broad range of mortgage related issues including foreclosures, mortgage modification programs, the Federal Reserve Bank's assistance with the mortgage crisis, related proposed bankruptcy rule amendments, the status of case law on mortgage issues and other relevant topics.*

**Moderator**

The Honorable Thomas H. Fulton  
United States Bankruptcy Judge  
Western District of Kentucky

**Panelists**

The Honorable Margaret A. Mahoney  
United States Bankruptcy Judge  
Southern District of Alabama

William Houston Brown  
Retired United States Bankruptcy Judge  
Western District of Tennessee

Courtney B. Minor  
Regional Counsel, United States Department of  
Housing and Urban Development

Mark Schweitzer  
Senior Vice President and Director of Research  
Federal Reserve Bank of Cleveland

Henry J. Sommer  
Editor-in-Chief  
Collier on Bankruptcy

**Thursday, May 6, 2010**

**11:00 A.M. -  
11:15 A.M.**                    **Break**

**11:15 A.M. -  
12:45 P.M.**                    **Breakout Sessions**

- 1.     Objectivity on Trial: Revisiting Old Convictions  
in Light of New Technology**  
*Hayes Ballroom C*

*This panel will discuss developments in DNA, criminalistics, and other forms of scientific evidence and the contents of a recent National Institute of Sciences (NAS) report will play prominently in the presentation.*

**Moderator**

The Honorable David M. Lawson  
United States District Judge  
Eastern District of Michigan

**Panelist**

Mark A. Godsey, Professor of Law and Director  
Lois and Richard Rosenthal Institute for  
Justice/Ohio Innocence Project  
University of Cincinnati College of Law

Jennifer L. Mnookin, Professor of Law  
UCLA School of Law

Jay A. Siegel, Professor and Department Chair  
Director, Forensic and Investigative Science  
Indiana University-Purdue University Indianapolis

Anjali R. Swienton, President and CEO  
SciLaw Forensics, Ltd.

**Thursday, May 6, 2010**

**11:15 A.M. - Breakout Sessions (continued)**  
**12:45 P.M.**

**2. Trial Advocacy: The Anatomy of a Trial**  
*Hayes Ballroom D & E*

*The program panel, moderated by Ronald S. Sullivan, Jr., and including United States Attorney Patrick Fitzgerald, and attorneys Billy Martin and Lori G. Cohen will focus on exploring all aspects of a trial from voir dire to opening statements, to the presentation of the government's (or plaintiff's) case, to the presentation of the defense's case, and finally, to closing arguments. Preliminarily, there will be a focus on the development of theory of the case.*

**Moderator**

Ronald S. Sullivan, Jr., Director  
Harvard Criminal Justice Institute  
Harvard Law School

**Panelists**

Lori G. Cohen, Chair  
Pharmaceutical, Medical Device and Health Care  
Litigation Group  
Greenberg Traurig

Patrick J. Fitzgerald  
United States Attorney  
Northern District of Illinois

Billy R. Martin, Esq.  
Howrey, LLP

**Thursday, May 6, 2010**

**11:15 A.M. - Breakout Sessions (continued)**  
**12:15 P.M.**

**3. Appellate Advocacy**  
*Hayes Ballroom A & B*

**Moderator**

Chad A. Readler, Esq.  
Jones Day

**Panelists**

The Honorable Raymond M. Kethledge  
United States Circuit Judge  
Sixth Circuit Court of Appeals

The Honorable Helene N. White  
United States Circuit Judge  
Sixth Circuit Court of Appeals

Jeffrey L. Fisher  
Associate Professor of Law and Co-Director  
Supreme Court Litigation Clinic  
Stanford Law School

**Thursday, May 6, 2010**

**11:15 A.M. - Breakout Sessions (continued)**  
**12:15 P.M.**

**4. Intellectual Property**  
*Meeting Room 30*

*Conflicts over intellectual property have assumed an increasing role in the U.S. economy. The number of cases being filed are increasing and the stakes involved have never been higher. During this program, the Honorable Liam O'Grady from the Eastern District of Virginia, who has substantial experience in IP litigation, and Kenneth B. Germain and George F. Pappas, who have practiced in this area for many years, will address current issues and trends in patents, trademarks and trade dress.*

**Moderator**

The Honorable Jack Zouhary  
United States District Judge  
Northern District of Ohio

**Panelists**

The Honorable Liam O'Grady  
United States District Judge  
Eastern District of Virginia

Kenneth B. Germain, Esq.  
Wood, Herron & Evans, LLP

George F. Pappas, Esq.  
Covington and Burling, LLP

**6:00 P.M. Reception**  
*The Ohio Supreme Court Building*  
*65 South Front Street, Columbus, Ohio*

***Music Performed by:***  
***The Ohio State Jazz Orchestra***

**The Ohio Supreme Court Building is within walking distance from the Columbus Renaissance Hotel and the Hyatt Hotel. Transportation from both hotels will be available beginning at 5:45 P.M. Shuttles will run continuously until 8:30 P.M.**

**Friday, May 7, 2010**

**9:00 A.M. -  
11:00 A.M.**

**District Breakout Sessions**

**Eastern & Western Districts of Kentucky**

*Hayes Ballroom C*

**Eastern District of Michigan**

*Meeting Room 30*

**Western District of Michigan**

*Executive Meeting Room*

**Northern District of Ohio**

*Hayes Ballroom A*

**Southern District of Ohio**

*Hayes Ballroom D & E*

**Eastern District of Tennessee**

*Meeting Room 31*

**Middle District of Tennessee**

*Meeting Room 35*

**Western District of Tennessee**

*Meeting Room 33*