

The Evidentiary Expert: Judge Paul W. Grimm

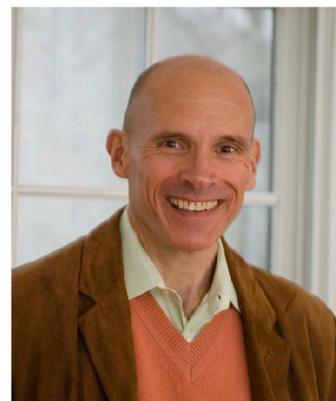
By **Gavin Broady**



Law360, New York (November 18, 2014, 5:57 PM ET) -- Judge Paul W. Grimm may be one of the newest judges on the Maryland federal bench, but he is already a seasoned judicial veteran with 16 years of experience as a magistrate judge — a role he says is both vital and frequently misunderstood.

“I remember people would sometimes say, ‘You’re not a real judge,’ which is a myth that needs to be busted,” Judge Grimm says. “People who say that are displaying their own lack of real-world understanding. Magistrate judges are the grease that keeps the federal judiciary operating efficiently.”

As a magistrate judge, Grimm handled all the duties of a federal court docket — save for felony cases and Title III wiretap authorizations — and he says he owes much of his compassionate judicial perspective to the extensive face-to-face settlement conference work largely delegated to magistrate judges.



Judge Paul Grimm

“You sit across the table from someone who’s just lost their livelihood, or feel they’ve been discriminated against, or their business has been ruined, or they’ve been injured by medical malpractice,” Judge Grimm says. “They look at you and they talk, quietly and often movingly, about how their life has changed. And you realize the name on the docket is not an abstraction.”

An Officer and an Advocate

As the son of an officer in the Judge Advocate General’s Corps, Judge Grimm describes his upbringing as that of a typical “Army brat,” growing up in places as far-flung as Okinawa, Japan, and Stuttgart, Germany, before eventually settling in San Francisco.

After studying classical rhetoric at the University of California, Davis, Grimm followed in his father’s footsteps and enlisted in the Reserve Officer Training Corps., serving as a JAG prosecutor during breaks from the University of New Mexico Law School and quickly gaining the sort of courtroom experience that his law school peers could only dream of.



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— Judge Paul W. Grimm
U.S. District Court for the District of Maryland

“Between my first and second years I tried 40 criminal cases,” Judge Grimm recalls, adding with a laugh, “I came back to law school for my second year, and you couldn’t teach me anything.”

The young Captain Grimm so impressed his superiors in the JAG office that after graduation he was detailed to the Pentagon, an eye-opening experience that put him on the front lines of the Vietnam-era culture wars and introduced him to the meticulous world of administrative law.

Though Grimm transitioned into private practice when his time with the Army ended in 1980, he says his years in the service continue to define his view of the law as a necessary bulwark to defend citizens against the destructive elements of society.

“Law is the veneer of civilization we try to impose on mankind, which is a selfish, sometimes venal organism,” Judge Grimm says. “Our legal structures deal with fractures that exist between people and organizations, and it’s how we operate in a system where we don’t go out and battle each other over every disagreement.”

Grimm ventured briefly into independent private practice before taking a job in the Maryland U.S. Attorney’s Office overseeing licensing for everyone from local barbershop owners to the state’s insurance commissioner.

The insurance commissioner dialed up Grimm a few years later after the young attorney had returned to private practice with Niles Barton & Wilmer LLP, and brought him on board as outside counsel in a sticky insolvency case involving an insurance company that had gone under and put construction lawsuits across the country into default.

“The commissioner called me up and asked me what I knew about fidelity and surety law, and I immediately reached for Black’s Law Dictionary,” Judge Grimm laughs. “I had to bring on two associates because they were bringing in canvas sacks full of lawsuits every day.”

Grimm soon became a go-to lawyer for insurance receiverships and other bankruptcy cases, and his success paved the way for his appointment in 1997 as a magistrate judge, a position he would hold for the next 16 years.

An Eye for Evidence

As a magistrate judge, Grimm’s wonkish passion for evidentiary law led to his authorship of some of the most impactful opinions yet written on how to navigate the perpetually shifting landscape of electronic media and modern discovery practices.

“He’s been one of the leading judges on e-discovery in his opinions and articles, and his approach has been very even-handed,” Reed Smith partner Anthony Diana says. “So many discovery opinions dealt

with sanctions and painted people who respond to discovery as bad guys, and his opinions were really the first that focused on abuses on the other side, on how people seeking discovery can also be abusive and overbroad.”

The first of those decisions was 2005’s *Hopson v. Mayor and City Council of Baltimore*, a class action involving allegations of racial discrimination against Baltimore police officers.

In light of the avalanche of discovery data now routinely being requested in the era of proliferating digital information, the courts had recently developed new rules establishing a clawback mechanism by which attorneys could retrieve any privileged documents that were accidentally turned over to their adversaries.

“That created something of a trap: The rules didn’t say if you’ve waived privilege or not, they just offered a procedural mechanism,” Judge Grimm says. “No prudent party would agree to use that mechanism, because waiving privilege would be immediate death.”



If you’re coming across evidence and you want to throw up, you know you’re going to object, and if you want to do the end zone dance, you want to move it in. But beyond vomiting and the end zone dance, a lot of lawyers don’t think through the nuance of: Why do I want to enter this? What purpose does it serve?

— Judge Paul W. Grimm
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Crowell & Moring LLP partner David Cross was a party to the *Hopson* case, and he says the proposed stopgap fix in Judge Grimm’s expansive opinion — which directly informed a corrective rule that passed unanimously through Congress in 2008 — has helped rein in the daunting price tag of modern discovery.

“When Judge Grimm wants to address something, his decisions are written like law review articles,” Cross says. “They’re not the typical court decision that just applies the law to a particular set of facts and leaves it to attorneys to try to extrapolate later. He makes his opinions very useful beyond the confines of his own case.”

In 2007, Judge Grimm issued a 100-page opinion in *Lorraine v. Markel American Insurance Co.* that Cross says offered the first truly comprehensive analysis of the admissibility of electronic evidence, in an effort to help attorneys avoid discovery issues that Judge Grimm says account for 70 percent of the total cost of litigation.

“That 70 percent is not even the cost of gathering data, it’s just the cost to review and separate out what you’re going to produce as relevant or not,” Judge Grimm says. “As a result, the entire civil litigation process is an upside-down pyramid where the entire cost rests on the tip of the process of discovery.”

Judge Grimm says one of the most important pieces of advice he tries to impart to legal professionals is the need for restraint in making discovery requests, and he suggests the best rubric for making those

decisions can be found in a quote attributed to Justice Oliver Wendell Holmes: that “you know something is bad if it makes you want to throw up.”

“If you’re coming across evidence and you want to throw up, you know you’re going to object, and if you want to do the end zone dance, you want to move it in,” Judge Grimm says. “But beyond vomiting and the end zone dance, a lot of lawyers don’t think through the nuance of: Why do I want to enter this? What purpose does it serve?”

The Common Touch

In 2012 Judge Grimm was elevated to the federal bench, joining a Maryland court where one-third of the active jurists started out as magistrate judges. He says those numbers reflect the district’s culture that treats magistrate judges as partners in the legal process rather than a subclass of clerical functionaries.

Judges get a lot of respect, sometimes more than their behavior warrants. I learned as an army officer that you can command obedience, but not respect. Respect has to be earned.

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“There are still some districts where magistrate judges are relegated to ministerial work, or the pretrial work that district judges don’t want to do,” Judge Grimm says. “Thankfully, that doesn’t happen in Maryland.”

Judge Grimm has cultivated a courtroom demeanor modeled after what he describes as “the common touch”: He doesn’t require that people stand when he enters the courtroom, and he comes down from the bench when speaking to juries in order to address them eye-to-eye.

“You’ve got to treat people with dignity, and you can’t control a courtroom by being a tyrant,” Judge Grimm says. “Judges get a lot of respect, sometimes more than their behavior warrants. I learned as an Army officer that you can command obedience, but not respect. Respect has to be earned.”

Among the most important lessons he’s learned is that he and his fellow jurists operate on a playing field that is not level — judges can lose their temper, while litigants cannot — and that it’s important to recognize such behavior can create divisions in the courtroom.

“The law can be petty sometimes, but Judge Grimm really tries to give the legal profession the dignity it deserves,” says Venable LLP associate Annie Vanselow, a former clerk. “We were once sitting in a hearing with a lawyer who was late, ill-prepared and relatively condescending, and it would’ve been very easy for Judge Grimm to get upset. But rather than get hung up on the pettiness of the situation, he just took a step back and focused on the issues at hand.”

Vanselow notes that for all his professionalism in the courtroom, Judge Grimm has a quirky side that endears him to clerks and colleagues alike, from his vast collection of bow ties — all hand-made by his wife — to his decision to forgo the standard-issue catalog-order chambers decor and instead deck out

his office with Amish furniture.

And while Judge Grimm is known to be the first one in and the last one out of the courthouse every day, he still finds time to indulge his passion for fly fishing whenever possible to clear his head.

“The good Lord did not make any ugly trout streams,” he says. “You’re out there for five hours at a time trying to catch something that has a brain the size of a pencil eraser, but you’re concentrated entirely on what you’re doing and all the other stuff it’s so easy to obsess about is gone.”

In Chambers is a regular feature presenting in-depth profiles of the nation’s leading state, federal and appellate judges.

--Editing by Jeremy Barker.

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