

2016 SECOND CIRCUIT JUDICIAL CONFERENCE
Saratoga Springs City Center
Saratoga Springs, New York

2016 STATE OF THE CIRCUIT REPORT
to be delivered by
Chief Judge Robert A. Katzmann
on
Wednesday, May 25, 2016

Good morning and welcome to the 2016 Second Circuit Judicial Conference at the Saratoga Springs City Center in historic Saratoga Springs, New York. As Chief Judge of the Circuit, it falls to me to report on the state of affairs throughout our three states regarding (1) our new judges; (2) judicial vacancies; (3) the status of the Third Branch budget; and (4) with special focus on the progress of a circuit-wide civic education initiative "***Justice for All: The Courts and the Community.***"

I. New Judges. First: new judges. At tonight's dinner, our Toastmaster, Eastern District Senior Judge Nicholas G. Garaufis, will introduce the 10 new judges appointed since our last Conference in 2015. I want to welcome these 10 new members of our Second Circuit judicial family. We wish them many years of good health, personal satisfaction and professional fulfillment on the bench.

II. Judicial Vacancies. Our Circuit has a few vacancies outstanding, but overall, we are in good shape in this regard. There are no vacancies at the moment on the Court of Appeals, although two vacancies will be created this summer when Circuit Judges Gerard E. Lynch and Richard C. Wesley assume senior status. We do not anticipate there will be nominees for these vacancies until the new Administration is underway in 2017.

In our district courts, Western, Northern and Southern New York each have one vacancy at this time, created when Judges William M. Skretny, Gary L. Sharpe and Paul Crotty

assumed senior status. The Eastern District of New York has two vacancies—one each in Brooklyn and Central Islip created when Judge John Gleeson left the bench in March of this year, and last year when Judge Sandra Feuerstein assumed senior status. There is a nominee for the vacancy in Central Islip and Senator Schumer has recommended a nominee to the White House for the Buffalo vacancy.

There are no vacancies at this time in Vermont and Connecticut. We are anticipating one vacancy in Connecticut, early in 2017, when Judge Robert N. Chatigny of Hartford assumes senior status.

In the bankruptcy courts, we have one remaining vacancy in Connecticut. The Court of Appeals has identified a nominee for the Hartford bankruptcy judgeship who is undergoing the background investigation at this time.

As to Magistrate Judge vacancies, we will have two, one each in Southern and Eastern New York due to the impending retirements of Magistrate Judges Frank Maas and Marilyn Go. The Second Circuit Council has approved the requests of the Southern and Eastern District to fill these vacancies. We await the decision of the Judicial Conference Committee on Magistrate Judges as to whether we can proceed to fill these two Magistrate Judge seats.

As to each of our *new* colleagues, we extend a cordial welcome. I wish them great distinction and fulfillment in their service to the courts and the nation. As to those who are retiring, I thank them for their superb service and wish them well in the next chapter of their lives.

III. Status of the Third Branch Budget: As you are aware, fiscal circumstances were challenging for the judiciary for some years. I am pleased to report that the judiciary's fiscal health has improved greatly, enabling the courts to sensibly fill some staffing vacancies created by the budget shortfalls, particularly in our Defenders Offices which were extremely hard hit by the sequester.

A. The Judiciary in FY 2016-Current Fiscal Year

For our current fiscal year-FY 2016, which began on October 1, 2015, Congress passed a budget bill shortly after the start of the new budget year. The President signed the Consolidated Appropriations Act of 2016 on December 15, 2015. The 2016 budget bill provided the Judiciary with \$6.78 billion in discretionary appropriations, an \$80 million or 1.2% increase above the FY 2016 enacted level and essentially equal to full funding of the Judiciary's re-estimated budget request. This funding is sufficient to support the Judiciary's FY 2016 financial plan approved last September by the Executive Committee of the Judicial Conference of the United States.

The omnibus budget bill also provided an unprecedented \$948 million in lump-sum funding to the General Services Administration ("GSA") for construction of courthouses on the Judiciary's Courthouse Project Priorities Plan formerly known as the Courthouse Construction Plan. Finally, the FY 2016 appropriations bill also provided judges and court employees with a modest cost-of-living increase of 1.3%.

B. FY 2017-New Fiscal Year for Judiciary

In February 2016, the Judiciary submitted its funding request for the upcoming fiscal year that begins this October 1st. The Judiciary's FY 2017 budget request of \$7 billion in discretionary funding represents an increase of 3.2% above the Judiciary's FY 2016 budget request to support the mission of the federal courts. This request will maintain current services across the Judiciary and sustain progress on several major initiatives begun in FY 2016, including a request for additional probation officers nationwide, full funding of the Defenders and Court Security programs, and a \$10 increase in the daily juror attendance rate from \$40 to \$50, the first such increase in over 30 years.

Indicative of the good standing of the judiciary on the Hill, neither the House nor the Senate Appropriations Committees scheduled a budget hearing for the Judiciary. Rather, the chair and ranking members of the appropriation subcommittee met with Judicial Conference Chair Julia

Gibbons, and Administrative Office Director James Duff and AO staff. The Judiciary has been advised by the appropriations staff that hearings will be held only on those budget requests considered problematic.

Congress will recess shortly after the July 4th holiday and not return to Washington until September. The Judiciary anticipates that Congress will pass a continuing resolution to fund the federal Government which will last through December 2016. It is conceivable that Congress could decide to wait on passing a budget bill until the new Administration takes office which would prolong the continuing resolution for most or all of FY 2017.

C. Good Fiscal Stewardship & Judiciary Spending

The courts of our Circuit continue to adhere to cost containment principles of spending and search out new ways to share administrative services to conserve limited financial resources. Our chief judges and court executives remain careful stewards of the public funds entrusted to them to operate the courts. We are committed to provide efficient and effective access to justice for the lawyers, litigants and the public even in the worst budget climates.

D. Bar Association Assistance in Budget Crises

We remain grateful to our bar associations—the Federal Bar Council, New York State Bar Association, Federal Bar Association and the NY City Bar Association—who made numerous trips to Capitol Hill to meet with Members of Congress and their staffs to educate Congress about the financial needs of the federal courts in our Circuit during the sequester year and have continued these efforts during our present year of relatively good fiscal health. In my view, this year's budget relief owes much to the outreach efforts of our bar associations who spoke clearly and eloquently on our behalf.

As we learn to live within these new tighter budgets, the courts maintain our priority of avoiding lay-offs of the experienced, dedicated individuals who run our courts and preserve our institutional memory.

IV. Public Engagement & Civic Education. *Justice for All: Courts and the Community Project - A Civic Education Initiative of the Federal Courts of the Second Circuit.*

Two years ago, I spoke to you about the importance of increasing public understanding of the role and operations of the courts, and to bring courts closer to the community. I called for an initiative, then, to help increase points of contact between the courts and the communities we serve, to facilitate mutual understanding and help to ensure that the courts are accessible and effective communities in which courts function. My purpose was not to put the courts on a pedestal, but rather foster awareness about the workings of the administration of justice, to provide ways to share ideas about that system, for improving the administration of justice in our federal courts. My hope was to develop a program could be implemented in every district and courthouse in our Circuit. Thus was born the idea for our Second Circuit-wide initiative on civic education and public engagement.

A. *Justice For All: Courts and the Community*

In these intervening two years, I launched a circuit-wide civic education initiative, entitled *Justice for All: Courts and The Community*, to increase public understanding of the role and operations of the courts and to bring the courts closer to the communities in which they are located and which they serve. To that end, our mission encompasses two principal approaches: to bring the communities to the courts, and to bring the courts to the communities. I appointed my esteemed colleague, Southern District Senior Judge Victor Marrero, as my co-chair, and together with the Circuit Executive, I formed a Circuit-wide Committee on Civic Education and Public Engagement consisting of judges and court executives throughout the three states of our Circuit. Working with us is an extraordinary group of lawyers and educators. The Committee developed a mission statement to assist its members in defining the Committee's goals for this circuit-wide program on civic education. I want to pay special tribute to the judges, lawyers and educators participating with such dedication, and to our court staff, especially in the Circuit Executive Office and in the Library. Would you please stand so that you can be recognized?

This Circuit-wide initiative has been divided into nine subcommittees: Civic Education Programs; Advocacy Skills; Learning Centers; Re-enactments; Student Contests; Civic Ceremonies; Speakers Bureau; Adult Education; and Civic Education Media & Public Outreach. Each of these subcommittees consists of several judges along with members of the Advisory Group.

This morning as each of you entered the meeting hall, you received a copy of a new brochure on our new Circuit-wide initiative: *Justice for All: Courts and the Community*. This brochure contains the Committee's Mission Statement, a listing of the components of the Second Circuit Civic Education Initiative and a roster of the Committee's judicial members and advisors. I encourage each of you to read this brochure to learn about this exciting new civics education project underway in our Circuit and think about the ways in which you can be involved in this effort to increase the public's understanding of the rule of law and the courts; enhance their education about the vital role of the judiciary in our nation's history and justice system; and bring the federal courts closer to the communities in which they are located.

Let me share with you a few of the many activities, programs and events being planned and being held in the courthouses of our Circuit:

B. Civic Education Programs Subcommittee Activities.

In New York City, the Civic Education Subcommittee has partnered with the Justice Resource Center ("JRC") of the New York City Department of Education to develop programs for courthouse visits for students and professional development seminars for teachers, and enhance the general social studies curriculum for New York City public school students. At the Thurgood Marshall Courthouse in lower Manhattan, the Committee has hosted monthly visits for high school students to watch oral arguments in the Court of Appeals, view district court proceedings in the Southern District and participate in legal research modules called Library Labs. During the courthouse visits, the students and their teachers meet with judges, including roundtable luncheon discussions.

On April 20th, the Civic Education Subcommittee, co-chaired by Judges Marrero and Laura Taylor Swain, held its first all-day Teachers Seminar on Civic Education for fifteen (15) New York City high school teachers. The teachers participated in a Library Lab, a roundtable luncheon discussion with Judges Dennis Jacobs, Andrew Peck and Vera Scanlon, attended a sentencing in the Judge Paul Gardephe's courtroom and met with Judge Deborah Batts for viewing of and discussion on the documentary, *Justice Is a Black Woman*, about the life of the late Southern District Judge Constance Baker Motley. Due to the enthusiastic response of the teachers, the Subcommittee intends to offer this program again this fall.

In early summer, the Civics Education Subcommittee is hosting a five-day Teachers Institute for Civic Education for twenty-five intermediate and high school teachers from New York City and Albany at the Thurgood Marshall Courthouse from June 29th through July 7th. The curriculum is based on the student textbook, *We The People: The Citizen & The Constitution* and will cover lessons on the Framers and the creation of the Constitution, the relationship between the Constitution and the Declaration of Independence and the Bill of Rights. We are seeking judges to partner with law professors in providing a practical orientation for these lesson materials.

This Subcommittee also has been working with Eric Contreras, Executive Director of Social Studies for the New York City Department of Education to review the proposed new social studies curriculum for New York City public school students. Aided by Russell Wheeler of the Governance Institute at the Brookings Institute, the Subcommittee members have reviewed the social studies curriculum with a view to enhancing its lessons about the courts, the role of the courts in our government and civic education.

C. Advocacy Skills Programs & Competitions. The Advocacy Skills Subcommittee, chaired by Eastern District Judge Joseph Bianco, is hard at work developing a template to replicate the JRC's mentor-based moot court and mock trial program outside New York City with assistance from the Nassau Bar Association and Hofstra Law School for Long Island-based high schools. This summer, Judge Bianco will

host a week-long advocacy program for ninth graders at the D'Amato Courthouse in Central Islip which will culminate in a mock trial competition for the students.

At Thurgood Marshall, we hosted the final round of the New York City-wide Moot Court competition last December and the last four rounds of the multiple-round New York City-wide mock trial competition with Southern District Judge Analisa Torres presiding over the final round between Tottenville High School in Staten Island and the High School for American Studies at Lehman College. This summer, we will host our (now) annual moot court argument for the New York Intellectual Property Association's summer associate program and the Legal Outreach summer mock trial competition in August.

The Advocacy Skills Subcommittee continues to encourage individual courts to host student moot court and mock trial competitions with judges presiding over these student competitions. It makes all the difference to the students to be able to argue in a real courtroom where their arguments are heard by actual real-life judges.

A subcommittee, chaired by Geoffrey Crawford of Vermont, is reviewing how best to stimulate such competitions as student essay contests, to replicate efforts already underway in parts of the Circuit that would like to take on this activity.

In all this, I thank our judges who have volunteered to preside at these student advocacy skills competitions and encourage all our judges to volunteer to preside at these student competitions.

D. Learning Centers. With the energetic initiative of Eastern District Judge Pamela Chen, who chairs the Learning Centers Subcommittee, we are working to create a model and exhibit materials for physical and virtual learning centers that can be used, or adapted for use, in each of our Circuit's courthouses. It is envisioned that these Learning Centers will cater to visitors of all ages, backgrounds and levels of knowledge regarding the federal judicial system, its judges, its courthouses and its role in maintaining our republican form of government.

E. Re-enactments. Under the leadership of Judge Denny Chin and Kathy Chin, our project is supporting the re-enactments they have produced of historic cases, that educate the public about their importance, and will permit teachers, students, lawyers and other members of the public to learn about these re-enactments and to obtain scripts so they can present the programs in their home communities or in our courthouses.

F. Civic Ceremonies. Our project, under the leadership of co-chairs, Judges Margo Brodie and Michael Shea, is working on programs for Law Day and Constitution Day celebrations, including naturalization programs.

G. Speakers Bureaus. Our plan, devised by subcommittee co-chairs Victor Marrero and Bankruptcy Judge Elizabeth Stong, is to coordinate speaking events for judges, professors, lawyers, and scholars about the legal profession and the work of the courts, participating in school and other communal events. In this regard, we are working with law school deans to involve their faculties and students. Last month, Dean Trevor Morrison of NYU Law School, hosted a luncheon meeting of deans throughout the circuit, who gave generously of their time and thinking.

H. Adult Education. For adult audiences, our project is developing financial educations programs on consumer bankruptcy and consumer credits, expanding the Credit Abuse Resistance Education (CARE) program, and forming panels of lawyer educators to partner with judges for presentations on financial literacy in a variety of locations, reaching a wide population, including seniors, veterans, immigrants, and victims of domestic violence). Bankruptcy Judge Shelly Chapman chairs this subcommittee.

I. New Civic Education Website. An initiative of this magnitude requires a permanent public presence where teachers, students and the public can access information about the many activities, programs and events happening at the courthouses of our Circuit. It is envisioned that this website will include a public Calendar of Events whereby the public can learn of courthouse ceremonies, lectures, student advocacy skills competitions and other civic education events occurring in the courthouses throughout the Second

Circuit.

Under the guiding hand of the Subcommittee on Civic Education Media & Public Outreach, chaired by Connecticut Magistrate Judge Holly Fitzsimmons, together with Circuit Librarian Lou Lopez and his staff, I am pleased to announce that our Circuit is developing a new and exciting public face to its Circuit-wide initiative on civic education. There are two components to our *Justice For All* website: a civic education website for the public and an internal website for judges and court executives. The website, which will be launched later this summer, will provide a wealth of resource and educational materials, calendars of events, programs and ceremonies and other information about our circuit-wide Civic Education Initiative: *Justice For All: Courts and the Community*.

We continue to seek the assistance of judges, lawyers, educators, academics, curators, architects, engineers, journalists and citizens with an interest in our *Justice For All: Courts and the Community* project. Please be in touch with the Circuit Executive's office with any ideas or inquiries. I look forward to working together on this effort to promote understanding of the judiciary, and to keep our judicial institutions vital for the communities we serve.

III. Hails and Farewells. Turning to hails and farewells, a great privilege for me, as chief circuit judge, has been the opportunity to work closely with the other chief judges in the courts of our Circuit. Since our last Conference, Carol Amon has stepped down as chief judge of the Eastern District of New York, and Loretta Preska will soon be finishing her term as chief judge of the Southern District of New York. It has been a great collaboration with these two estimable leaders, and I know I speak for everyone here in congratulating them on a job exceptionally well-done. I look forward to working with their able successors, Dora Irizarry of the Eastern District, and Colleen McMahon of the Southern District.

I want to welcome three new members of our Second Circuit Court family appointed since our last Conference: Mary Loewenguth, Clerk of the Western District of New York, Scott Kowal, who succeeds Art Penny, as the Chief of Pre-Trial Services in the Southern District of New York and Bruce Van Tassel, who succeeds Matt Brown, as the Chief Probation Officer in the Northern District of New York. We welcome them to our Second Circuit Court Family and wish them many years of good health, success and personal satisfaction in their new positions.

Sadly, since our 2015 circuit judicial conference, our Circuit lost six judges: Circuit Judge Richard J. Cardamone, Southern District Judges Robert Patterson, Jr., Richard Owen and Miriam Cedarbaum, Connecticut Bankruptcy Judge Lorraine Weil and Eastern District Bankruptcy Judge Albert Parenti. At yesterday's Executive Session of the Judges, we heard brief eulogies of these colleagues.

We also unexpectedly lost a long-serving member of our Court Family last month, Assistant Southern District Executive Gary Lee who died on April 6th of a cerebral aneurysm at the age of 53. Appointed in 1984 as the Southern District's procurement officer, Gary Lee served in the Southern District for over thirty years in increasingly important positions, including the Southern District's Director of Space & Facilities, Budget Officer and finally as the Assistant District Executive.

Gary was a graduate of Stuyvesant High School and Pace University. He and his wife Helen were married in October 1999 by Southern District Judge Jed Rakoff. They are the proud parents of fourteen-year old twins, Robert and Caitlin.

All of the members of our Second Circuit Family are devastated by Gary's sudden passing. We mourn him and extend our deepest sympathies to his wife, Helen and their children, Robert and Caitlin and our Southern District colleagues.

IV. 2016 Second Circuit Judicial Conference. I owe thanks to those whose care and energy brought this Conference into being: Circuit Executive Karen Milton, Assistant Circuit Executive Janice Kish; Executive Assistant Kaleena Guzman; Senior IT Programmer Matvey Zabbi, Network Systems Engineer Emmanuel Soto, Senior Facilities Coordinator Chris Cooper, Facilities Coordinator Justin Marziliano and Administrative Assistant Aisha Parks.

Our Program and Planning Committee, under the thoughtful, dedicated leadership of Conference Chairman Janet Bond Arterton, has worked hard over the past year to develop thought-provoking programs on the Reconstruction of the American South after the conclusion of the Civil War and the passage of the 13th, 14th and 15th Amendments to our Constitution between 1865 and 1870. *Reconstructing Reconstruction*, our theme for this year's circuit judicial conference, will explore issues germane to the legal profession and society as a whole relating to the impact of the Reconstruction Era on historical and political forces, the emergence of federalism and the evolution of federal jurisprudence in the decades following Reconstruction and its impact on national issues today. I am very grateful to Judge Arterton and the committee for their very hard work. Dean Trevor Morrison of NYU Law School, a member of the planning committee, was a source of many great ideas, and we also appreciate NYU's support for the Justice Ginsburg dialogue, which will take place tomorrow.

I thank you for your great courtesy. I look forward to our time together and hope you enjoy the Conference.

Dated: May 20, 2016