

THE THIRD BRANCH

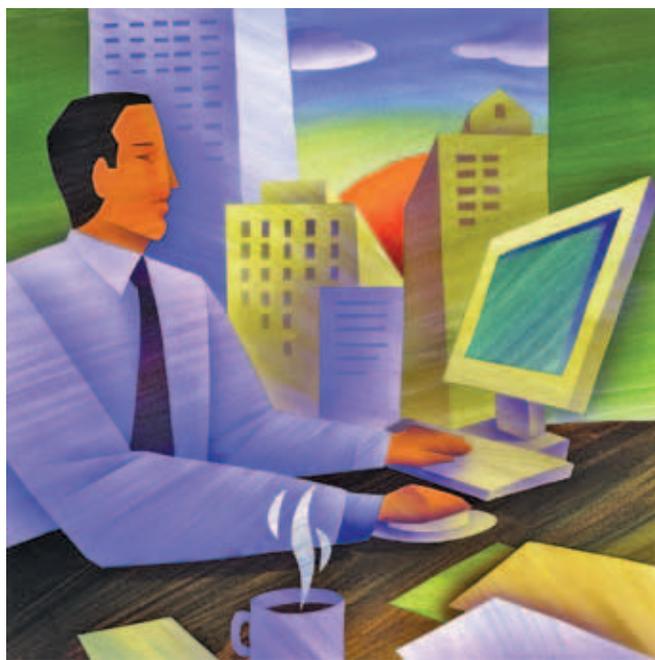
Newsletter
of the
Federal
Courts



Vol. 41
Number 12
December 2009

Smooth Rollout for National eJuror Program

The national deployment of the eJuror program is well under way. Between June 2009 and the end of November, 52 districts installed this latest enhancement to the Jury Management System (JMS) and 14 are now live with the program, with more scheduled to go live over the next few months. In all, 81 of the 94 districts will implement eJuror by April 2010.



The eJuror program gives potential jurors the option of responding to their jury questionnaire form or summons online. Jurors choosing to complete these forms electronically won't have to mail them. They also can update personal information, check when they need to report for jury service, submit a request for an excuse or deferral, and select an alternate time to serve. And they do it from the convenience of their homes, at any time of the day or night.

On a Friday in early November, Kris Porter, jury administrator for the District of Utah, mailed out questionnaires to 1,800 potential jurors. The online responses began almost immediately.

"I was surprised at how many respondents went online," said Porter. "We mailed the questionnaires on a Friday, and that same day 53 logged-on to eJuror. On Monday, 113 went online." The Utah court

See *eJuror* on page 7

INTERVIEW

To Speak with One Clear Voice: The Executive Committee's Role in the Judiciary

Chief Judge Anthony J. Scirica (3rd Cir.) has chaired the Executive Committee of the Judicial Conference since May 2008, but his work within the Judicial Conference began long before that. He has served as chair of the Judicial Conference Standing Committee on Rules of Practice and Procedure, and he was a member of the Advisory Committee on Civil Rules. He has served as chair of the working group on mass torts and as a member of the Judicial Panel on Multi-District Litigation.

His career has encompassed the judicial, legislative, and executive branches at the state level. Before his appointment to the federal bench, Scirica practiced law in Montgomery County, Pennsylvania, where he also served as an assistant district attorney and judge of the Court of Common Pleas. Scirica was a member of the Pennsylvania legislature and also served as chair of

See *Interview* on page 10

INSIDE

OPERA System Bring Offender Info to Probation Officers.. pg. 3
Reentry Court Programs to be Studied..... pg. 4
USSC Reports on Child Pornography Guidelines pg. 6

House Bill Would Clarify Jurisdiction and Venue Issues

A second defendant was added to a civil case in state court, months after the initial filing. The new defendant wants to remove the case to federal court—but the existing law is unclear on the timing of such removal.

H.R. 4113, the Federal Courts Jurisdiction and Venue Clarification Act of 2009, would clear up that question of law, as well as many other areas of confusion. The bill, recently introduced by Representative Lamar Smith (R-TX), ranking member on the House Judiciary Committee, and Representative Howard Coble (R-NC), ranking member on the Courts and Competition Policy Subcommittee, will make it easier to identify where—in state or federal court—certain actions should proceed. The legislation also will help reduce wasteful litigation over jurisdictional issues.

The Judicial Conference Committee on Federal-State Jurisdiction identified recurring problems encountered by litigants and judges in applying certain jurisdictional and venue statutes. Following years of study, and consideration of the American Law Institute's Federal Judicial Code Revision Project (2004), the Committee crafted solutions that were subsequently endorsed by the Judicial Conference and transmitted to Congress.

Provisions in H.R. 4113 include those that would:

- Clarify that diversity jurisdiction does not exist in suits between a citizen of a state and a permanent resident alien in that state.
- Allow the amount in controversy to be adjusted every five years to keep pace with inflation when needed.
- Ensure that when a federal question claim is removed and otherwise nonremovable state law claims are attached to it,

the federal question claim will proceed in federal court and the nonremovable state law claims will be severed and remanded to state court.

- Facilitate the use of stipulations by allowing plaintiffs, when they wish to remain in state court, to specify that the case involves less than the statutory minimum amount in controversy.
- Clarify the provisions governing timeliness of removal by giving each defendant 30 days after service to file a notice of removal, while allowing any earlier-served defendants to consent to the removal by the later-served defendant.
- Permit removal of a case after one year if equitable considerations so warrant.
- Clarify that a person is deemed to reside in the judicial district in which that person is domiciled.

- Provide that unincorporated associations will be treated the same as incorporated associations for determining venue, so that they also will be regarded as residents of any district in which they are subject to personal jurisdiction.
- Provide that a civil action may be brought in any division of a judicial district in which that case can be properly pursued, and that the court will have discretion to transfer a case to another division within the district upon its own motion or upon the request of a party.
- Delete the limitation on transfer of a case that it be to a district where it might have been brought, thereby broadening the availability of convenient locations for litigants. ⚖️

Justice and Journalism at the Newseum



Last month, the First Amendment Center and the Judicial Branch Committee of the Judicial Conference capped a decade of Justice and Journalism programs with their latest session at the Newseum in Washington, D.C. A group of about 20 federal judges and journalists met to discuss common concerns and the changing nature of their professions. Gene Policinski, vice president and executive director of the First Amendment Center (standing), facilitated the discussion along with John Seigenthaler, (seated, left front), founder of the First Amendment Center.

(PHOTO CREDIT: MARIA BRYK)

OPERA Brings Information Directly to Probation Officers

A new web-based system is giving probation officers ready access to offender fine, restitution, and special assessment data thanks to the collaborative efforts of Judiciary staff in four districts, and the assistance of the Administrative Office (AO). The Offender Payment Enhanced Report Access (OPERA) system is now available through the Probation and Pretrial Services Automated Case Tracking System (PACTS). OPERA lets the civil and criminal accounting modules of the Judiciary's financial accounting system talk directly to PACTS, eliminating calls to the clerks' office where the payments are processed.

"We wanted a system where officers could easily access information about payments made by offenders while under supervision," said Don Martenz, a probation officer in the District of New Jersey who worked with Information Technology specialists to develop OPERA. "Historically, officers would have to contact the clerk's office for that information. Depending on how busy the clerk's office was, the response might take an hour, a day, or even a couple days if the offender was from another district. But if the data could be drawn from the accounting modules and accessed through the PACTS database, officers would be able to obtain payment information themselves, any time."

Now, a probation officer logging into PACTS automatically launches OPERA and can pull up the offender payment report; case financial history, including all of the dispersals; and the summary payee balance or the amounts owed to each victim. Searches for information can be made by name, social security number, and marshal or case number. Reports also can be exported to an Excel spreadsheet or as a PDF document.

The screenshot shows the OPERA search interface. At the top right, the logo reads "OPERA Offender Payment Enhanced Report Access". The form is divided into three sections: 1. Offender Information, which includes input fields for Last Name, First Name, SSN, and Register Number; 2. District Selection, which features a grid of checkboxes for various districts, with "DE" (Delaware) selected; and 3. Case Information, which includes a "Search" button.

The OPERA search page shows the many ways by which probation officers can search for information on an offender's payments.

"If John Doe walks into my office, or I make a home visit, and he says he made his most recent restitution payment last month, I can easily verify that while he's sitting there," said Martenz.

The search for a system that would allow probation officers to access financial information began in the Southern District of Alabama in 2007 with Clerk of Court Chuck Diard.

"Our financial department is fairly small and we'd get calls from probation officers requesting offender payment information," said Diard. "For probation officers, it was a hassle to call and wait for information. I thought it might be beneficial, and ease the burden on the court, to have the data available in a web-based browser."

Diard tasked Information Technology Support Specialist William (PJ) Isbell, with the development of an OPERA prototype. At the time, neither Diard nor Isbell knew that Eric Swanson, a programmer analyst

in the District of New Hampshire, and Kevin Beaulieu, a network administrator in the District of Maine also were separately looking for a similar solution.

"When I sent the prototype of my system around to a few courts for comment, Eric caught some code errors and made some revisions. And then I learned Kevin also was programming a system. We were working on similar systems without knowing it," said Isbell. "That's when the AO pulled the three of us together to collaborate on a national solution."

The threesome soon became a quartet. "With Eric and Kevin, we had the technical expertise," said Isbell. "Martenz helped refine our focus. He screened OPERA for functionality, telling us if, for example, the icons we used would make sense to officers."

The AO's Accounting and Financial Systems Division (AFSD)

See OPERA on page 9

Study Requested on Reentry Court Programs

With an eye toward providing the best possible supervision of offenders and maximizing the use of limited resources, the federal Judiciary will begin a study of the various federal reentry court programs nationwide.

Based on “problem-solving courts” or “drug courts,” reentry court programs address offender behavior and rehabilitation by providing treatment and sanction alternatives, combined with regular judicial oversight, for offenders under federal supervision. Currently 30 districts have some type of reentry program. Twenty-one districts are considering beginning either reentry or problem-solving court programs.

The Judicial Conference Committee on Criminal Law, with the endorsement of the Judicial Conference, has requested that the Federal Judicial Center conduct a study that will assess the programs’ operational aspects, outcomes, and cost-effectiveness.

“We are pleased that so many district judges are interested in reentry efforts,” said Chief Judge Julie E. Carnes (N.D. Ga.), chair of the Criminal Law Committee. “However, the informal way in which drug and reentry programs are being created is a concern. We need to know which techniques and what programs will produce the most positive results for offenders. An assessment is necessary. It is our hope that such a study will reveal approaches that work, so that these techniques can be shared with other courts and so that current and future resource implications can be identified.”

Current reentry court programs typically include 10-25 offender participants. The operation of these programs, however, varies considerably, largely because no national guidelines have been established



Chief Judge Julie E. Carnes (N.D. Ga.), shown here testifying before Congress on the effect of mandatory minimum sentences on the justice system, has chaired the Judicial Conference Criminal Law Committee since 2007 and has been a committee member since 2005. Her committee requested the study of federal reentry programs.

at the federal level and, to date, no large-scale and methodical evaluations have been conducted. Some programs target offenders with a high risk of recidivism; others do not. In some districts, the reentry court program is optional; in others, it is mandatory. Some judges may see offenders from time to time in informal conferences, while others may preside over formal hearings on a monthly basis. There are nearly as many permutations of reentry court programs as there are courts with programs.

There is currently a great deal of anecdotal information on the benefits of certain techniques and approaches in existing reentry programs, but a systematic study would identify the hallmarks of successful programs, determine if they are cost-effective, and identify which configurations will work best with a federal supervision population of more than 170,000 offenders a year. The end result may be a national model for federal courts.

Resources are also an issue.

“The federal Judiciary has very limited resources in our probation

offices and district courts,” said Judge Julia S. Gibbons, (6th Cir.), chair of the Judicial Conference Budget Committee. “And reentry courts are very people- and resource-intensive. If we are to be good stewards of our resources, some cost-benefit assessment of practices would be prudent.”

Although many state courts have established a track record on reentry court programs, having maintained programs for a number of years, wholesale adoption of state practices might not be practical for federal courts. For instance, in state courts, presentence participation in a drug court program might lead to a reduction or even waiver of sentence, but federal courts typically operate reentry programs *after* a period of incarceration has been served and the offender is on supervised release. The same incentives aren’t there for federal offenders.

Both the state and federal systems, however, share at least one commonality when it comes to evaluating new initiatives: evidence-based practices (EBPs). Federal

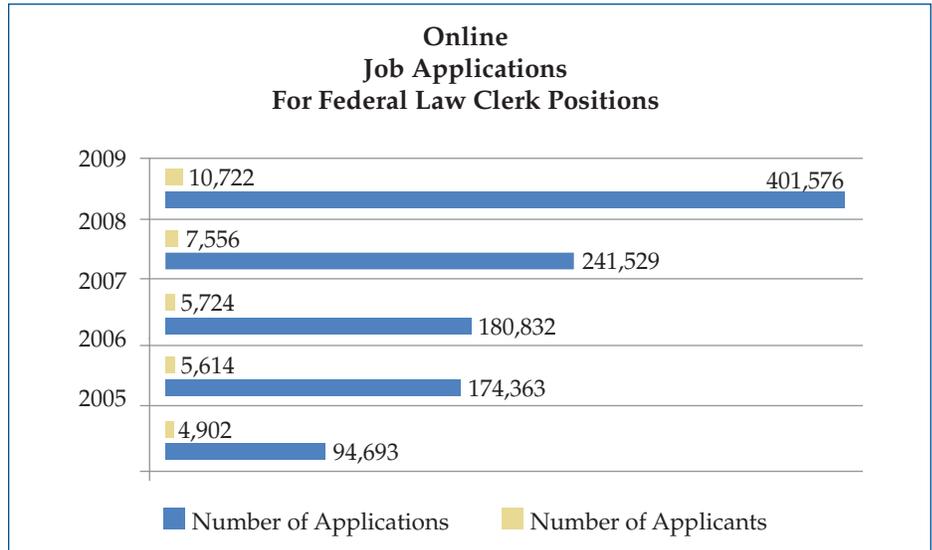


Online Job Applications for Federal Law Clerk Jobs Rise 66 Percent

The federal Judiciary's Online System for Clerkship Application and Review (OSCAR) showed enormous growth in fiscal year 2009—a 66 percent increase over fiscal year 2008 in the number of applications received.

A total of 401,576 electronic applications from lawyers seeking jobs as federal court law clerks were received between October 1, 2008, and September 30, 2009. In the previous 12-month period, a total of 241,529 applications were received.

The applications were filed by 10,772 applicants who were competing for 1,244 clerkship positions. About two-thirds of all federal judges participate in the OSCAR



program, electing to maintain a judge profile, post a clerkship position, and accept applications or advertise that they are not hiring law clerks.

Fifty-two percent of the applicants during FY 2009 were law school graduates. Forty-eight percent were third-year law students, and they generated 68 percent of the applications.

The number of applications filed via OSCAR has increased each year

since its introduction in FY 2005, when 94,693 applications were handled. The program takes what was a paper-heavy—and expensive—process and puts it online. Applicants for law clerk positions can pull together and submit online applications complete with resumes, cover letters, transcripts, and writing samples.

For more information on OSCAR, see <http://oscar.uscourts.gov>.

probation programs, including several reentry court programs, make strategic use of EBP as a part of federal supervision, including workforce development, cognitive-behavioral therapy and moral reconnection techniques, motivational interviewing, and matrix substance abuse treatment. These supervision practices have been demonstrated to help federal offenders become law-abiding and productive members of society.

Judge Keith Starrett was a state court judge when he began his first drug court in Mississippi in the late 1990s and his involvement in the National Association of Drug Court Professionals (NADCP). Shortly after joining the U.S. District Court for the Southern District of Mississippi in 2005, he started a reentry court program using components

developed by the NADCP. An enthusiastic proponent, he offers a word of caution: "Evidence-based practices and reentry programs go hand in glove," said Starrett. "I'm concerned that programs that don't follow EBP standards, don't work, and give us all a bad name."

In the Western District of Michigan, Judge Robert Holmes Bell's reentry court program employs many evidence-based practices, including interactive journals that use cognitive behavioral therapy methods to address the needs of offenders.

Magistrate Judge Leo Sorokin in the District of Massachusetts began the Court Assisted Recovery Effort (CARE) program in his district in 2006 to target offenders with serious substance abuse problems, many of whom were repeat violators. "The CARE program aims to more

effectively deploy resources to obtain better results by blending treatment with accountability enforced by the criminal justice system," said Sorokin. "The court's goal is to release offenders back into the community who are sober, employed, and law-abiding citizens." The Massachusetts program makes use of current research into EBPs from the National Institute of Health's National Institute of Drug Abuse. When the program began, trainers from the NADCP trained Sorokin and the probation officers, prosecutors, public defenders, and treatment specialists involved in the program.

Every Wednesday, Sorokin meets with the CARE team to review offender progress. Immediately after, he talks to offenders in the CARE

See *Reentry* on page 9

Sentencing Commission Focuses on Punishment for Child Pornography

The U.S. Sentencing Commission recently issued a comprehensive report, "The History of Child Pornography Guidelines," as a first step in its review of the punishment prescribed for the sexual exploitation of children.

According to the 54-page report, the Commission is conducting "a review of child pornography offenses, and possible promulgation of guideline amendments and/or a report to Congress as a result of such review." The report also stated that the Commission expects to review how often federal judges depart from the sentencing guidelines for such crimes, compile information on repeat child pornography offenses, and recommend to Congress any statutory changes that may be appropriate.

The Commission has established its review as a "policy priority for the guideline amendment cycle ending May 1, 2010."

"Congress has demonstrated its continued interest in deterring and punishing child pornography offenses, prompting the Commission

to respond to multiple public laws that created new child pornography offenses, increased criminal penalties, directly (and uniquely) amended child pornography guidelines, and required the Commission to consider offender and offense characteristics for the child pornography guidelines," the report said.

It added: "Sentencing courts have also expressed comment on the perceived severity of the child pornography guidelines through increased below-guidelines variance and downward departure rates."

Child pornography has been a federal crime since Congress enacted the Protection of Children Against Sexual Exploitation Act of 1977. Sentencing guidelines for child pornography convictions have existed since 1987, and have undergone substantial amendments nine times since then.

Most recently, a sentencing guideline revision took effect November 1, 2009, to address a 2008 "morphed image" child pornography law, which makes

it a crime to produce or distribute child pornography that is "an adapted or modified depiction of an identifiable minor." These adapted images morph a non-sexual image of an identifiable child with sexually explicit images. The law carries a maximum penalty of 15 years in prison.

Child pornography is defined in federal law as "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct."

The legal definition of such offenses also covers situations where "such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct."

The Commission's report is posted on its website, at www.ussc.gov/general/20091030_History_Child_Pornography_Guidelines.pdf. 

Timeline of Significant Events in Child Pornography Legislation

1977 Protection of Children Against Sexual Exploitation Act, Pub. L. No. 95-225, 92 Stat. 7 § 2 (1978) (codified at 18 U.S.C. §§ 2251-2253).

1984 Child Protection Act of 1984, Pub. L. No. 98-292, 98 Stat. 204 (1984).

1986 The *Final Report of the Attorney General's Commission on Pornography* finds that the production and sharing of child pornography images causes serious harm and noted that "[i]f the sale or distribution of such pictures is stringently enforced, and if those sanctions are equally stringently enforced, the market may decrease and this may in turn decrease the incentive to produce those pictures."

1986 Child Sexual Abuse and Pornography Act of 1986, Pub. L. No. 99-628, 100 Stat. 3510 (1986).

Child Abuse Victims' Rights Act, Pub. L. No. 99-500, 100 Stat. 1783, Title I, § 101(b) [Title VII, §§ 701-05 (1986)] and amended by Pub. L. No. 99-591, 100 Stat. 3341-75, Title I, §101(b) [Title VII, §§ 701-705] (1986).

2003 28 U.S.C. § 994(a) (as amended by § 401 of the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act, Pub. L. No. 108-21, 117 Stat. 650 (2003) ("PROTECT Act")).

2008 Effective Child Pornography Prosecution Act of 2007, Pub. L. No. 110-358, 122 Stat. 4001 (2008).

Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act of 2008, Pub. L. No. 110-401, 122 Stat. 4229 (2008) ("PROTECT Our Children Act").

Keeping the Internet Devoid of Sexual Predators Act of 2008, Pub. L. No. 110-400, 122 Stat. 4224 (2008) ("KIDS Act").

eJuror continued from page 1

is not offering the option of deferrals online, but according to Porter, the majority of respondents are not asking to be excused from service. And there's an immediate plus to eJuror: "We don't have to open envelopes, take out forms, and scan them," Porter said. That saves processing time and money.

Carrie LaCourse, jury administrator in the Northern District of New York, was part of the JMS Working Group and volunteered to be part of the original eJuror pilot. The district began offering eJuror in June 2009, sending information on the ease of use and accessibility of the program along with jury summonses. The response has been encouraging.

"Between June and November," said LaCourse, "we've had 33 percent of our respondents use eJuror."

The district allows jurors responding online to take one automatic deferral and select the month in which they want to serve. "We've found that, when given a choice, jurors serve willingly when it comes time to do their jury service," LaCourse said.

There are additional benefits to the court, according to LaCourse. "With eJuror, fewer forms cross my desk, address changes are made online, and data reentry is reduced," she said. Their experience has been so positive, beginning in January, the district will start using eJuror for responses to questionnaires, too.

"I have to admit, I was rather surprised we had such a good response," said Mary Beth Hill, jury administrator for the District of Kansas. Of the 65,000 jury questionnaires mailed by the court, more than 9,000 recipients responded online within 10 days. "We currently are allowing responses to summonses through eJuror, and out of 950 summonses in three divisions, we've had 455 responses through eJuror."

Hill was pleasantly surprised by another finding: the median age for those responding to questionnaires by eJuror was 45-50.

The Southern District of Iowa went live with eJuror in July. The program already has reduced the amount of paper received by the district court and the time spent processing it.

"Now the process involves much less paper," said Jury Administrator Jamie Morawski. "And we can be a lot more flexible. We can take requests and questions by e-mail. Respondents can fax in doctor's notes instead of mailing them. eJuror allows jurors to defer service for 30-60 days from the original date. They tell us when they want to serve. It's all geared toward customer service."

See eJuror on page 9

District courts currently live on eJuror

District of Connecticut
Northern District of Florida
Northern District of Illinois
Southern District of Iowa
District of Kansas
Western District of Kentucky
Middle District of Louisiana
Western District of Louisiana
Western District of Michigan
Eastern District of Missouri
Northern District of New York
Middle District of Pennsylvania
District of Utah
Western District of Virginia

House Holds Hearing on Judicial Recusal



Responding to Congressional queries on the state of federal judicial recusal, a representative of the Judicial Conference this month told a congressional subcommittee that both judges and the public have a broad array of tools and a transparent environment to ensure the fair and impartial adjudication of cases. Judge M. Margaret McKeown (above), chair of the Judicial Conference Committee on Codes of Conduct, testified before the House Judiciary Subcommittee on Courts and Competition Policy. In addition to discussing the strong framework established by the federal Judiciary, McKeown provided an overview of the recusal standards applying to federal judges and explained the role that the Codes of Conduct Committee plays in advising judges in ethics issues, including recusal. Read her written testimony at www.uscourts.gov/Press_Releases/2009/JudicialRecusal.cfm.

Elevated: U.S. District Judge Andre M. Davis, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Fourth Circuit, November 12.

Elevated: U.S. District Judge David F. Hamilton, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Seventh Circuit, November 24.

Appointed: Irene Cornelia Berger, as U.S. District Judge, U.S. District Court for the Southern District of West Virginia, November 10.

Appointed: Roberto A. Lange, as U.S. District Judge, U.S. District Court for the District of South Dakota, November 6.

Appointed: Lawrence Patrick Auld, as U.S. Magistrate Judge, U.S. District Court for the Middle District of North Carolina, November 18.

Appointed: Nandor J. Vadas, as U.S. Magistrate Judge, U.S. District Court for the Northern District of California, November 5.

Elevated: U.S. District Judge Ralph R. Erickson, to Chief Judge, U.S. District Court for the District of North Dakota, succeeding U.S. District Judge Daniel L. Hovland, November 1.

Senior Status: U.S. District Judge Elaine E. Bucklo, U.S. District Court for the Northern District of Illinois, October 31.

Senior Status: U.S. District Judge Patrick Michael Duffy, U.S. District Court for the District of South Carolina, December 27.

Senior Status: U.S. District Judge Paul L. Friedman, U.S. District Court for the District of Columbia, December 31.

Senior Status: U.S. District Judge Hayden W. Head, Jr., U.S. District Court for the Southern District of Texas, November 13.

Senior Status: U.S. District Judge Dale A. Kimball, U.S. District Court for the District of Utah, November 30.

Senior Status: U.S. District Judge Michael M. Mihm, U.S. District Court for the Central District of Illinois, October 1.

Senior Status: U.S. District Judge Charles A. Shaw, U.S. District Court for the Eastern District of Missouri, December 31.

Retired: U.S. Magistrate Judge Barry L. Garber, U.S. District Court for the Southern District of Florida, October 30.

Retired: U.S. Magistrate Judge Arlander Keys, U.S. District Court for the Northern District of Illinois, October 31.

Resigned: U.S. District Judge Stephen G. Larson, U.S. District Court for the Central District of California, November 2.

Deceased: U.S. Senior Court of Appeals Judge Melvin Brunetti, U.S. Court of Appeals for the Ninth Circuit, October 30.

Deceased: U.S. Senior District Judge Myron L. Gordon, U.S. District Court for the Eastern District of Wisconsin, November 3.

Deceased: U.S. Senior District Judge Charles M. Metzner, U.S. District Court for the Southern District of New York, November 30.

Deceased: U.S. Senior District Judge Charles P. Sifton, U.S. District Court for the Eastern District of New York, November 9.

Published monthly by the Administrative Office of the U.S. Courts
Office of Public Affairs
One Columbus Circle, N.E.
Washington, D.C. 20544
(202) 502-2600

Visit our Internet site at
www.uscourts.gov

DIRECTOR
James C. Duff

EDITOR-IN-CHIEF
David A. Sellers

MANAGING EDITOR
Karen E. Redmond

PRODUCTION
OmniStudio, Inc.

CONTRIBUTOR
Dick Carelli, AO

Please direct all inquiries and address changes to *The Third Branch* at the above address or to
Karen_Redmond@ao.uscourts.gov.

JUDICIAL BOXSCORE

As of December 1, 2009

Courts of Appeals

Vacancies	19
Nominees	9

District Courts

Vacancies	78
Nominees	7

Courts with "Judicial Emergencies"

34

Up-to-date information on judicial vacancies is available at <http://www.uscourts.gov/judicialvac.html>

OPERA continued from page 3

collaborated with the OPERA team. The data used within the OPERA reports resides in the Civil Criminal Accounting Module (CCAM) of the individual court's FAS4T financial system. The AO provided CCAM report design documents to assist the team in designing its OPERA reports. Access also was provided to the 94 separate FAS4T databases so that the required financial information could be retrieved.

"The difficult task of connecting to 94 separate databases was solved by an innovation of using a single user ID to connect to a gateway database," said John Lalley, of the AO's AFSD. "This approach greatly simplified the complexity of data

retrieval for the team." The collaborative effort of court and AO contributed to OPERA's short development turnaround, from a first meeting in mid-July to the launch of OPERA on October 30.

"We started out with a basic database," said Martenz, "but over a couple of months, we turned OPERA into a nice reporting tool. Officers can access OPERA anywhere they can access PACTS, and now we're working on a mobile version for Blackberrys." OPERA also will be made available through the Judiciary's Case Management/Electronic Case Files system in a future release.

OPERA can be accessed only if the district uses CCAM. But for the nearly 80 districts currently using the modules, OPERA also lets probation

officers check fee and restitution information on offenders who are relocated from other districts or who have cases in multiple districts.

"While an offender is under court supervision," said Martenz, "probation officers are required to monitor payments and enforce the court's payment orders. Because one of our goals is to help make victims whole again, it is important that we can see what is owed and what has been paid." Martenz added, "By providing officers easy access to offender payment information, OPERA also will prove useful in the development of an outcome measurement system, of which the payment of fines and restitution are a key component." 

Reentry continued from page 5

program from the bench. "Sometimes I deliver encouragement, sometimes it's sanctions," said Sorokin. "The close oversight, swift and certain sanctions, even for missing a single treatment session, blended with treatment and encouragement, aim to change the revolving door of release, relapse, and revocation." Graduates of the program earn one year off of the supervised release term. After two years of CARE, Sorokin reports a 42 percent graduation rate, compared to approximately

26 percent for similarly situated offenders under regular supervision. The most recent year's numbers are under review by researchers at Northeastern University.

The goal of reentry or problem-solving court programs—to reduce recidivism—would seem to be in sync with the goal of the Criminal Law Committee.

"Our goal," said Carnes, "is to identify those techniques that produce the most positive results among offenders reentering the community. We are interested in any technique that could be useful."

Carnes, however, is aware of the potential pitfalls that may come from embracing the untested and she is willing to take the time to study different practices.

"We do not intend to roll out, nationwide, any model practices until we feel comfortable that these practices have value and will work," she said. "We are aware that, in the past, this or that approach has been touted as the proverbial silver bullet to solve the problem of recidivism, only to fail in a very public fashion. We do not want that outcome." 

eJuror continued from page 7

The district also includes a reminder in its jury notices that going online to respond is the "green" alternative. "We want to go paperless," explained Morawski, and they're well on their way: of 1,330 summonses mailed, 363 were responded to through eJuror.

"Nationally, deployment of eJuror is going very smoothly," said David Williams, in the Administrative Office's District Court Administration Division, which is responsible for the program. Williams and Dan Elsroad have coordinated the national rollout of the eJuror program since June 2009 and, before that, worked with the JMS Working

Group to design and test the look and feel of eJuror. "The feedback we've received is on how easy eJuror is to use," Williams said. "Courts have a faster response from potential jurors and there are fewer forms to process manually. We may never get away from sending paper, but eJuror will increase data reliability and save time for everyone." 

the Pennsylvania Sentencing Commission. In 1984, he was appointed U.S. District Judge for the Eastern District of Pennsylvania, and in 1987 he was elevated to the Third Circuit Court of Appeals. He is a graduate of Wesleyan University and the University of Michigan Law School.

Q: The chair of the Executive Committee often is the voice of the Judicial Conference. What is the significance of the Judicial Conference in terms of national governance? And why is it important for the Judiciary to speak with one voice on certain matters?

A: The Judicial Conference, consisting of 27 judges and chaired by Chief Justice John Roberts, is the national policy-making body of the federal Judiciary. Generally, the Judicial Conference works through its committees, where most policy matters are initiated, but it also originates its own policy initiatives. Over 300 federal judges serve on the 25 conference committees. The Conference meets twice a year to act on the committee recommendations.

Governance of the Judiciary is shared among the Judicial Conference, the 12 Judicial Councils, and the Director of the Administrative Office (AO). Through the Conference and Councils, which together claim the active participation of about one third of all federal judges, policy proposals at the national and circuit level are initiated, debated, adopted, and implemented.

The Executive Committee plays a special role. It works closely with the Director of the AO, Jim Duff, in addressing a multitude of issues. Together with the Director, it makes recommendations to the Conference and its committees on matters of priority and coordination. Working with the Judicial



Chief Judge Anthony J. Scirica (3rd Cir.)

Conference Committee on the Budget and the AO, the Executive Committee approves spending plans for the Judiciary's appropriations and, working with the Judicial Branch Committee, it acts to maintain and improve judicial-legislative relations. The Executive Committee is authorized to act on behalf of the Conference on emergency matters arising between its regular sessions.

Governance under our Constitution requires a continuing dialogue among our three co-equal branches of government. Once judicial policy is made on certain matters, like those affecting our independence or our appropriations, it is important to speak with one clear and unmistakable voice.

Q: Nearly six years ago, the Chief Justice tasked the Executive Committee with coordinating the effort to contain costs in the federal Judiciary. Has this effort been successful?

A: In 2004, the budget forecast showed a significant and widening gap between the courts' financial needs and expected future funding. At the request of Chief Justice William Rehnquist, the Executive Committee, together with the

Budget Committee, took the lead in coordinating cost containment in the Judiciary. The result was a comprehensive and effective strategy for controlling future costs.

This cost-containment initiative has been an enormous success. It began under the direction of the Executive Committee, with its former chairs, Judge Carolyn King (5th Cir.) and Judge Thomas Hogan (D. D.C.), and is now coordinated through the Budget Committee with its chair, Judge Julia Gibbons (6th Cir.) and its Economy Subcommittee, chaired by Judge Bob Broomfield (D. Ariz.), and their superb staff, and with others in the federal courts. As a result of these combined efforts, the Judiciary reduced its need for more space, implemented more efficient operating procedures to improve productivity, and reduced the cost of supporting technology systems through more efficient development of computer services. The process has enhanced the Judiciary's transparency and its credibility with Congress, and has demonstrated that we are serious about being good stewards of the public's funds.

Q: What financial challenges do we face, given the current economic downturn, and how should we deal with them?

A: Because of the hard work done with cost containment, we're in the best position we could be in, given the state of the economy. We have earned the trust of the Congressional appropriations committees and they understand that our budget requests are reasonable and proper. Without these efforts in cost containment, we would not have the same credibility with Congress that we have today.

A gap remains, however, between projected future needs and anticipated funding. The current national



economic downturn threatens to increase that gap to an unacceptable level. As a result, cost-containment initiatives must be sustained in areas that will not harm the Judiciary, in order to present to Congress credible budget requests that are likely to be funded.

Currently, the Executive Committee, with the Budget Committee and its Economy Subcommittee, is identifying new avenues for savings and cost avoidances. Cost containment will remain a high priority.

Q: You also have chaired the Judicial Conference Committee on Rules of Practice and Procedure. Do you find there are commonalities between these two committees?

A: Of course. Each plays an important institutional role. The Rules Committees monitor and amend the civil, criminal, appellate, bankruptcy, and evidence rules. The Executive Committee addresses the administrative and structural arrangements through which the courts carry out their functions.

The primary responsibility of the Standing Rules Committee on Practice and Procedure is to implement the Rules Enabling Act. The Act was a brilliant solution to the making of procedural law. Described as a treaty between the legislative and judicial branches, it provides a dispassionate, neutral forum that allows procedural law to be written in a deliberate and thoughtful manner. Key members of the Executive Branch (such as the Deputy Attorney General and the Solicitor General) have seats on the Rules Committees. The openness mandated by Congress invites public comment, and new rules are enacted only after approval by the Judicial Conference, adoption by the Supreme Court, and after a six-month interval while Congress considers whether to permit the rules to become law. All of this ensures the rigorous scrutiny and

public review essential to establish the credibility and legitimacy of the rulemaking process.

The primary responsibility of the Executive Committee is to help the Judiciary to perform its constitutional role in a government of divided powers. It seeks to foster a productive dialogue with Congress and the Executive Branch, building a consensus whenever possible. The goal is to maintain our high level of competence and our independence so that we can perform the judicial function.

Both the Executive Committee and the Rules Committees work to mediate the relationships between the branches of government in ways that endeavor to promote the rule of law.

Q: You are also chief judge of the Third Circuit Court of Appeals. How do you balance these demanding responsibilities?

A: With unselfish assistance from wonderful colleagues and talented staff. Both jobs are rewarding and fun.

Q: Why is judicial accountability important?

A: Because we are independent and self-governing. The Constitution grants us a large measure of independence, and with that comes the responsibility to be accountable and to maintain the public's trust.

Q: There have been several changes in recent years to the Judicial Codes of Conduct and in judicial discipline. Why were those changes made?

A: To promote accountability and increase transparency. There have been several significant actions. The first was the creation of the Judicial Conduct and Disability

“Governance under our Constitution requires a continuing dialogue among our three co-equal branches of government.”

Act Study Committee, chaired by Justice Stephen Breyer, that issued a comprehensive report. The second was the work done by the Judicial Conference Committee on Judicial Conduct and Disability, chaired by Judge Ralph Winter (2nd Cir.), that wrote the new misconduct and disability rules. The third was the adoption of a revised Code of Conduct—the first substantial code revisions since 1992—under the leadership of the Judicial Conference Codes of Conduct Committee chairs, Judge Gordon Quist (W.D. Mich.) and Judge M. Margaret McKeown (9th Cir.). There was also important work done on recusals and potential conflicts of interest. They all build on the first Canon in the Code of Conduct: that judges should uphold the integrity and independence of the Judiciary. As the Commentary to Canon 1 notes, deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. All these changes help to ensure the integrity of the Judiciary.

Q: The fading purchasing power of a judicial salary is a concern for most judges, who haven't had a real pay adjustment

See *Interview* on page 12

THE THIRD BRANCH

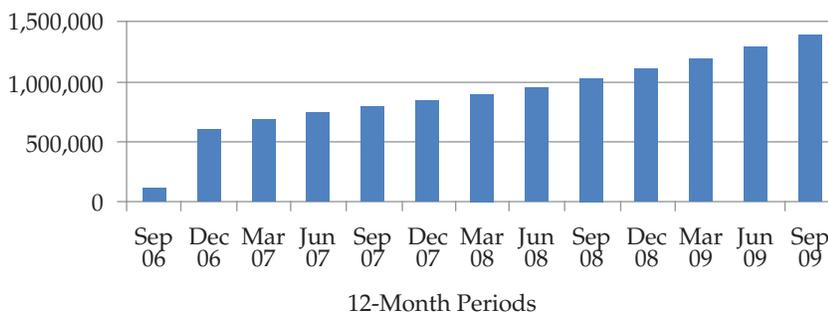
Administrative Office of the U.S. Courts
Office of Public Affairs
One Columbus Circle, N.E.
Washington, D.C. 20544

FIRST CLASS MAIL
POSTAGE & FEES
PAID
U.S. COURTS
PERMIT NO. G-18

FIRST CLASS

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

Bankruptcy Filings
12-Month Periods Ending September 2006–September 2009



Fiscal Year Bankruptcy Filings Up 34 Percent

Bankruptcy cases filed in federal courts for fiscal year 2009 rose 34.5 percent, when compared to FY 2008 filings. The bankruptcy courts reported 1,402,816 filings for the 12-month period ending September 30, 2009; 1,042,993 cases were filed in FY 2008. The federal Judiciary's fiscal year is the 12-month period ending September 30.

Business filings for FY 2009 totaled 58,721, up 52 percent from

the 38,651 business filings in the 12-month period ending September 30, 2008. Non-business filings totaled 1,344,095, up 34 percent from the 1,004,342 non-business bankruptcy filings in September 2008.

For more on bankruptcy statistics, including per capita filings, filings by month, and by quarter, visit www.uscourts.gov/Press_Releases/2009/BankruptcyFilingsSep2009.cfm

INTERVIEW *continued from page 11*

since the mid-1990s. Is there ever a good time to ask Congress for a salary restoration for judges?

A: There will be a good time. Nothing is more important to the long-term health or long-term stability of the federal Judiciary than to preserve its competence, integrity, and independence.

Unfortunately, since 1969, federal judges' real pay has declined 28 percent—although during the same period, the average American's wages, when adjusted for inflation, have risen 21 percent. It is important that we continue to attract lawyers of great ability and integrity, and lawyers who are able to devote a lifetime of service, rather than having to leave due to financial constraints. Congress understands this, and we hope that it will act at the appropriate time to secure a pay adjustment for judges.