

**JUDICIAL CONFERENCE OF THE UNITED STATES**

**STATEMENT OF**

**JUDGE DAVID B. SENTELLE  
U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA**



**BEFORE**

**THE SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY  
AND THE INTERNET**

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**“AN EXAMINATION OF THE JUDICIAL CONDUCT AND DISABILITY  
SYSTEM”**

**April 25, 2013**

Good day, Mr. Chairman and members of the Committee. I am Judge David Sentelle of the United States Court of Appeals for the District of Columbia Circuit. In February of this year, I completed my term as Chair of the Executive Committee of the Judicial Conference of the United States. In February, I also completed a five-year term as chief judge of my court. Today's hearing is entitled, "An Examination of the Judicial Conduct and Disability System" and my colleague, Judge Anthony Scirica, as the chair of the Judicial Conference Committee on Judicial Conduct and Disability, is obviously best qualified to discuss that topic. But our conduct and disability system does not operate in a vacuum. Rather, it is part of an interconnected web of Judiciary programs regarding ethics, employee conduct, oversight, audit, review, complaint and dispute resolution, and development and implementation of best practices. Not infrequently, matters that are discovered in one of these areas lead to others, both in practice and perhaps in the minds of Congressional Committees. Therefore, my testimony today on behalf of the Judicial Conference of the United States will outline some of our work in these other areas, which I hope will be helpful to the Subcommittee.

An independent Judiciary is one of the most valuable and admired assets of our 235-year-old democracy. In order to help preserve independence, our branch has been granted considerable powers of self-governance and oversight. With such power, however, comes responsibility and accountability, including the obligation to explain ourselves to the public and to Congress. The Judicial Conference reaffirmed this guiding principle by identifying Accountability as one of the six core values underlying the *Strategic Plan for the Federal Judiciary*, adopted in September 2010. Specifically, the Plan requires "stringent standards of conduct; self-enforcement of legal and ethical rules; good stewardship of public funds and property; effective and efficient use of resources."<sup>1</sup> Today, I will provide a brief overview of the robust system of checks and balances that are in place to ensure that the administration of the judicial branch of the U.S. government is accountable.

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<sup>1</sup> *Strategic Plan for the Federal Judiciary*, September 2010, page 2. See also, Strategy 7.1, page 16.

## **Judiciary Mechanisms for Oversight and Accountability**

To understand accountability mechanisms in the Judiciary, it is important to recognize that our system is specifically designed to reflect and capitalize upon the unique nature and structure of federal judicial administration. Unlike executive branch entities, the federal Judiciary is not a single agency, and critical administrative authorities and responsibilities are carried out locally, as well as regionally and nationally. The decentralized nature of judicial administration is designed to support and complement independent judicial decision-making at the local court level where the judicial power is vested in individual judges and panels of judges. 28 U.S.C. §§ 43(b), 132(b), 151.

### *Local Accountability Mechanisms*

Within appellate, district, and bankruptcy courts, chief judges and court unit executives are primarily responsible for the review, oversight, and integrity of court operations. Certain duties and responsibilities are the statutory responsibility of the chief judge or the court as a whole; other authorities are delegated to the courts by the Director of the Administrative Office of the U.S. Courts (AO). Each court carries out its business independently, but in accordance with statutes, rules of court, Judicial Conference policies, and circuit judicial council orders. For administrative purposes, each court has a chief judge, whose responsibilities include oversight activities in areas that do not impinge on the judicial independence of the court's judges.

Every federal court is held responsible for the effective stewardship of all public resources under its control and for appointing and removing its employees. Each court is required to have clearly defined procedures for making financial management decisions and producing timely financial reports. Courts must maintain management plans against which court operations can be monitored including, for example, a budget spending plan, internal controls plan, jury management plan, employment dispute resolution plan, Criminal Justice Act plan, and others that guide performance and effective, accountable administrative operations.

### *Regional Oversight Responsibilities*

Regionally, circuit judicial councils carry out major oversight responsibilities.<sup>2</sup> Each council has broad authority to “make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit.” 28 U.S.C. § 332(d)(1). As Judge Scirica has already described, the judicial councils play an important role in the administration of the judicial disability or misconduct complaint system. In addition, the councils perform an array of other oversight responsibilities related to circuit governance and operations. To ensure enforcement of council mandates, Judiciary officers and employees of the circuit are statutorily required to “promptly carry into effect all orders of the judicial council.” 28 U.S.C. § 332(d)(2).

### *National Entities*

National entities and governing bodies, including the U.S. Judicial Conference and the AO, develop policies, provide support for courts, and perform necessary oversight. The Director of the AO is “the administrative officer of the courts,” 28 U.S.C. § 604(a), and is vested with various powers and responsibilities for administering the branch’s functions. In addition to coordinating the Judiciary audit program, the AO maintains an integrated management and financial planning system, with rigorous financial controls governing budget formulation and execution. The AO also conducts reviews and assessments of certain court operations and judicial workloads to enhance operational effectiveness and economy. National standards and guidelines are promulgated in an official administrative policy manual, and the AO prepares supplemental court guidance materials. The AO also is instrumental in conducting investigations of allegations about fraud, waste, and abuse regarding Judiciary operations that are raised by judges, Judiciary personnel, or members of the public.

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<sup>2</sup> For each circuit, the membership of circuit judicial councils includes the chief judge of the court of appeals plus an equal number of circuit and district judges. Most circuit judicial councils also have non-voting bankruptcy judge and magistrate judge observers.

The Director of the AO is appointed by the Chief Justice and serves under the supervision and direction of the Judicial Conference of the United States. 28 U.S.C. §§ 601, 604(a). The Judicial Conference is the policy-making body for the federal Judiciary, 28 U.S.C. § 331, and much of its work, like that in Congress, is conducted by committees. Proposed policies are analyzed and considered at the committee level. The Judiciary's audit, review, and investigative assistance activities are overseen by the Judicial Conference Committee on Audits and Administrative Office Accountability.

### *External Oversight*

In addition to these internal oversight mechanisms, Congress provides external oversight of Judiciary budgets, administrative functions, and operations. Today's hearing is an example of Congress exercising its legitimate oversight role specifically to hear about how our self-governance is functioning, to ask questions about our accountability systems, and to discuss suggested actions that the Judiciary can take to address any concerns you may have. Judiciary representatives are often called upon to testify before other Congressional committees that have oversight responsibilities over other aspects of our operations, including for example the Judiciary's budget requests and courthouse construction. In addition, the Government Accountability Office (GAO) regularly conducts studies of Judiciary operations. Nine GAO studies involving the federal Judiciary are either underway or recently completed. This year, the Judiciary has cooperated with GAO reviews on the following array of topics: shared administrative services, courthouse planning and use, patent litigation, judicial survivor benefits, the bankruptcy of large financial firms, and other matters.

### **Judiciary Audit Programs**

28 U.S.C. § 604(a)(11) provides that the Director of the AO shall audit vouchers and accounts of the courts, the Federal Judicial Center, the offices providing pretrial services, and their clerical and administrative personnel. This responsibility requires the Director to audit the

courts' financial transactions to ensure the completeness, existence, accuracy, rights and obligations, valuation, and presentation of financial reporting. To carry out this function, the AO's Office of Audit oversees comprehensive audits of Judiciary funds through cyclical financial audits of Judiciary units, annual financial audits of Judiciary programs, and audits of major program expenditures, activities, and systems.

Most of these audits, including the cyclical audits of court units, audits of Criminal Justice Act grantees, bankruptcy trustees and debtors, and audits of the Judiciary's appropriation accounts, are conducted by independent certified public accounting (CPA) firms. These audits are performed in accordance with generally accepted auditing standards, and the standards applicable to financial audits contained in the *Government Auditing Standards*, issued by the Comptroller General of the United States. Use of CPA firms for these audits provides the assurance that the Judiciary has obtained an independent auditor's opinion on the related financial statements.

In addition to these regular audits, managers of federal court units, including federal defender organizations, may request special audits of their units or programs. The most common types of special audits are "change of clerk" and "change of financial administrator" audits. These audits provide assurance that new unit executives and financial administrators inherit financially sound operations. The AO may also initiate a special audit in certain circumstances if an issue is identified in an area for which the AO has oversight or audit responsibilities. Special financial audits are usually performed by an experienced staff financial auditor from the AO's Office of Audit.

Upon completion of all audits, final audit reports are provided to the court unit's chief judge, court unit executives and circuit executives, and relevant AO program managers and offices. These reports are used by the auditee to implement recommendations communicated in the report to address audit findings. In order to ensure that court units and other audited entities evaluate and implement corrective action to address audit findings or other issues identified in an

audit, the AO, under the guidance of the Committee on Audit and Administrative Office Accountability, has instituted a follow-up program in which auditees are asked to report on and verify the implementation of corrective actions. The Office of Audit tracks all findings identified in final audit reports until it has been verified that all issues have been resolved. Open findings and reports may be escalated to the relevant circuit judicial council for resolution if not addressed at the local level. In addition, all previous findings and corrective actions are reviewed and assessed as part of the next regularly scheduled audit.

Performance audits also are conducted. This type of audit provides information to improve program management and facilitate decision-making by management, as well as to oversee or initiate corrective actions and improve public accountability. Performance audits are generally national in scope and focus on programs, activities, or systems that support all of the courts. Typically, they are performed at the request of either AO or court unit management to review a specific operation or program or to ensure that a law, standard, or policy is adhered to or is operating effectively. Performance audits can be conducted by internal audit staff or by independent CPA firms, depending on the nature of the audit.

### **Program Reviews**

The AO conducts a broad array of management and program reviews of court units and federal defender organizations. These review programs provide advice to court and defender organization managers regarding the effectiveness of their organizations, and determine whether the policies of the Judicial Conference are being followed. Review programs also assess whether AO responsibilities that have been delegated to the courts by the AO Director are being carried out in compliance with relevant policies.

Program reviews may be broad in scope or narrowly focused – they may address the operations and functions of the organization; human resource management; budget and finance; property management; procurement; jury administration; court reporting; court interpreting; and

information technology operations, management, and security. Most program reviews are conducted on site and include observations of office operations, interviews with key staff, and reviews of appropriate court records and files.

Most program reviews conclude with a set of findings and recommendations that are discussed with the court unit while they are in a preliminary stage, and are then included in a final report. Implementation of program review recommendations is generally the responsibility of the court unit or defender organization, in consultation with the relevant AO program office, which is also available to provide assistance as needed.

### **Investigations of Allegations of Fraud, Waste, and Abuse**

In keeping with the decentralized nature of the federal Judiciary, the primary responsibility for addressing allegations of fraud, waste, or abuse rests with each Judiciary organization – at the local, regional, and national levels. The Committee on Audits and Administrative Office Accountability works with courts to ensure that local mechanisms for reporting and investigating fraud, waste, or abuse allegations are established and that these mechanisms are communicated to all Judiciary employees. For those who may not feel comfortable reporting an allegation locally, complaints may be lodged at the circuit level or with the AO, which maintains a confidential fraud, waste, and abuse online system that is available to all Judiciary employees and contractors.

Since 1988, the Judicial Conference has authorized the Director of the AO to provide investigative assistance to courts and federal public defender organizations, upon request of a chief circuit, district, or bankruptcy judge. The AO may receive allegations pertaining to the federal courts and its employees from court or AO employees, from executive branch agencies such as the Department of Justice, and from GAO's fraud hotline. Allegations of impropriety may also be received by the AO from members of Congress and the general public. If the

allegation involves court behavior, the AO brings these matters to the chief judge of the involved court and offers assistance, including investigatory assistance.

Although courts may elect to conduct their own investigations of alleged improprieties, the AO's investigation program was created to provide professional, impartial, fact-finding services. The investigation program enables an involved court to determine if a matter requires its administrative attention, generally by way of corrective action or, in some circumstances, referral to law enforcement officials. The AO follows up with the court regarding its investigation and resolutions are reported to the Committee on Audits and Administrative Office Accountability.

### **Whistleblower Protections for Judiciary Employees**

To protect whistleblowers in the courts, in September 2012, the Judicial Conference approved an amendment to the Judiciary's Model Employment Dispute Resolution (EDR) Plan to provide more explicit protections for whistleblowers. A new chapter in the Model EDR Plan includes a policy statement that employees with certain personnel authority shall not take adverse action against an employee who in good faith discloses what that employee believes is evidence of a violation of any law, rule, or regulation, as well as certain other conduct constituting gross mismanagement or waste. The new chapter also defines adverse actions and describes reporting responsibilities, the investigation of allegations, and disciplinary actions. Claims of retaliation are adjudicated through the plan's dispute resolution procedures. The AO also has whistleblower protections for its employees, established pursuant to the AO Personnel Act, Pub. L. No. 101-474.

### **Conclusion**

Accountability is a core value of the federal Judiciary, and a comprehensive array of Judiciary policies, procedures, and governance mechanisms provide thorough oversight and review of court and federal defender operations. A multi-tiered system of comprehensive checks

combined with decentralized authority has provided effective operational oversight and ensured that problems are prevented, and that when they do occur, they are promptly identified and addressed. Working together, these components have proven an effective deterrent against misconduct and misuse of public resources, fostered a culture of integrity and accountability, and contributed to the federal Judiciary's established record of sound stewardship.