

2018 SECOND CIRCUIT JUDICIAL CONFERENCE
Saratoga Springs City Center
Saratoga Springs, New York

2018 STATE OF THE CIRCUIT
REPORT

Chief Judge Robert A. Katzmann

Friday, June 15, 2018

Good morning. I hope that you are enjoying this Conference in historic Saratoga Springs, New York. I am so grateful to our outstanding group of scholars, high government officials, past and present, and esteemed members of the legal profession, who have participated in this Conference with its exploration of the “Administrative State: Past, Present and Future.” I am deeply appreciative to our outstanding program chair, Judge Carol Amon of the Eastern District of New York, and to our planning committee who worked so hard on this program.

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; (4) the law clerk hiring plan; (5) a report on the progress of a circuit-wide civic education initiative “*Justice for All: The Courts and the Community*”; (6) hails and farewells; and, finally, (7) some words of appreciation.

Before I begin, I want to acknowledge again, as I did last night, the presence of the Chief Justice of the United States, the Honorable John G. Roberts, Jr. at our Conference. The Chief Justice pays us great honor by coming to our Conference in Saratoga Springs at the busiest time of the year for him. Mr. Chief Justice, thank you for being with us. I know that I speak for all the judges, lawyers and invited guests at this Conference when I say that we are greatly honored by your presence here today.

I also want to salute our beloved Circuit Justice, the Honorable Ruth Bader Ginsburg, on the occasion of her twenty-fifth (25th) anniversary on the Supreme Court. Our screening of the newly released documentary film—RBG—here last night was in celebration of Justice Ginsburg’s auspicious anniversary. Our conference is only complete when Justice Ginsburg is with us, as she is such an essential part of our Circuit life. We wish her many more years of good health, personal happiness and professional fulfillment on the bench.

We look forward to the conversation between the Chief Justice and our Circuit Justice later this morning, as well as Justice Ginsburg’s always much-anticipated report on

the Supreme Court with attention to how the Second Circuit has fared thus far.

And now, to the business at hand. The state of our Circuit.

I. New Judges

First: new judges. Last night's Toastmaster presentation by Southern District Senior Judge Jed S. Rakoff was a blockbuster in my view. His witty, tongue-in-cheek lyrics to familiar song-tunes gave this "Conference Follies" presentation real "panache." He welcomed the five (5) new members of our Second Circuit judicial family with warmth and humor, the trademark of our Second Circuit Toastmaster presentations. We wish our new colleagues – Magistrate Judge Stewart D. Aaron of the Southern District of New York, Magistrate Judge Sanket J. Bulsara of the Eastern District of New York, Magistrate Judge Robert W. Lehrburger of the Southern District of New York, Magistrate Judge Robert M. Spector of the District of Connecticut, and Magistrate Judge Ona T. Wang of the Southern District of New York – many years of good health, as well as personal and professional satisfaction on the bench.

II. Judicial Vacancies

Our Circuit has thirteen vacancies outstanding with more on the horizon, but the good news is that there are nominees for most, but not all of these vacancies.

Court of Appeals: There are two vacancies at the moment on the Court of Appeals created in 2016 when Circuit Judges Gerard E. Lynch and Richard C. Wesley assumed senior status. This August, Circuit Judge Reena Raggi has announced her intention to assume senior status on August 31st, creating a third vacancy on our Court. At present, there is one nominee for Judge Wesley's seat: Southern District Judge Richard J. Sullivan. There are no nominees for the other two vacancies on the Court of Appeals.

WDNY and NDNY: In our district courts, Western and Northern New York each have one vacancy at this time, created when Judges William M. Skretny and Gary L. Sharpe assumed senior status. There is a nominee for the Western District vacancy, but no nominee for the Northern District vacancy.

SDNY: In Southern New York, there are four (4) vacancies which were created when Judges Paul Crotty, Loretta Preska, Kevin Castel and William Pauley III assumed senior status. There are two nominees for these four vacancies. The confirmation of Judge Sullivan to the Court of Appeals would create a fifth vacancy on the Southern District.

EDNY: The Eastern District of New York has four (4) vacancies—three in Brooklyn and one in Central Islip created when Judge John Gleeson left the bench in March 2016 and Judges Carol Amon and Eric Vitaliano assumed senior status. The Central Islip vacancy was created in 2015 when Judge Sandra Feuerstein assumed senior status. I am pleased to report that we have nominees for each of these four seats, including Magistrate Judge Gary Brown to fill the Central Islip seat vacated by Judge Feuerstein in 2015.

CT: In Connecticut, there is one vacancy created when Judge Robert N. Chatigny assumed senior status on January 1, 2017. That nominee has been voted out of the Judiciary Committee and is awaiting a floor vote by the full Senate. We anticipate a second vacancy in the bench in Connecticut when Judge Alvin W. Thompson of Hartford assumes senior status this summer.

VT: Fortunately, there are no vacancies in Vermont at this time.

Bankruptcy Courts: In the bankruptcy courts, we have no vacancies at this time, but we anticipate a vacancy on the Southern District Bankruptcy Court upon the confirmation of Southern District Bankruptcy Judge Mary Kay Vyskocil to the district court bench. The Court of Appeals intends to fill any vacancy created on the Southern District Bankruptcy bench without delay.

Magistrate Judges: As to Magistrate Judge vacancies, we will have two, one each in Northern and Eastern New York due to the impending retirement of Northern District Magistrate Judge David E. Peebles next July and the anticipated elevation of Eastern District Magistrate Judge Gary Brown to the district court bench.

The Second Circuit Council and the Judicial Conference Magistrate Judge Committee have approved the request of the Northern District to fill the anticipated vacancy in Binghamton, New York. We expect a similar result when the Eastern District requests to fill the vacancy in Central Islip upon the confirmation of Judge Brown.

There also are two (2) vacancies on our sister court across Foley Square, the Court of International Trade, but now we have two nominees. I know that Chief Judge Timothy Stanceu joins with me in hoping that the Administration will move to fill our judicial vacancies without further delay.

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 2013 sequester.

A. The Judiciary in FY 2018–Current Fiscal Year

For our current fiscal year–FY 2018, which began on October 1, 2017, Congress passed a budget bill several months after the start of the new budget year on March 23, 2018. The President signed the Consolidated Appropriations Act of 2018 later that same day. The 2018 budget bill provided the Judiciary with \$7.1 billion in discretionary appropriations, an \$184 million or 2.7% increase above the FY 2017 enacted level and essentially equal to full funding of the Judiciary's re-estimated budget request. This funding is an outstanding result and it is clear that Congress again has treated the Judiciary as a funding priority. Omnibus funding levels combined with prior year carryforward balances are sufficient to, at a minimum, support the Judiciary's FY 2018 financial plan approved last December by the Executive Committee of the Judicial Conference of the United States.

A few highlights of the Consolidated Appropriations Act of 2018 include:

New Courthouse Funding: The omnibus budget bill also provided \$437 million in courthouse construction funding to the General Services Administration ("GSA") for construction of courthouses on the Judiciary's Courthouse Project Priorities Plan, including Harrisburg, Pennsylvania; Huntsville, Alabama; and Fort Lauderdale, Florida. Later this month, the Judicial Conference Committee on Space and Facilities is considering a recommendation of the Second Circuit Judicial Council to approve construction of a new courthouse in Hartford, Connecticut, so Congressional funding for these three projects on the Courthouse Project Priorities Plan will assist our Circuit in getting a new courthouse constructed in Hartford.

Jurors Fee Account: The Fees of Jurors and Commissioners account received \$51 million, an \$11 million or 27.6% increase above FY 2017 which will provide for the implementation of the requested \$10 increase in the juror daily attendance payment from \$40 to \$50, the *first increase since 1990*. This new rate became effective on May 7, 2018.

Defenders Services: The Defenders Services account received \$1.1 billion, a \$34 million or 3.3% increase above FY 2017. The omnibus bill also provides

cost-of-living adjustments or COLA's to panel attorney hourly rates and a \$6 above-COLA increase to the non-capital rate. The new hourly rates for capital work are \$188 and \$140 for non-capital work, effective for work performed on or after March 23, 2018.

B. FY 2019–New Fiscal Year for Judiciary

In February 2018, the Judiciary submitted its funding request for the upcoming fiscal year that begins this October 1st. The Judiciary's FY 2019 budget request of \$7.22 billion in discretionary funding represents an increase of 3.2% above the Judiciary's FY 2018 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 prior fiscal years, including a request for increased funding to sustain cyber-security initiatives – a priority of the Chief Justice and the Judicial Conference – security at federal courthouses, the Defenders Services program and PACTS, the national integrated database that helps probation and pretrial services officers supervise criminal offenders and defendants under community supervision.

My “crystal ball” tells me that we will just have to wait and see whether Congress will pass a budget bill prior to the midterm elections in November or whether in September, Congress will pass a continuing resolution to fund the federal Government at the outset of the new fiscal year.

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 – for making 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 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 continue to speak 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. Law Clerk Hiring Plan

We will be adhering to the law clerk hiring plan, designed to return some order to the clerkship selection process. Key features of that plan are that law students who entered law school the fall of 2017 cannot be interviewed until a set date in June 2019; nor can there be any applications, law school recommendations or contact with judges before that date. This is a two-year pilot project to which I urge full adherence. I thank the law school deans for their participation, and in our circuit, Deans Gerken and Morrison have been leaders, indeed, not just in this circuit, but nationwide, in securing the support of an extraordinary number of deans.

V. Public Engagement & Civic Education

Justice for All: Courts and the Community Project – A Civic Education Initiative of the Federal Courts of the Second Circuit.

Since becoming Chief Judge, I have spoken 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. In 2014, 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 that could be implemented in every district and courthouse in our Circuit. Today, our Circuit has a strong, Circuit-wide initiative on civic education and public engagement that is quickly becoming the gold standard for the federal judiciary.

A. Justice for All: Courts and the Community

Our Circuit-wide Committee on Civic Education and Public Engagement, co-chaired by Southern District Senior Judge Victor Marrero and me, consisting of judges, court executives, lawyers and educators throughout the three states of our Circuit has developed a rich civic education program for students,

teachers and adults. 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? I want to pay special tribute to Judge Marrero, my co-chair for his extraordinary work, for being such a superb partner.

New Subcommittee on Law Week: In addition to the existing nine subcommittees covering civic education programs, re-enactments, civic ceremonies and courthouse visits, adult education, advocacy skills, learning centers and media outreach, Judge Marrero and I recently formed a new subcommittee to bring a true Circuit-wide approach to our Law Week commemoration, beginning in 2019. I am pleased to report that Northern District Judge Mae D'Agostino accepted our invitation to co-chair this new subcommittee with Saul Shapiro of Patterson Belknap in New York City.

We continue to seek volunteers from around our Circuit to join our Civic Education Committee. I encourage each of you to 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.

B. Highlights of the Circuit-Wide Civic Education Initiative

I would like to tell you about a few of the highlights of our Second Circuit-wide initiative on civic education and public engagement:

New Civic Education Programs: Teacher Professional Days, Library Labs for Teachers, Law Enforcement Career Days in Southern and Eastern NY.

New Learning Center at the TMCH opening officially this fall. We hope in the next year or so to plan a national conference, to be held in the Learning Center, bringing together from across the country, judges, educators, and court staff, to exchange ideas about how to advance civic education and promote public understanding of courts. In that work, we will work with the indefatigable Rebecca Fanning of the Administrative Office of the U.S. Courts, and judicial educator Russell Wheeler, a visiting fellow of the Brookings Institution and president of the Governance Institute (whose work is supported by the Leon Levy Foundation).

Expansion of NYC Moot Court to Long Island with assistance from Hofstra Law School and Nassau Bar Association.

First International Mock Trial Competition at TMCH on June 8th with High

School from Edinburgh, Scotland.

Law Week 2018—visits to NYC high schools by judges and lawyers and 11 NYC high schools, including 3 high schools from Staten Island came to TMCH on May 4th for an all-day program including a new, shorter re-enactment of The Trial of Susan B. Anthony which both made the NYLJ and the front page of the J-Net in the judiciary's national report on Law Week activities in federal courthouses.

Adult financial education outreach by bankruptcy judges on the civic education committee, led by NDNY Chief Bankruptcy Judge Margaret Cangilos-Ruiz.

In all this, I thank again our judges, lawyers and Civic Education Committee members who have participated in all our civic education programs and competitions and encourage all of you who have not volunteered to join us and participate in these worthy educational endeavors.

Linked to this brief summary is the [complete annual report](#) of our **Justice For All** initiative, and you can follow our activities, as I said, on our website: justiceforall.ca2.uscourts.gov

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.

VI. 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, Christina Reiss of Vermont concluded her seven-year term as Chief Judge in December 2017. She was succeeded by Judge Geoffrey W. Crawford.

I want to welcome a new member of our extended Second Circuit Court family appointed since our last Conference: Mario Toscano, Clerk of Court of International Trade, who succeeded Tina Potuto Kimble. We welcome Mario to our extended Second Circuit Court family and wish him many years of good health, success and personal satisfaction in his new position.

Sadly, since our 2017 circuit judicial conference, our Circuit family lost four senior judges: Southern District Judge Thomas P. Griesa, Eastern District

Judges Sandra L. Townes and Leonard Wexler and Court of International Trade Judge Nicholas Tscoucalas. At our Executive Session of the Judges on Wednesday, June 13th, we heard brief eulogies of these distinguished colleagues.

We also want to acknowledge the impending retirements of two long-serving court executives this summer: Northern District Clerk Larry Baerman and Northern District Bankruptcy Clerk Kim Lefevbre. Larry, in particular, has served the judiciary for over 30 years, including as the long-serving, non-judicial member of the Judicial Conference Committee on Court Administration and Case Management known as CACM.

We are grateful for the many decades of service of these long-serving dedicated public servants, Larry and Kim. We will miss their day-to-day camaraderie and collegiality, but wish them many years of happiness in this next new chapter of their lives. I would like to ask Larry and Kim to stand so we can acknowledge them.

Finally, a word about the retirement of Tommy McDonald at the end of the month. Tommy has served for more than two decades years as a Court Security officer at Foley Square, where he worked closely with the judges of the court of appeals, ensuring our safety in the courtroom. We are grateful to Tommy and wish him well.

VII. 2018 Second Circuit Judicial Conference

I owe deep thanks to those whose care and energy brought this Conference into being: Circuit Executive Karen Milton, Assistant Circuit Executive Janice Kish, Administrative Assistants Meika Brown and Aisha Parks, Senior IT Programmer Matvey Zabbi, IT Technician Nicholas Coffey, Facilities Coordinator Justice Marziliano, Interior Architect Tania Medina and Financial Administrator Sharon Phillip.

Our Program and Planning Committee, under the wonderful and special leadership of Conference Chairman Carol Bagley Amon, has worked hard over the past year to develop thought-provoking programs on the Administrative State. *The Administrative State: Past, Present and Future*, our theme for this year's circuit judicial conference, explored issues germane to the legal profession and society which relate to the impact of the administrative state in our complex society and the role of government in a constitutional design. As I noted at the outset, I am very grateful to Judge Amon and the committee for their exceptional efforts. I particularly want to salute our three terrific program chairs -- Dean Matthew Diller of Fordham Law School, former Brooklyn Law School Dean Joan Wexler and Eastern District Bankruptcy Judge Alan Trust -- for the excellent programs they and

their subcommittee members developed for our 2018 Second Circuit Judicial Conference. Will all those involved in this year's program please rise so that so that we can salute you?

I thank you for your great courtesy. I look forward to working together in the year ahead.

Dated: June 15, 2018