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## Chief Judge Hogan Sees Change Coming

Chief Judge Thomas F. Hogan (D. D.C.) was named chair of the Executive Committee of the Judicial Conference in 2005. He has been a member of the committee since 2001.

Q: What is the role of the Executive Committee of the Judicial Conference?

A: The Executive Committee keeps the day-to-day business of the Conference running—between the March and September sessions of the Judicial Conference. We basically work on behalf of the Chief Justice, at his direction, to ensure the important policy issues are carried out by the Judicial Conference and its committees and by the AO. We do not establish or create policy—that's the role of the Judicial Conference.

Executive Committee members serve at the pleasure of the Chief Justice, who appoints seven members from the Judicial Conference. Right now we have four chief judges of circuits, and three district judges. The secretary of the Executive Committee is the Director of the Administrative Office, Jim Duff. The chair of the Executive Committee sometimes is looked upon by the Chief Justice and others as a spokesperson for the Judicial Conference on matters of Conference policy.

Q: This has been a year of transition for the federal Judiciary.

A: It really has been a year of tremendous transition for the Judiciary. We have a new Chief Justice. We have a new director of the Administrative Office. We're going to have a new deputy director of the AO, and the Chief Justice will have a new administrative assistant, when Sally Rider leaves. The Executive Committee will have three new members after October 1. So there's change all the way around.

That said, I don't see any substantive changes immediately taking place, although there is bound to be some change in time. I think the Chief Justice, as he gets more involved and more familiar with the process, will put his own mark on the Judiciary. The Chief Justice is a very comfortable person to work with. He is very interested in the Judiciary and an extremely brilliant man. He's adapting well to his new role.

Jim Duff is new as Director of the Administrative Office; but he comes with a long history with the federal Judiciary. It's amazing there was someone like him available. Jim comes in as a person who worked with Chief Justice Rehnquist for several years, and with the Judicial Conference. He represented the Federal Judges Association, so he was intimately involved with the issues of the federal Judiciary.

Mr. Mechem did such a wonderful job in bringing us into the 21st Century, with new courthouses, automation, and CM/ECF. I think Jim Duff is ready to move forward in his own style, which will be different from Mr. Mechem's.

There will be changes on the Executive Committee because Chief Judge John Walker (2nd Cir.) and Chief Judge Joel Flaum (7th Cir.) will be taking senior status and will no longer be members of the Judicial Conference. And Judge David L. Russell, the district court judge from the Western District of Oklahoma, is finishing his term and will be replaced. It will be up to the Chief Justice to appoint new committee members. He'll bring in well qualified judges who will have an opportunity to participate with us on the Executive Committee. It's always nice to have a new perspective and different views.

Q: The issue of judicial ethics and accountability has been in the media recently. Federal judges recently received a memo from the Executive Committee on the topic.

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A: They did. We are obviously concerned with reports in the media of occasional lapses—they're rare but they do happen—of judges forgetting to report a trip they took, or judges not recusing themselves from a case when a family member may own stock.

I don't think there's any suggestion the judges did anything intentionally, but it has concerned us on the Executive Committee, as well as the Chief Justice, and we are going to take steps to be sure judges live up to what is expected of them.

Through the committees, we already have put some measures into effect. The Committee on Codes of Conduct has developed many tools for the judges to keep up-to-date on matters. We have an ethics quiz on the Intranet for the judges to take. And the AO has developed very good conflict-checking software that works with electronic case filing; it's much better software and its easier for judges to use than prior iterations. And once most of the courts are on CM/ECF, it will make it much easier to check for conflicts. It is very difficult in today's world where corporations constantly change and merge, to keep track of all the changes. If the lawyers don't advise you of the changes, you can inadvertently sit on a case. But the automatic conflict-checking software will help greatly.

Q: Why is public perception of judicial accountability so important?

A: If we're making rulings that affect people's lives and well-being, the public has to be confident that we are upholding the law impartially and fairly. They rely on us to give full and fair consideration to all the issues and rules according to the law. When we have judges in whom the public has lost confidence, it hurts the whole process.

I've been very concerned about attacks on the independence of the Judiciary, which causes, I think, misunderstandings by the public. These attacks may result in such laws as one now on the ballot in South Dakota called "Jail for Judges." Or a bill in Montana that would amend their constitution to allow the recall of judges for any reason. There are some very draconian suggestions being made out there, which all go back to a lack of confidence in the Judiciary—and that's why the perception by the public is so important.

Q: There is a growing disparity in judges' pay when compared to the private sector. Is this a problem for the Judiciary and what can be done about it?

A: It's true, federal judges haven't had a real pay raise since the mid-90s. We have had occasional cost-of-living increases—usually less than what federal employees get. The United States used to have the highest pay scale for federal judges, but no longer. Canada and England pay more to their top judges than we do. Perhaps as a result, an increasing number of judges are leaving to go into private practice.

You always hear that a first- or second-year associate in a major firm in a major city makes more than a federal district court judge—which is true. But I like to look at the obligations and duties of a federal judge, and the nature of the cases they're ruling upon. What you're asking them to do is a tremendous responsibility. There's something wrong when you handle a major antitrust case with a billion dollars at issue and the finest lawyers in the country are on the case, and the least lawyer there is making more than the judge. Or if you run a southwest border court and you work seven days a week with literally thousands of cases a month on your docket.

Still, everybody understands that we perform a public service; we don't take the job to make money. We do it as dedicated public servants. But at the same time, we're losing highly qualified judges who have to support their families. Or we risk not getting the quality judges applying for the jobs anymore. The Chief Justice has recognized this and he has indicated that improving judges' pay is a top priority for him. We hope Congress will respond.

Q: Legislation is pending in Congress that would extend to the Judiciary deferral of capital gains taxes. Why was this legislation needed?

A: The rollover provision in the Federal Tax Code allows high officials in the Executive Branch, who have conflicts because of the nature of their business, to take the stock they own and roll it over into a mutual fund or other investments. When they do that, they do not pay capital gains tax, but delay or defer the tax until such time as they sell that investment. Because they have to sell the stock to avoid conflicts, they are not penalized.

The federal Judiciary does not have the same benefit. There was a recent newspaper article about a judge, with family stock in a business, who had been handling a very large antitrust case for several years. One of the defendants purchased that business through another subsidiary. To stay on the case, the judge had to sell the family stock and pay a large capital gains tax. This legislation would avoid that.

Q: The Judiciary's FY 2007 budget is working its way through Congress. What are your concerns about the level of funding for FY 2007?

A: I am very thankful both to the House and the Senate Appropriations Committee for their fair consideration of our needs. At the House and the Senate Appropriations Committee mark we should be able to maintain our existing staff levels in FY 2007, in contrast to a few years ago when we had to make dramatic cuts in staffing.

There are certainly new initiatives and programs that will not proceed. But if the committee mark is passed by the full Senate at least we are going to be able to maintain the status quo in the coming year.


Q: What is the status of the Judiciary's cost-containment efforts? Is this a continuing effort and priority?

A: It is. The Executive Committee is dedicated to it. All the studies show that appropriations simply will not be able to keep up with our increased expenses—especially the rent increases, which we're working to try to control. We're still

asking each conference committee to review and update its cost-containment efforts.

We have to continue to contain our costs internally and operate as effectively and efficiently as possible. We have some substantial ongoing studies to introduce more cost-containment measures, such as the Judiciary's compensation study, and information technology studies, which include the consolidation of servers and other such initiatives that will limit our IT costs. We are trying to control our buildings projects as much as possible, and to evaluate the long-range planning process. We're looking at budget caps in all areas. We are dedicated to an ongoing cost containment, even though it sometimes hurts. We have to be if we're going to survive as the Judiciary.



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