

ANALYSIS OF THE SIXTH CIRCUIT¹

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

Although the Sixth Circuit had 16 authorized active judgeships since 1990, it has never actually operated at this level. At present, the Sixth Circuit has one judicial vacancy which has existed for more than three years. Chief Judge Boyce Martin argued that the court's existing caseload justifies at least 18 judgeships, and consequently the vacancy should be filled as soon as possible. But he also testified that the Sixth Circuit is functioning in an effective and efficient manner.

B. Discussion of Sixth Circuit Caseload

In fiscal year 1997, there were 4622 cases filed with the Sixth Circuit. While this number represented only a slight increase over 1996, it also was approximately 10% higher than in 1991. Filings were up by 9.1% for the first 5 months of 1998 over the same period in 1997. Judge Martin testified that approximately half of these appeals will require judicial action to dispose of them on the merits. In 1996, approximately 2000 cases were terminated by judicial action after hearing or submission, while the remaining appeals were disposed of through settlement, procedural default, consolidation or voluntary dismissal.

According to Judge Martin, the Prisoner Litigation Reform Act and habeas corpus reforms have not had a significant impact on their caseload. The number of prisoner cases decreased slightly from 1996 to 1997, but was 13% higher in 1997 than in 1992.

C. Sixth Circuit Case Management

Unlike some circuits, oral argument in the Sixth Circuit is afforded to all parties, other than prisoner and pro se litigants, unless the parties waive oral argument. Consequently, the Sixth Circuit hears oral argument for a greater percentage of its docket than do other circuits. Judge Martin indicated that the court generally allocates 15 minutes of oral argument to each side, so the time spent on oral argument constitutes a relatively small amount of total judge time spent in the preparation and disposition of a case. The policy of granting oral argument in so many cases significantly increases the workload of the Sixth Circuit.

Under Sixth Circuit Rule 9, if a case falls within one of certain enumerated criteria, it is assigned to a staff attorney for review and research on the facts and relevant legal issues for consideration by the court. Staff attorneys review counsel-represented appeals where the parties have waived oral argument, and present applications for certificates of appealability in

¹ Due to scheduling problems, the Subcommittee was unable to schedule a hearing on the Sixth Circuit which the Chief Judge could attend. Thus, the Subcommittee's assessment of the Sixth Circuit's judgeship needs is based solely on a written statement and responses to Subcommittee questions provided by the Chief Judge of the Sixth Circuit. These materials are available from the Subcommittee.

habeas corpus cases and motions to vacate cases to single judges. Staff attorneys also present motions seeking permission to file a successive habeas corpus petition or motion to vacate sentence to 3-judge panels.

In 1997, the Sixth Circuit scheduled a total of 48 panels, with each panel assigned 40 cases. Judge Martin indicated that the Sixth Circuit accomplished this through the use of senior judges, visiting circuit judges, and district judges sitting by designation.

Court Schedule and Recess Period: Each active judge is scheduled to sit for 8 weeks of hearings each year. Judges usually sit Tuesday through Friday during hearing week, and are assigned 40 cases per hearing week, of which 24 cases are on the oral argument docket and 16 cases are for submission on the briefs. As such, each active judge maintains a caseload of 320 cases per year for disposition on the merits. According to Judge Martin, this work does not include additional work associated with death penalty cases, motions, petitions for rehearings, participation in en banc hearings, and court administrative work.

Judge Travel: Judge Martin did not believe that non-case related travel by judges in the Sixth Circuit has resulted in reduced participation in the hearing or disposition of cases.

According to the GAO judicial travel study, judges in the Sixth Circuit took 92 non-case related trips in 1995, for a total of 268 travel days of which 215 were workdays. Of these trips in 1995, 34 were for activities such as law school seminars or bar association meetings, which comprised 77 travel days of which 57 were workdays. In 1996, the judges in the Sixth Circuit took 92 non-case related trips, consisting of 292 travel days of which 217 were workdays. 34 of these trips were for law school seminars or bar association meetings, and they comprised 91 travel days of which 66 were workdays. In the period from January 1, 1997 to September 30, 1997, the Sixth Circuit judges took 69 non-case related trips, consisting of 196 travel days of which 146 workdays. 28 trips, consisting of 68 travel days of which 43 were workdays, were taken for activities such as teaching law school seminars or attending bar association meetings.

Use of Staff Attorneys: The Sixth Circuit has resisted increasing its use of staff attorneys to prepare court decisions. This resistance has foreclosed an opportunity for judges to reduce the circuit's workload and to focus judicial resources on more complex cases. The primary function of the staff attorney office is merely to review pro se and prisoner-related appeals, and to prepare memoranda for cases that do not require oral argument. A separate group of 4 attorneys work in the clerk's office and prepare research memoranda on substantive motions for the docket that does not include prisoner or pro se cases.

Judge Martin testified that in 1989, the Sixth Circuit had a total of 13 staff attorneys, including a supervisor and senior staff attorney. When the Judicial Conference adopted a staffing formula based on the number of filings in 1991, the court was authorized 21 line staff attorneys, plus supervisory attorneys. At present, there are 19 line attorneys, 3 supervisory attorneys and a senior staff attorney.

Use of Visiting Judges: Judge Martin stated that visiting judges are necessary for the Sixth Circuit to complete its caseload, but they are an “increasingly scarce resource because other circuits find themselves in the same predicament.” He also noted that there are administrative problems inherent in finding and scheduling judges to fill vacancy slots in their hearing schedule. Judge Martin noted that during 1997, a total of 168 3-judge panels sat to hear oral arguments, of which only 8 were composed entirely of active circuit judges from the Sixth Circuit.

Judge Martin was concerned that a heavy reliance on visiting judges could lead to instability and unpredictability in the law of the circuit, which itself could generate additional appeals. While he did believe that visiting judges can enhance an exchange on how circuits operate and can give district judges an appreciation of the appellate process, Judge Martin did not think that a permanent reliance on visiting judges was the answer to filling a court’s judgeship needs.

Use of Senior Judges: The Sixth Circuit’s 6 senior judges have, according to Judge Martin, “shouldered as much of the burden as anyone reasonably could ask.” In FY 1997, Sixth Circuit senior judges were handling about 15% of the circuit’s adjusted case filings. At the time of the Subcommittee hearing, a number of the circuit’s senior judges were over the age of 76.

Use of Mediation Programs: The Sixth Circuit’s mediation office mediated more than 1000 appeals, with settlement occurring in more than 40% of those cases. The office consists of 4 full-time mediation positions. Judge Martin noted that a significant and growing part of the Sixth Circuit’s docket, criminal appeals, are not subject to the settlement process.

D. Sixth Circuit Use of Other Court Efficiencies

The Sixth Circuit has implemented a number of practices designed to enhance its efficiency and to improve the administration of justice. For example, staff attorneys screen appeals to identify those cases which might be subject to some form of summary treatment, and the parties are informed of their right to waive oral argument. The court has also adopted a procedure by which, under certain conditions, disposition of a case may be made in open court following oral argument. The Sixth Circuit also conducts oral argument by telephone conference call in simple, single-issue criminal and civil cases, which achieves significant savings. Judge Martin testified that the court will hear approximately 275 cases by telephone oral arguments in 1998.

Judge Martin also suggested that Congress should be looking at ways to curtail, not expand, federal court jurisdiction. He recommended that the bulk of civil and criminal litigation should be preserved for the state courts. Judge Martin also believed that the suggestion of Judge Newman for 2-judge panels had merit and should be authorized in the circuits on a pilot or trial basis.

E. Conclusion

Notwithstanding the innovations and hard work of the Sixth Circuit's active and senior judges, the Sixth Circuit could further reduce its workload by channeling more work to staff counsel and by granting oral argument only in those cases where argument is truly necessary. Until the Sixth Circuit takes alternative approaches to manage its caseload efficiently, it is not clear that new judgeships should be created for the Sixth Circuit. It is significant that the vote of the Sixth Circuit judges to request additional judgeships was not unanimous. In fact, most of the judges responding to the 1996 Judicial Questionnaire were of the opinion that their caseload was manageable. Judge Martin even testified that his court was functioning effectively and efficiently. Moreover, Judge Martin himself suggested that any action on pending requests for judgeships be deferred until after the report of the Commission on Structural Alternatives for the Federal Courts of Appeals has been reviewed and until final action has been taken on pending legislation that could impact the workload of the federal courts. As such, final action on these judgeships should be deferred until there has been an opportunity to review that report thoroughly and completely.

The following table shows the number of new cases filed in each of the district courts within the Sixth Circuit from 1986 through 1997:

	E. KY	W. KY	E. MI	W. MI	N. OH	S. OH	E. TN	M. TN	W. TN
1986	2,261	2,069	8,289	2,360	6,447	4,389	2,709	1,787	1,638
1987	2,237	1,870	7,519	2,089	5,642	4,056	2,160	1,538	1,475
1988	2,496	1,705	7,356	2,151	6,991	3,843	2,260	1,852	1,528
1989	2,300	1,865	6,405	2,102	5,804	3,350	2,524	1,645	1,770
1990	1,948	1,782	5,402	2,020	7,465	2,917	2,580	1,707	1,613
1991	2,197	1,672	5,869	1,800	4,867	2,784	2,042	1,633	1,636
1992	2,094	1,683	8,466	1,791	4,942	3,226	2,607	1,639	1,781
1993	2,300	1,644	5,715	1,884	8,193	3,060	2,424	1,634	1,671
1994	2,334	1,598	5,467	1,894	7,954	3,015	2,290	1,693	1,608
1995	2,293	1,733	5,725	1,967	8,651	3,109	2,163	1,667	1,793
1996	2,397	1,718	6,461	2,039	9,627	3,369	2,512	1,774	1,945
1997	2,618	1,786	17,104	2,068	9,986	3,415	2,472	1,796	1,789

5. As of July 31, 1998, the cases that were awaiting argument or submission include the following types, numbers and percentages of cases:

Agency	65	1.9%
Bankruptcy	45	1.3%
Civil Rights (non-prisoner)	589	17.6%
Civil Rights (prisoner)	394	11.8%
Criminal	829	24.7%
Diversity	239	7.1%
Federal Question	447	13.3%
Habeas Corpus/Motion to Vacate	606	18.1%
NLRB	55	1.6%
Original Proceedings	15	0.4%
Social Security	41	1.2%
Tax Court	25	0.7%
TOTALS	3350	100.0%

