

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
2012 ANNUAL REPORT**

**District Judges.** The Northern District of Ohio lost its temporary judgeship, which reduced the number of authorized district judgeships from 12 to 11, when Congress failed to extend the judgeship prior to Judge Kathleen M. O'Malley's elevation to the U.S. Court of Appeals for the Federal Circuit. The district currently has 10 active judges on board with one vacancy in Toledo since June, 2010.<sup>1</sup> The district judges are: Chief Judge Solomon Oliver, Jr., Donald C. Nugent, Patricia A. Gaughan, James S. Gwin, Dan Aaron Polster, and Christopher A. Boyko in Cleveland; John R. Adams and Sara Lioi in Akron; Jack Zouhary in Toledo; and Benita Y. Pearson in Youngstown. The Court also has four senior judges, each of whom carries a substantial workload considerably beyond the minimum requirements: Lesley Wells in Cleveland, David D. Dowd, Jr. in Akron; and James G. Carr and David A. Katz in Toledo. Several of the district's judges participate in national Court governance by serving on Judicial Conference committees: Judge Katz, Committee on Audits and Administrative Office Accountability (appointed 2006; Chair 2010); Judge Gaughan, Committee on Federal-State Jurisdiction (appointed 2007); and Chief Judge Oliver, Advisory Committee on Civil Rules (appointed 2011). Judge Gwin previously served on the Committee on Information Technology and is now a member of the Next Generation of District CM/ECF Chambers Functional Requirements Group and Judge Polster formerly served on the Committee on the Administration of the Magistrate Judge System.

**Magistrate Judges.** The district is authorized seven full-time magistrate judges: four in Cleveland, and one each in Akron, Toledo and Youngstown. The magistrate judges are: Nancy A. Vecchiarelli, William H. Baughman, Jr., Kenneth S. McHargh and Greg A. White in Cleveland; George J. Limbert in Youngstown, James R. Knepp, II in Toledo; and Kathleen B. Burke in Akron. In Toledo, Magistrate Judge Vernelis K. Armstrong serves in retired-recalled status. Magistrate judges presided over 285 (8%) of the 3,667 civil cases closed in 2011 and over 9% (210 of 2,280) of the non-MDL civil cases pending at year end.

**Judicial Changes.** Judge Kathleen M. O'Malley was elevated to the U.S. Court of Appeals for the Federal Circuit in December, 2010, which triggered the loss of the district's temporary judgeship and resulted in the reduction in the number of authorized district judgeships from 12 to 11. Judge O'Malley continues to assist the Court, sitting by designation to finish work on her remaining MDL docket. In December 2010, Judge Benita Y. Pearson was appointed by President Obama to fill the district court judgeship vacancy created in Youngstown when Judge Economus took senior status in July, 2009; Judge Pearson had been serving as the magistrate judge in Akron. The Court appointed Magistrate Judge Kathleen B. Burke in August, 2011 to fill the magistrate judgeship vacated in Akron by the elevation of Judge Pearson.

**In Memoriam: The Honorable George W. White.** Former Chief Judge George W. White died on Saturday, November 12, 2011 at age 80. Judge White was appointed to the District Court

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<sup>1</sup>Jeff Helmick, Esq. was nominated to fill the position by President Barack Obama on May 11, 2011 and it is hoped that he will have his Senate nomination hearings early this year.

bench by President James Earl Carter in 1980. Judge White served as Chief Judge of the Court from February 10, 1995 to February 26, 1999 when he retired from the bench to become the first director of the Cleveland Browns Foundation, a philanthropic organization. Judge White was a native of Duquesne, Pennsylvania and moved to Cleveland in 1948. He graduated from the Cleveland Marshall College of Law in 1955. He served on Cleveland City Council for 5 years and also served as judge on the Cuyahoga County Court of Common Pleas. Judge White was the first African American to serve on the Northern District of Ohio bench and was also the first African American to serve as Chief Judge.

**Civil Docket.** Civil case filings increased 72% from 3,546 in calendar year 2010 to 6,080 in 2011 due to a 443% increase in MDL filings which rose from 603 to 3,277. Traditional civil case filings decreased by 5% from 2,937 in 2010 to 2,800 in 2011. Civil case closings decreased 22% from 4,691 in 2010 to 3,667 in 2011, again reflecting the large fluctuations in MDL caseloads. The number of civil cases pending at year end increased 56% from 4,319 in 2010 to 6,736 in 2011.

**Criminal Docket.** Criminal case filings rose 6% from 521 in calendar year 2010 to 550 in 2011 while the number of new criminal defendants increased 23% from 781 to 962. Criminal case closings decreased 3% from 506 in 2010 to 492 in 2011 while the number of criminal defendants rose 5% from 718 to 755. The number of criminal cases pending at year end went up 12% from 421 in 2010 to 472 in 2011 while the number of pending defendants increased 30% from 682 to 884.

**MDL Cases.** The Judicial Panel on Multidistrict Litigation continues to rely upon Northern Ohio to deal with a significant number of MDL matters. Northern Ohio currently presides over 13 MDL actions involving 4,456 pending cases: Commercial Money Center (Judge Carr), Heparin Products Liability (Judge Carr), Vertue Marketing and Sales (Judge Gaughan), Whirlpool (Judge Gwin), Ortho-McNeil (Judge Katz), DePuy Orthopaedics, Inc. (Judge Katz), Sulzer (Judge O'Malley), Welding Rod (Judge O'Malley), National City Bank Corp. (Judge Oliver), Kaba Simplex Locks (Judge Nugent), Gadolinium Contrast Dyes (Judge Polster), Oral Sodium Phosphate Solutions (Judge Polster) and Polyurethane Foam (Judge Zouhary). The DePuy Orthopaedics litigation currently has over 3,200 pending cases and several thousand more are expected to be filed this year.

**Budget.** Perhaps the most significant item of note in Northern Ohio, as well as in other districts, during the past year has been the impact of the national budget crisis. The judiciary-wide across-the-board budget cuts and a cost containment "salary reset" mechanism coupled with the loss of the district's temporary judgeship along with a general decline in traditional case filings, has resulted in projected personnel funding shortfalls of unprecedented proportions which has required all Court units to reduce staffing through buyouts and attrition. The Pretrial Services and Probation Office has left 10 officer positions vacated in the past two years and the Clerk's Office has left 7 positions, including the Administrative Services Manager, vacant. Nevertheless, Court staff continue to make strong contributions to a wide variety of local and national projects in an effort to improve and extend the services we provide in order to aid in the administration of justice. Chief Judge Oliver and the Court Unit Executives along with the Human Resources Director have conducted "town hall" meetings at all Court locations to let staff know about the significant anticipated personnel funding shortfalls in both FY 2012 and 2013, but to also let

staff know that the Court is taking a “wait and see” approach before taking any precipitous action.

**Digital Video (Cameras) Pilot Project.** Northern Ohio is among 14 district courts participating in the Federal Judiciary's digital video pilot, which allows a limited exception to the ban on cameras and broadcasting of district court proceedings. The three-year pilot will evaluate the effect of cameras in the courtroom for civil cases. Proceedings are selected upon the approval of the presiding judge and with the consent of the parties. The judge can stop the recording whenever necessary to protect the rights of the parties and witnesses and to preserve the dignity of the Court. Recording jurors and jury voir dire is prohibited. Judges Donald C. Nugent, Dan Aaron Polster, David D. Dowd, Jr. and James G. Carr have expressed interest in participating, and Judges Nugent and Carr have already recorded trials, which are available for viewing on the U.S. Courts web site.

**Electronic Courtrooms.** The district has 16 electronic courtrooms with full video capability serving all district judges and one magistrate judge courtroom. In 2011, the district judge courtroom in Youngstown had a complete state of the art audio video replacement. Wireless microphone systems have been deployed throughout the district that allow secure use during proceedings. Wi-Fi internet access is also accessible in all courtrooms throughout the district. A Jury Evidence Review System (JERS) has been implemented which allows jurors to easily review exhibits during deliberation.

**Naturalization of New Citizens.** The Court administered the oath of allegiance to 3,265 new citizens in 2011. Ceremonies are held twice per month in Cleveland and monthly in Toledo. Six special ceremonies were also held at offsite locations in the Cleveland area.

**Attorney Admissions Fund.** Thirty grants were awarded in 2011 to bar associations, law schools and other organizations for educational and outreach programs that benefit the bench and the bar in the administration of justice using attorney admission funds. Volunteer attorneys who accept court appointments through the district's Civil Pro Bono Program to represent pro se litigants in civil cases are also reimbursed for expenses using the funds. The funds are also being used to support a written history of the Court which is currently being finalized for publication later this year.

**Attorney Workroom - Akron Ohio.** The U.S. District Court for the Northern District of Ohio was pleased to announce the opening of an Attorney Workroom this past summer. Located on the B-3 Level of the John F. Seiberling Federal Building and U.S. Courthouse, in Akron, Ohio the Attorney Workroom is adjacent to the cafeteria. Amenities of the lounge include a conference area, wireless access to attorneys admitted to practice in the district, telephones, a printer, scanner and copier.

**Local Rules.** The Court modified its Local Rules regarding Alternative Dispute Resolution upon the recommendation of the Northern Ohio Advisory Group. Court appointed neutrals are now permitted to charge the parties up to \$275 per hour for their services.. Previously, neutrals provided the first four and one half (4 1/2) hours of service free of charge. Court appointed neutrals may now charge for those hours subject to certain limitations. The fee is split equally between the plaintiffs and the defendants, unless otherwise agreed. In order to retain some of the

aspects of pro bono service that had been in place since the ADR program was adopted in 1992, no compensation is provided for preparation time. In addition, the Court may appoint a neutral who will provide 4 1/2 hours of free service, if a party does not have the financial resources to pay the fee. The district also changed the Court depository from the Bank of America's On Line Banking System to the Administrative Office's Court Registry Investment System (CRIS) which invests funds in the Bureau of Public Debt's Federal Investment Program of Government Accounting Series (GAS) securities.

**CJA National Policy and Procedure Training.** The Clerk's Office, in conjunction with the Federal Defender's Office, provided CJA National Policy and Procedure training to all of the CJA Panel Attorneys last December. The National CJA Voucher Training provided information describing the CJA and explaining the CJA voucher submission and approval process. During the training key points were identified related to the compensation and expenses of appointed counsel. Key points were also identified related to the authorization and payment of service providers other than counsel (ie investigator). The uses of the CJA Online Reference Tool (ORT) were discussed and demonstrated online during the training. Following the ORT a demonstration of the calculating CJA20 Voucher/Worksheet was demonstrated and information was reviewed on tips and other resources such as frequently asked questions and user set up instructions. The last item covered were the changes in the policy guidance on billing practices. We concluded the training with questions.

**Bench / Bar Conference.** The district co-sponsored the Sixth Biennial Ohio Federal Bench Bar Conference in Columbus in October with the Southern District of Ohio. Topics included a Supreme Court update; Tips for Briefing with an Eye on the Appellate Record; Litigating Privilege issues; Experts: Admissibility and Effective Presentation; Resolving Employment Cases; Criminal Law: New Thinking on Not-So-New Issues; Class Action Management; Provisional Ballots: Will Every Close Election Have to Be Decided by a Federal Judge; and Employment Law: Retaliation Claims.

**National Clerks Conference.** Our Clerk's Office had the privilege of hosting the Federal Judicial Center's National Conference for Clerks, District Court Executives and Chief Deputies in Cleveland October 25- 28, 2010. The Conference was attended by about 200 individuals representing all district courts across the nation as well as FJC and AO staff. The Conference is held every other year to update clerks of court and their chief deputies on emerging trends and issues and to provide courts with the opportunity to exchange ideas and best practices. Highlights of the program included a motivating and gracious welcome address by Judge Patricia A. Gaughan; a budget update by Judge Julia Smith Gibbons, Sixth Circuit Court of Appeals and AO staff; and inspirational closing reflections on the role of court administration leaders by former Chief Judge Thomas D. Lambros. In addition, numerous presentations by the AO, FJC, court staff and guest speakers addressed budget, performance management, mentoring of new Court Executives and Chief Deputies, and the development of court staff. Breakout sessions were also conducted on audit, internal controls, motivating different generations, concepts from the latest and greatest management books, memory skills, and the use of iPads within the judiciary. A technology resource fair allowed courts to demonstrate locally developed software programs for managing inventory, processing attorney admissions, implementing eJuror, etc. " It was most gratifying to hear not only how many people enjoyed the Conference, but perhaps even more so, how many enjoyed their visit to Cleveland and Northern Ohio.

**Toledo Courthouse Project.** The national budget crisis has placed on hold construction of the new Toledo courthouse despite the fact that the design development has now been completed.

**Consolidated Human Resources Department.** The district has a consolidated Human Resources Department which serves judges, judicial staff, the Pretrial Services and Probation Office, and the Clerk's Office. The four-member team recently moved into a newly created HR suite on the first floor of the Carl B. Stokes Courthouse in Cleveland after several years of operating in separate offices throughout the building. The HR department has assisted in the implementation of the Court's Performance Management Plan and evaluations systems and is in the process of updating and revising the district's Employee Manual.

**Bar Memorial Program.** The Court, in collaboration with the Cleveland Metropolitan and Federal Bar Associations, hosts an annual memorial program honoring members of the bar who passed away the previous year. Last year's ceremony was held in the atrium of the Howard M. Metzenbaum U.S. Court House with attendance by families of the deceased attorneys and judicial officers from the district, bankruptcy, state, county and municipal courts. This year's program is scheduled for April 2, 2012.

**Clerk's Office.** The Clerk's Office continues to take a leadership role in operational innovations, emergency planning, administration of the district's consolidated IT department, finance, web site development, space/facilities, procurement, implementation of electronic filing and video-conferencing, the installation and support of electronic courtrooms and audio-digital recording equipment, and the renovation of court facilities. The office is proud of its redesigned public Internet web site and is preparing to unveil a redesigned Intranet web site in April. The Clerk's Office strongly supports staff participation in leadership development and educational programs. Six staff members have graduated from the Federal Judicial Center's Court Leadership Program. Two Clerk's Office staff members are currently enrolled in the FJC's Court Leadership Program. Additionally, several others have participated in the University of Michigan Judicial Administration program offered in conjunction with the Federal Court Clerks' Association.

Paper Check Conversion Over the Counter (PCCOTC) migrated to Over the Counter Channel Application (OTCnet). In 2010 the Clerk's Office implemented Paper Check Conversion Over the Counter (PCCOTC), software deployed by the Department of the Treasury, which enhances our cashing system by allowing for the electronic conversion (scanning) of all personal and business checks received as payments in a secure, online banking environment. Prior to the implementation of TGA net, cash deposits were manually prepared and delivered to local depositories. With TGA net, deposit slips are automatically generated and deposit information is electronically transmitted to the Treasury and later verified by local depositories, thus streamlining the process for all entities. This program resulted in faster deposits of funds into the court's commercial bank accounts and a substantial reduction of our need for Brink's service. In 2011, the Clerk's Office migrated to the Over the Counter Channel Application (OTCnet). The OTCnet Web-based application, which was implemented in March, 2011, integrated the functionality of the Paper Check Conversion Over the Counter (PCC OTC) and Treasury General Account Deposit Reporting Network (TGA net) legacy systems into a single application. OTCnet provides for the electronic communication between TGA banks and agencies regarding the processing of cash and check deposits. In addition, the OTCnet meets the latest Federal Information Security Management Act and the Government-wide Accounting Modernization

Project's audit and security standards.

Consolidated IT Department. The district has a consolidated IT Department under the direction of the IT Director who reports to the Clerk of Court. The district continues to pursue cost savings by virtualizing file servers and desktop systems. Virtualization allows multiple servers to reside on one physical file server, and also allows multiple desktop systems to reside on one centralized server for easier administration and extending the usability of existing desktop hardware without the need for cyclical replacement. The court expects to have one of the largest deployments of virtual desktops in the federal judiciary by the end of 2012. The Court's public web site was completely redesigned in January 2011 to make it easier to navigate, include improved search capability, and allow for active content management by non-automation staff. Plans are underway to unveil a redesigned web site for internal users in April, 2012. The Youngstown courthouse phone system was upgraded to a new Voice over IP (VoIP) system in February 2011. The new system offers the same expanded functionality as the main Cleveland system.

Electronic Filing. The Clerk's Office continued its efforts to contribute as a leader of the national implementation of electronic filing in the federal courts by serving as a Monitored Live Operations (MLO) court for CM/ECF Version 5 by installing and testing the upgrade prior to its national release.

Jury. The district closely monitors jury utilization and actively seeks to meet the AO juror utilization goals. The Clerk's Office implemented the web-based eJuror system has allowed prospective jurors to complete questionnaires and summons, and request deferrals or excusals, online since December of 2009. The Clerk's Office also implemented a juror stratification program through which it attempts to increase the response of minorities to juror summons by mailing through subsequent mailings to prospective jurors from the same zip codes from which it has received returned undeliverable summons. The jury utilization rate for 2011 was 40%.

**Pretrial Services and Probation Office.** The Pretrial Services Office and the Probation Office are consolidated under the direction of the Chief Pretrial Services and Probation Officer.

Successful Transitions-Accelerated Reentry (STAR). Northern Ohio is committed to expanding its reentry court program which attempts to reduce recidivism in the high-risk, high-need offender population through close oversight by the Court using evidence-based principles of effective community supervision. The STAR program was developed in 2008 after researching other reentry court programs in the United States. The district initiated its efforts in Toledo and has since expanded the program to Cleveland and Youngstown. Potential participants are identified using several risk prediction indicators. Participation is voluntary and the possibility of early termination of supervised release is offered as an incentive to participate. The program uses a team approach involving judges, the U.S. Attorney's Office, the Federal Public Defender's Office, and the U.S. Pretrial Services and Probation Office.

Defendant / Offender Workforce Program. The district continues to expand and diversify the workforce program originally launched in 2005 to assist unemployed and under-employed clients. In 2010, a line staff officer was promoted to Employment Specialist and a Workforce Development Manual was developed to establish procedures for addressing client employment-related issues. Employment programs that have developed and expanded within the

past two years are: 1) Prepare for Success which provides free interview clothes to clients in need of dress attire; 2) Cognitive Restructuring/Soft Skills Training to help clients understand their own self-defeating "thinking traps" and learn about employer expectations and the interpersonal skills needed to handle difficult workplace situations; 3) Life Skills and Job Readiness which provides in-house training on resume writing, job interviewing, dressing for success, and budgeting; 4) a Career Resource Room which has information to assist in pursuing education and employment opportunities; 5) Warrant Release / Driver's License program which assists clients regain a valid license due in order to pursue employment opportunities; and 6) Employer Outreach / Community Partnerships which provide a speakers' bureau on topics including workforce development, drugs and alcohol, computer crimes, HIV and AIDS and Project Penalty Awareness.

Fair Sentencing Act of 2010. The U.S. Pretrial Services and Probation Office has been working diligently to process the requests received from offenders to determine whether they qualify for a retroactive reduction in sentence pursuant to the Fair Sentencing Act of 2010, that increased the quantities of crack cocaine which trigger 5 and 10-year mandatory minimums penalties.

6th and 7th Circuit Pretrial and Probation Chiefs and Deputy Chiefs Meeting. The district hosted the 6th and 7th Circuit Pretrial and Probation Chiefs and Deputy Chiefs meeting in September, 2011. The theme of the upbeat agenda was "Playing Into the Future: A Leadership Jam Session."

Scenario-Based Safety Training. The Pretrial Services and Probation Office partnered with other federal and state law enforcement agencies to conduct its second district-wide scenario-based safety training in September, 2011, to increase officer safety awareness. Officers participated in a series of reality-based scenarios, such as home and office visits. They utilized the district's "use of force" continuum to respond to potentially threatening situations.

Federal Judicial Center Leadership Development Program. Six officers are participating in the Federal Judicial Center's Leadership Development Program for Pretrial Services and Probation Offices which is a three-year program that teaches and develops leadership skills through formal instruction, project-based learning, and one-on-one interaction with faculty mentors.

Educational Program / GED. Many offenders under supervision are without a high school diploma or GED and attendance in programs established to assist offenders obtain their GEDs continues to grow. In Cleveland, attendance tripled in Spring, 2011, and classes were expanded and are now held year round, two days a week with two hour sessions in both the morning and afternoon. The Youngstown office has also begun the process of implementing an educational program / GED and our Akron office has partnered with Project LEARN, to improve the GED intake process. The district held its first graduation ceremony in November for two graduates of the program.

Second Chance Act Program. The district partnered with the Cuyahoga Community College Truck Driving Academy to offer a six-week training program to four selected participants using Second Chance Act funding. All four participants successfully completed the training, passed the practical exam, and received their Class A Commercial Driver's License. The district is working closely with the college and other community resources to assist the graduates in securing jobs in the truck driving field.

Mobile Computing. In a move towards establishing a paperless office, all officers were provided with new Blackberry Torches and iPads that can be used in the field, at home or in court to access offender information from PACTS as well as reports, email, and calendars.

**USMS Celebration.** Chief Judge Oliver and Judge Benita Pearson hosted a celebration to honor three security personnel who were nationally recognized for excellence in service on June 30, 2011:

Dean G. Michael, Deputy United States Marshal -Special Achievement Award

Lucian Paglia, Lead Court Security Officer and Gary Dolak, Court Security Officer - The Harry Belluomini Court Security Officer of the Year Award

Chief Judge Oliver and Judge Pearson along with Magistrate Judge George J. Limbert, Peter J. Elliott and Geri M. Smith took part in a brief ceremony to congratulate Dean Michael, Lucian Paglia and Gary Dolak who courageously saved the life of a co-worker in the line of duty. The guests of honor were greeted at a reception immediately following the ceremony in Judge Pearson's chambers.

**Heritage Celebrations.** The district participates in the Administrative Office's Heritage Celebration Series by holding an annual African-American Heritage Ceremony each February. The keynote speaker in 2011 was newly appointed District Judge Benita Y. Pearson.

**International Outreach.** In August, the Court collaborated with the Cleveland Council on World Affairs to host judges and attorneys from Armenia, Ghana, Israel, Macedonia, Malawi, Morocco, Romania, and Sierra Leone seeking to learn about the U.S. judicial system.

**Advisory Group.** The Northern Ohio Attorney Advisory Group, chaired by José Feliciano of Baker & Hostetler, meets with the judges in May and November and has four standing committees: Civil Rules Committee, Criminal Rules Committee, Alternative Dispute Resolution Committee and Futures Group. In addition, ad hoc committees and study groups are formed as needed. In 2011 the Advisory Group recommended several changes to the Local Rules regarding Alternative Dispute Resolution which the Court adopted.

Respectfully Submitted,

Solomon Oliver, Jr.  
Chief Judge