

The Use of Visiting Judges  
in the Federal District Courts:  
A Guide for Judges & Court Personnel

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**EXHIBIT D**

## Preface

Faced with rising caseloads and limits on judicial resources, the judiciary must make some difficult decisions about how to marshal its resources. One approach to managing resources is interdistrict collaboration and assistance. Judges from less burdened districts can assist overburdened districts in a variety of ways.

In the fall of 1998, Chief Justice William H. Rehnquist authorized the creation of the Judicial Officers Resources Working Group (hereafter “Working Group”) to study possible improvements in the management of available judicial resources. The Working Group consisted of the chairs of the six Judicial Conference committees “most involved in issues relating to the flow and disposition of cases within the judiciary” and the chair of the Judicial Panel on Multidistrict Litigation. The Working Group task was to consider whether there were actions the judicial branch could take to alleviate the pressures arising from an increasing caseload and a lack of new judgeships. The Working Group focused its attention on the needs of the district courts.

After an examination of criminal and civil case management, the contributions of senior judges, magistrate judges, and visiting judges, the use of support staff, the impact of automation, and existing procedures for inter-circuit and intracircuit assignments of visiting judges, the Working Group made the following recommendations:<sup>2</sup>

- Expand the effort to collect and share information among judges and courts about how to obtain visiting judge assistance and use this assistance most effectively.
- Endorse creative ways of using visiting judges to maximize the judges’ value to the borrowing courts and minimize administrative burdens for both the visitors and the courts receiving assistance.
- Enhance circuit-based systems for providing district courts with visiting judge assistance.
- Collect comprehensive data on the number of visiting judges assigned to work in other courts, and on the nature and amount of work they

2. Report of the Judicial Officers Resources Working Group to the Executive Committee of the Judicial Conference of the United States, Sept. 1999.

*The Use of Visiting Judges in the Federal District Courts*

perform, but collect data without imposing inordinate burdens on judges and staff.

- Develop and implement an automated system to aid the management of visiting judge assignments.
- Provide more information and education for chief judges on a wide range of administrative matters related to the use of visiting judges.
- When evaluating future judgeship needs, include careful scrutiny of the requesting court's use of visiting judges and other strategies for handling judicial workload.
- Establish and maintain processes for
  - identifying “high workload” courts (as defined by Judicial Conference criteria); and
  - using circuit-based mechanisms for informing those courts about the resources, programs, and procedures that can help them manage their caseloads, and providing them with administrative or technical assistance to obtain or use those tools.
- Continue coordinated efforts among Judicial Conference committees to promote effective use of existing judicial officer resources.

The Working Group's deliberations and recommendations were based on information collected by the Administrative Office and the Federal Judicial Center. With the Working Group's encouragement, and to support implementation of their recommendations, we offer in this guide the information and advice we collected in studies conducted in 1999 and 2000.<sup>3</sup> This guide's purpose is to help borrowing courts and visiting judges work together in an effective, efficient, and mutually beneficial way. It offers suggestions based on the advice and experiences of courts that have used the services of visiting judges. The guide also relies on the experiences of judges who have visited both within and outside their home circuits. Not all of these suggestions will be relevant to courts' specific circumstances, but this guide should help courts craft or refine procedures for judicial visits.

The guide begins with the most basic questions: How do courts acquire visitors and how do judges become visitors? It then addresses court and case-management concerns, ranging from finding a visitor to disposing of posttrial events that may arise after the judge's departure. The guide also de-

3. See *infra* Appendix A for more details on the studies and the methodology used.

## *Preface*

scribes how visiting judges can work most effectively with judges and staff in the host court.

Chapter One explains the authority for use of visiting judges. Chapters Two and Three are directed mainly at courts hosting visitors: Chapter Two describes the procedures for finding a visitor; Chapter Three provides detailed suggestions for courts about hosting visiting judges and includes a section about how new technology can be used to structure visiting judge assignments that require little or no travel by the visiting judge and staff. Chapters Four and Five are directed mainly at judges who would like to serve as visiting judges: Chapter Four outlines how to get a visiting judge assignment; Chapter Five lists issues to consider when taking an assignment. Chapter Six describes the elements of successful visiting judge programs. Chapter Seven concludes the guide.

## *Chapter Two: Finding a Visiting Judge*

Once a judge has been found who is available to visit, notify the chief circuit judge and the circuit executive and secure the chief circuit judge's approval.

Finally, send a letter to the visiting judge that outlines the terms of the visit. In some circuits and districts, the circuit executive handles this matter. Check with the circuit and district executive or clerk to find out who is responsible in your district and circuit. The letter should include such details as the dates of the visit, the types of matters the judge has agreed to handle (e.g., motions, guilty pleas, trials, sentencing), and what the visitor will do if cases settle or defendants plead guilty prior to the scheduled visit and trial(s). Writing down the terms of the visit and recommended responses to anticipated events will help clarify the court's expectations and the visitor's expectations and should help to eliminate any misunderstandings later. If your court has a visiting judge manual, include a copy of the manual with the letter. If your court does not have a manual and would like to develop one, see Appendix B for a list of courts that have manuals that can be used as models.

### Steps in getting a visitor from outside your circuit

Before seeking a visitor from outside the circuit, consider the following issues:

- whether the circuit has any special policies about selecting visitors from within or outside the circuit;
- whether there is a preference for active or senior judges; and
- whether a visitor needs expertise in a specific area (e.g., a diversity case may benefit from a visitor who is familiar with the law in a particular state).

Once these issues have been decided, the following steps will help in getting an intercircuit visitor:

- Authorization from the Chief Justice, through the Judicial Conference Committee on Intercircuit Assignments, will be needed.
- The chief judge of your circuit must certify the need for a judge before a judge from another circuit visits your court. This step is required for assignment of both active and senior judges. The Certificate of Necessity form is on the J-Net <<http://jnet.ao.dcn/judgescorner/judges/cert.html>> (see *infra* Appendix C for a copy).

*The Use of Visiting Judges in the Federal District Courts*

The borrowing court's chief circuit judge must complete the form and mail the signed original to the chair of the Committee on Intercircuit Assignments. If time is pressing, an advance copy may be submitted by fax machine. As a courtesy, some chief circuit judges send a copy of the completed Certificate of Necessity to the chief judge of the borrowing court.

- You may decide to find a judge on your own, or you can contact the Intercircuit Assignments Committee chair and staff for assistance. Committee staff maintain lists of judges who wish to visit, and they can help find someone who will meet your needs. The committee is an excellent resource for finding senior judges who may be available to visit for longer periods of time. Many senior judges are able to visit, sometimes on short notice. In practice, most courts have already identified an available visitor before they contact the chief circuit judge for a Certificate of Necessity.
- The committee sends a Consent to Assignment form to the visiting judge. There are three consent forms (see *infra* Appendix D) currently in use: one for senior judges, one for active judges (signed by the chief judge of the lending circuit), and one for retired justices. The committee processes the official designation, which is approved by the Chief Justice. Once the Chief Justice approves the assignment, the original signed designation is sent to the clerk in the lending court, and a certified copy is sent to the clerk of the borrowing court.

Have the following information available when contacting judges to visit in your district:

- when assistance is needed and for what purpose;
- how long a visitor is needed;<sup>19</sup>
- the kinds of matters the visitor will handle (e.g., motions to dismiss and/or motions for summary judgment, civil or criminal cases, jury or nonjury trials, a high-profile, all-judge recusal case);
- for civil cases, whether pending motions will be disposed of by the time the judge visits;
- for criminal cases, the status of the case under the Speedy Trial Act and the status of any suppression hearings;

<sup>19</sup> *Guidelines for the Intercircuit Assignment of Article III Judges* (*infra* Appendix F) states that a judge assigned to work on the general calendar of a district court should serve for at least two weeks. However, an assignment to a district court for a particular case is made without regard to specific dates.

APPENDIX C

## Certificate of Necessity

*Note:* This form is for information only. To complete a Certificate of Necessity, please contact the Judicial Conference Committee on Intercircuit Assignments.

INTERCIRCUIT ASSIGNMENT OF A UNITED STATES JUDGE  
CERTIFICATE OF NECESSITY  
(Revised October 1997)

Pursuant to 28 U.S.C. § 291(a), 292(d) or (e), 293(a), or 294(d), and the Guidelines for the Intercircuit Assignment of Article III judges (approved by the Chief Justice Oct. 21, 1997), I certify that a need exists for the designation and assignment of a United States judge from another circuit (or special court) to perform judicial duties in the following court:

\_\_\_\_\_  
Name and title of judge to be assigned:

\_\_\_\_\_  
Period of assignment: from \_\_\_\_\_ through \_\_\_\_\_

OR

Specific case(s): \_\_\_\_\_

\_\_\_\_\_  
This requested assignment is for the period or purpose stated, and for such time as needed in advance to prepare and to issue necessary orders, or thereafter as required to complete unfinished business.

\_\_\_\_\_  
Chief Judge

\_\_\_\_\_  
Circuit (or special court)

Date: \_\_\_\_\_

Please mail the signed original form to:

Honorable James C. Cacheris  
United States District Court  
Albert V. Bryan United States Courthouse  
401 Courthouse Square  
Alexandria, VA 22314-5799

If time is pressing, please transmit an advance copy by facsimile to: (703) 299-2249.

## APPENDIX D

# Consent Forms for Visiting Judges

*Note:* The following form is for information only. To complete consent forms, please contact the Judicial Conference Committee on Intercircuit Assignments.

### CONSENT OF A RETIRED CHIEF JUSTICE OR ASSOCIATE JUSTICE TO AN INTERCIRCUIT ASSIGNMENT

(Revised October 1997)

Pursuant to 28 U.S.C. § 294(a), I certify that I am willing to undertake the following designation and assignment.

Court to which I will be assigned: \_\_\_\_\_

Period of assignment: from \_\_\_\_\_ through \_\_\_\_\_

OR

Specific case(s): \_\_\_\_\_

I understand that this assignment is for the period or case(s) stated, and for such time as needed in advance to prepare and to issue necessary orders, or thereafter as required to complete unfinished business.

\_\_\_\_\_  
Retired Chief Justice of the United States  
or Retired Associate Justice of the Supreme Court

Date: \_\_\_\_\_

Please mail the signed original form to:

Honorable James C. Cacheris  
United States District Court  
Albert V. Bryan United States Courthouse  
401 Courthouse Square  
Alexandria, VA 22314-5799

If time is pressing, please transmit an advance copy by facsimile to: (703) 299-2249.



