

## **ANALYSIS OF THE SEVENTH CIRCUIT**

### **A. Number of Authorized Judges and Current Request for Additional Judges**

The Seventh Circuit has a full complement of judges, and is not requesting any additional judges. The Seventh Circuit currently includes 11 active and 6 senior judges. According to Chief Judge Richard Posner, this number of judges has proven adequate for the court to effectively handle its caseload.

### **B. Discussion of Seventh Circuit Caseload**

The number of filings for the Seventh Circuit increased from 2541 in 1988, to 3350 in 1997. Although case filings increased dramatically over a ten year period, the time interval from notice to decision declined from a median time of 11 months in 1988, to 10.5 months in 1997. The median time from oral argument to decision also fell from 4.4 months to 2.7 in the same time period.

According to Judge Posner, the Seventh Circuit experiences a significant reduction in its caseload before cases are submitted to a panel of judges. Of 3350 cases filed in 1997, more than half of these cases “disappeared” through abandonment, consolidation, dismissal on motion, or settlement, before they were reviewed by a panel of judges. Consequently, Judge Posner testified that the Seventh Circuit’s caseload, in effect, has “not increased significantly in the last five years.”

Case terminations in the Seventh Circuit are almost equal the number of filings each year. In 1995, there were 3112 filings and 3246 terminations; in 1996, 3248 filings and 3149 terminations, and in 1997, 3350 filings and 3311 terminations. The large number of terminations has allowed some judges to visit and sit by designation in district courts in their circuit. This efficiency has also allowed some Seventh Circuit senior judges to sit by designation on other circuits.

### **C. Seventh Circuit Case Management**

The Seventh Circuit conducts preliminary case screenings. In 1995, 42.9% of all cases were decided by the court after a conference on the case. Most of the remaining 57.1% of the cases were then set for oral argument by a panel of judges. For cases that were not decided at a preliminary hearing, oral argument is usually scheduled. The Seventh Circuit grants oral argument to any parties that want it as long as both sides are represented by lawyers, and it may even grant oral argument to pro se litigants.

**Court Schedule and Recess Period:** Active judges in the Seventh Circuit are scheduled to sit on 6 oral arguments a day for some 30 days per year. The active judges also sit for an additional 9 cases a day for 4 days in the year, and all judges sit en banc for 2 days a year. There are 36 days of conferences, and each active judge sits for 9 or 10 conferences a year. A total of some 482 cases were considered in the 36 days of conference during 1997.

The Seventh Circuit has a recess from oral argument, but the judges have no recess from their workload. From mid-June until Labor Day, the court suspends its regular calendar sittings of oral arguments and conferences to give the judges time to write opinions.

**Use of Staff Attorneys:** Staff attorneys provide no input in substantive case dispositions, nor in the screening process for cases which receive oral argument. They do handle pro se appeals, and research and prepare the record for such cases.

Judge Posner indicated that the Seventh Circuit has been allotted 6 staff attorneys, but only employs three. However, he felt that if the court's caseload increases significantly, it might be prudent to hire their allotted staff in order to stay on top of the caseload.

**Use of Visiting Judges:** According to Judge Posner, it is more appropriate to utilize visiting judges at the district, rather than appellate court level. Consequently, the Seventh Circuit has discontinued the use of visiting judges in consideration of its appeals. Judge Posner testified that one reason the Seventh Circuit does not utilize visiting judges is because it wants to foster collegiality between its own judges. In addition, he indicated that when a circuit conducts en banc proceedings and there is a split between two regular judges on a 3-judge panel, the visiting judge will break the tie. As such, Judge Posner believed that avoiding the use of visiting judges in en bancs can minimize the number of separate opinions, concurring and dissenting opinions. While it might be appropriate for visiting judges from an over-staffed circuit to help out another court if their situation is "desperately underhanded", Judge Posner recommended that, generally, circuits would be "better off" not making use of visiting judges.

**Use of Senior Judges:** There are 6 Seventh Circuit senior judges. At the time of the Subcommittee hearing, one senior judge maintained a full caseload and was considered by Judge Posner to be a full-time judge, while the other 5 judges worked in a part-time capacity. Judge Posner estimated that the circuit's 6 senior judges provided the court with the services of roughly the equivalent of 3 additional active judges.

**Use of Mediation Programs:** Pursuant to the Federal Rules of Appellate Procedure, the Seventh Circuit established a settlement conference program to encourage and facilitate the settlement of civil appeals. The settlement program handles civil cases, but does not review pro se, habeas corpus, prisoners' civil rights, sentencing, or mandamus appeals. The court has two senior employees who act as settlement officers. These settlement officers randomly pull 1 out of 7 appeals prior to conference. If no settlement is reached, the cases then are moved to conference for judicial review. In this fashion, the settlement office removes cases from the docket before any time is spent on them by judges.

Judge Posner estimated that 3 settlement officers could resolve the work of one circuit judge, but the court currently only has 2 such officers. He felt that it might be wise to evaluate the circuit's program and request additional settlement officers if the program is successful. Judge Posner also believed that it might be wise for settlement officers to evaluate all incoming cases for potential settlement rather than take a random sample of cases. He explained that mediators recognize that there are certain cases and situations that lend

themselves better than others to successful negotiations and mediation of disputes.

#### **D. Seventh Circuit Use of Other Court Efficiencies**

The Seventh Circuit keeps a “shame list” of cases which are pending without a decision for more than 90 days after oral argument, and the judges meet to go over this list. Judge Posner noted that the judges on his court did not like to be at the bottom of that list, and in fact indicated that the list and meetings provide a big incentive for the Seventh Circuit judges to improve their performance before the next judicial meeting.

The Seventh Circuit practices a system in which the judges hear all the day’s cases in one continuous session, without even taking a luncheon break. Judge Posner explained that this process gives judges a full afternoon to work on writing decisions and other non-argument tasks. In addition, he encourages judges to lend their law clerks to other judges when they have a slack period in their work and another judge is short of help at the time.

Judge Posner suggested that to lessen the federal caseload, prisoner appeals brought under the Federal Tort Claims Act be handled in a forum other than the federal courts of appeals.

#### **E. Conclusion**

Judge Posner testified that the Seventh Circuit is handling its caseload well. However, at the time of the Subcommittee hearing, Judge Posner warned that, because two active judges were eligible for senior status and there could be a substantial increase in future caseload, the Seventh Circuit’s situation could drastically change for the worse.

In their responses to the 1996 Judicial Questionnaire, some Seventh Circuit judges suggested that their caseload was “overwhelming”. Each circuit judge is responsible for writing and supervising approximately 100 written decisions a year. The difference in perception between circuit judges concerning their caseload seems to be just that, perception. One-hundred decisions a year per judge calculates to be about two decisions a week. The majority of circuit judges appear to find this level of workload to be heavy, but not overwhelming.

Based on the Seventh Circuit’s current needs and caseload requirements, no congressional action is necessary at this time.

## Seventh Circuit - Statistical Information for 1988 through 1997 as of September 30

Year	Filings	Terminations	From notice of Appeal to decision (Interval)	From Oral Argument to Decision (Interval)
1988	2,541	2,091	11.0	4.4
1989	2,766	2,227	11.6	3.9
1990	2,913	2,791	12.8	3.3
1991	3,029	2,784	12.8	3.8
1992	3,106	3,295	13.5	4.3
1993	3,235	3,152	12.5	3.9
1994	3,096	3,398	11.5	3.4
1995	3,112	3,246	11.1	2.5
1996	3,248	3,149	10.5	3.1
1997	3,350	3,311	10.5	2.7