2009

2009 Annual Report of the Director

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to the prosecution of criminal charges in federal court. Diversion thus preserves prosecutorial and judicial resources for more serious criminal matters. In 2009, the number of pretrial diversion cases activated decreased by 349 cases to 1,077, representing approximately 1 percent of activated cases in 2009.

Cases opened in the pretrial services system grew by 5,929 cases (up 6 percent) from 2005 to 2009. During the five-year period (2005 – 2009), the number of pretrial services reports prepared grew almost 7 percent, although the number of persons interviewed decreased 9 percent from 70,284 to 63,819 (not all defendants are interviewed–defendants may decline to be interviewed, and sometimes interviews are not possible–but for each defendant, a pretrial services report is usually written).

Pretrial services statistics appear in the H series of the appendix tables.

Complaints Against Judges

Under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or that a judge cannot discharge all the duties of the office because of physical or mental disability, may file a complaint with the clerk of the court of appeals for the circuit in which the judge holds office or, if the judge serves on a national court, with the office specified in that court's rules. Such a complaint must concern the actions or capacity of a circuit judge, a district judge, a bankruptcy judge, a magistrate judge, or a judge of a court specified in 28 U.S.C. § 363.

On May 11, 2008, the process that courts follow to report complaint-related activity was changed to make the information more detailed and comprehensive. To achieve this, the system for collecting the requisite data was enhanced by the Judicial Conference as recommended by the Judicial Conduct and Disability Act Study Committee in "Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice" (known as the Breyer Report), 239 F.R.D. 116 (Sept. 2006), and as warranted by the Judicial Conference's *Rules for Judicial-Conduct and Judicial-Disability Proceedings*. In accordance with the Breyer Report, the mechanism for capturing special investigative committee appointments has been strengthened, and the statistical tables are now based on a uniform methodology for reporting different types of judicial council actions. The tables now include expanded categories for allegations and actions on complaints. The tables also now reflect that a complaint against more than one judge is counted once for each judge named (before May 11, 2008, a complaint against more than one judge was counted only as a single complaint).

Since these reporting changes took effect during the fiscal year in 2008, this information is presented in two distinct sets of tables. Tables 10 and S-22A present information on complaints filed before May 11, 2008, and Tables 11 and S-22B present information on complaints filed on or after May 11, 2008. Only limited comparisons can be made between the partial-year data for 2008 and the full-year data for the years 2007 and 2009. In addition, only limited comparisons can be made between data gathered prior to May 11, 2008, and data gathered thereafter, because the two sets of data reflect different measurements.

A total of 150 complaints filed before May 11, 2008 were dismissed or concluded in 2009, leaving 15 complaints filed before May 11, 2008, pending. Of the 150 complaints, chief judges reviewed and concluded 64 complaints (43 percent), and judicial councils reviewed and concluded 86 complaints

Table 10
Summary of Actions Taken on Judicial Complaints Filed Before May 11, 2008
Fiscal Years 2007 - 2009

	2007 [1]	2008 [1]	2009
Filed	899	490	0
Concluded	834	630	150
By Chief Judges	485	356	64
Dismissed	473	348	61
Corrective Action Taken	9	3	3
Withdrawn	3	5	0
By Judicial Councils	349	274	86
After Review of Chief Judge's Dismissal [2]			
Dismissed	341	273	85
Withdrawn	2	0	0
Action Taken	1	1	1
After Report of Investigating Committee			
Dismissed	4	0	0
Withdrawn	0	0	0
Action Taken	1	0	0
Pending	305	165	15
Special Investigating Committees Appointed	5	2	0
Referred to Judicial Conference	0	0	1

[1] Revised.
[2] Petition for review of a chief judge's disposition of a complaint.

Table 11
Judicial Complaints Commenced, Concluded, and Pending on or After May 11, 2008
Fiscal Years 2008 and 2009

	2008 [1]	2009
Complaints Commenced	716	1,543
Complaints Concluded	218	1,130
By Withdrawal		
Complaint Withdrawn by Complainant	4	9
Petition for Review Withdrawn	0	0
By Chief Judges		
Dismissed	146	644
Other Disposition	4	11
By Judicial Councils		
Upon Petition For Review of Chief Judge's Disposition [2]		
Chief Judge's Disposition Affirmed	64	465
Other Disposition	0	0
After Report by Special Investigating Committee [3]		
Dismissed	0	1
Other Disposition	0	1
By the Judicial Conference	0	0
Complaints Pending	498	911
Special Investigating Committee Appointed	2	6

[1] Revised.
[2] Petition for review of a chief judge's disposition of a complaint.
[3] A single complaint was concluded in part by dismissal and in part by corrective action.

(57 percent). Complaints can be concluded in whole or in part for more than one reason and by more than one action.

Fifty percent of actions by chief judges on complaints were dismissals made on the grounds that allegations were not covered under 28 U.S.C. §§ 351-364 because they were directly related to the merits of decisions or of procedural rulings. Other reasons cited for dismissing complaints include the following: the allegations were frivolous (37 percent); the allegations were not in conformance with the Judicial Conduct and Disability Act (9 percent); and the allegations lacked factual foundation (2 percent). For the remaining complaints, chief judges found that appropriate action already had been taken (2 percent) or that no action was necessary because of intervening events (1 percent).

Judicial councils considered 86 petitions for review of chief judges' dismissals of complaints. One complaint led to disciplinary action (public censure) and a referral by the Fifth Circuit to the Judicial Conference of the United States (this complaint was concluded before the Judicial Conference took any action).

No special investigating committees to address these complaints were appointed during 2009.

A total of 1,543 complaints were filed in fiscal year 2009. The most prevalent allegations were in the categories of erroneous decision, other misconduct, personal bias against the litigant or attorney, and delayed decision. More than one-half of all complaints filed originated in the Third, Fifth, Sixth, and Ninth Circuits.

Of the complaints filed in 2009 or pending from prior years, 1,130 complaints were terminated as final—655 by chief judges, 466 by judicial councils, and 9 by withdrawal—leaving 911 pending at the end of the year.

Chief judges considered and dismissed 1,163 complaints in whole or in part and concluded 11 others in whole or in part. The most frequently reported reasons for dismissal included the following: the complaint was directly related to the merits of decisions or procedural rulings (88 percent); the allegations lacked sufficient evidence (44 percent); and the allegations were frivolous (24 percent). The percentages do not total 100 percent because multiple reasons can be recorded for each dismissal. Of the 11 complaints that were concluded in whole or in part, 6 were terminated because a voluntary corrective action was taken, 4 because of intervening events, and 1 because of an informal resolution made before the complaint was filed.

All but one of the actions by judicial councils on complaints were denials of petitions for review of chief judges' dispositions. In the remaining action, a judicial council reviewed a special investigating committee's report on a complaint, then ordered that the complaint be concluded in part by dismissal and in part by corrective action.

During 2009, six special investigating committees to address complaints filed on or after May 11, 2008, were appointed--four in the Third Circuit and two in the Tenth Circuit.

Status of Article III Judgeships

On September 30, 2009, a total of 20 vacancies existed among the 179 judgeships authorized for the U.S. courts of appeals. Nine of these vacancies had been unfilled for more than 18 months. One year earlier, 12 of the 178 authorized judgeships had been vacant, 7 of them for more than 18 months (the total number of authorized judgeships temporarily had been reduced in 2008 by the Court Security Improvement Act of 2007).

On September 30, 2009, a total of 75 vacancies existed among the 678 positions authorized in the district courts,

Table S-22A.
Report of Action Taken Under Authority of 28 U.S.C. 351-364
During the 12-Month Period Ending September 30, 2009, on Complaints Filed Before May 11, 2008

Summary of Activity	Circuits														National Courts	
	Total	Fed.	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC [1]	CIT [2]
Complaints Pending on September 30, 2008 [3]	165	0	0	3	0	38	0	8	32	0	9	74	0	1	0	0
Complaints Concluded	150	0	0	3	0	37	0	8	24	0	9	68	0	1	0	0
Action by Chief Judges																
Complaint Dismissed [4]																
Not in Conformity With Statute	24	0	0	3	0	6	0	0	1	0	9	5	0	0	0	0
Directly Related to Decision or Procedural Ruling	128	0	0	3	0	35	0	6	22	0	9	53	0	0	0	0
Frivolous	95	0	0	2	0	35	0	2	3	0	9	43	0	1	0	0
Lacked Factual Foundation	4	0	0	1	0	1	0	0	1	0	0	1	0	0	0	0
Appropriate Action Already Taken	4	0	0	0	0	0	0	0	0	0	0	4	0	0	0	0
Action No Longer Necessary Because of Intervening Events	3	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0
Complaint Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	258	0	0	9	0	77	0	8	27	0	27	109	0	1	0	0
Action by Judicial Councils																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed Complaint	85	0	0	3	0	28	0	7	16	0	8	23	0	0	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Subtotal	87	0	0	3	0	28	0	9	16	0	8	23	0	0	0	0
Complaints Pending on September 30, 2009	15	0	0	0	0	1	0	0	8	0	0	6	0	0	0	0
Special Investigating Committees Appointed	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

NOTE: Excludes complaints not accepted by the circuits because they duplicated previous filings or were otherwise invalid filings.

[1] CC = U.S. Court of Federal Claims.

[2] CIT = U.S. Court of International Trade.

[3] Revised.

[4] Each complaint may involve multiple reasons for dismissal.

Table S-22B.
Report of Action Taken Under Authority of 28 U.S.C. 351-364 During the 12-Month Period Ending September 30, 2009, on Complaints Filed on or After May 11, 2008

Summary of Activity	Circuits													National Courts	
	Total	Fed.	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC [1]	CIT [2]
Complaints Pending on September 30, 2008 [3]	498	5	2	22	62	42	22	22	35	36	19	143	52	36	0	0
Complaints Filed	1,543	14	48	81	94	149	138	164	170	111	61	304	73	136	0	0
Complaint Type																
Written by Complainant	1,540	14	48	81	94	149	138	164	170	110	61	304	71	136	0	0
On Order of Chief Judges	3	0	0	0	0	0	0	0	0	1	0	0	2	0	0	0
Complainants [4]																
Prison Inmates	691	2	9	67	33	61	78	73	58	49	33	128	47	53	0	0
Litigants	778	12	38	12	58	79	51	64	113	60	32	163	23	73	0	0
Attorneys	34	0	1	1	3	6	2	16	0	1	0	4	0	0	0	0
Public Officials	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Other	55	0	0	1	0	4	8	12	0	4	0	14	3	9	0	0
										0	0					
Judges Complained About																
Circuit Judges	373	11	10	9	15	44	26	31	57	44	14	57	21	34	0	0
District Judges	869	1	34	52	62	77	86	94	79	59	37	170	43	75	0	0
Court of International Trade Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Court of Federal Claims Judges	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	35	0	1	1	2	3	1	3	5	3	0	9	3	4	0	0
Magistrate Judges	265	1	3	19	15	25	25	36	29	5	10	68	6	23	0	0
Nature of Allegations [5]																
Erroneous Decision	970	9	18	77	49	18	33	153	146	8	15	272	46	126	0	0
Delayed Decision	195	0	6	4	11	26	29	18	45	18	0	29	5	4	0	0
Failure to Give Reasons for Decision	24	0	0	2	3	7	1	2	3	0	4	1	1	0	0	0
Improper Discussions With Party or Counsel	93	0	2	3	3	6	4	19	11	2	18	16	9	0	0	0
Hostility Toward Litigant or Attorney	134	0	3	4	6	19	9	23	23	3	12	22	7	3	0	0
Racial, Religious, or Ethnic Bias	93	0	1	2	15	7	23	7	7	2	4	16	2	7	0	0
Personal Bias Against Litigant or Attorney	317	0	6	15	13	40	14	49	31	32	19	63	13	22	0	0
Conflict of Interest (Including Refusal to Recuse)	129	0	2	3	17	19	7	22	18	1	5	27	7	1	0	0
Failure to Meet Financial Disclosure Requirements	4	0	0	0	0	0	0	0	0	0	2	0	2	0	0	0
Improper Outside Income	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Partisan Political Activity or Statement	6	0	0	0	1	1	0	0	0	0	0	0	4	0	0	0
Acceptance of Bribe	18	0	1	1	1	4	1	2	3	3	1	1	0	0	0	0
Effort to Obtain Favor for Friend or Relative	13	0	1	1	2	1	5	0	0	0	2	0	0	1	0	0
Solicitation of Funds for Organization	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Violation of Other Standards	115	3	0	5	26	13	9	6	2	2	30	16	1	2	0	0
Other Misconduct	507	5	27	65	34	96	39	38	32	74	12	35	48	2	0	0
Disability	38	0	0	0	1	5	0	11	0	2	3	7	5	4	0	0
Actions Regarding the Complaints																
Concluded by Complainant or Subject Judge	9	0	0	0	1	3	3	0	0	0	0	1	0	1	0	0
Complaint Withdrawn with Consent of Chief Judge	9	0	0	0	1	3	3	0	0	0	0	1	0	1	0	0
Withdrawal of Petition for Review	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table S-22B. (September 30, 2009—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC [1]	CIT [2]
Actions by Chief Judge																
Matters returned from Judicial Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Complaint Dismissed in Whole or in Part [4]	1,163	12	48	81	84	79	130	115	67	113	52	172	78	132	0	0
Not Misconduct or Disability	146	0	0	71	2	23	13	3	5	5	5	13	4	2	0	0
Merits Related	1,022	8	22	80	82	77	116	107	61	89	45	144	74	117	0	0
Frivolous	283	0	0	19	0	55	8	63	1	28	29	66	0	14	0	0
Allegations Lack Sufficient Evidence	509	2	37	1	58	61	79	17	13	9	30	119	46	37	0	0
Allegations Incapable of Being Established	1	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Filed in Wrong Circuit	7	6	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Otherwise Not Appropriate	95	1	2	0	1	2	6	0	0	2	9	70	0	2	0	0
Complaint Concluded in Whole or in Part	11	0	0	2	0	0	0	0	0	1	0	0	8	0	0	0
Informal Resolution Before Complaint Filed	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Voluntary Corrective Action Taken	6	0	0	1	0	0	0	0	0	1	0	0	4	0	0	0
Intervening Events	4	0	0	0	0	0	0	0	0	0	0	0	4	0	0	0
Complaint Referred to Special Committee	6	0	0	0	0	4	0	0	0	0	0	0	2	0	0	0
Actions by Special Committees																
Matter Returned From Judicial Council	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
New Matter Referred to Chief Judge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Judicial Council Proceedings															0	0
Matter returned from Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Complaint Transferred to/From Another Circuit	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Special Committee Reports Submitted to Judicial Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Received Petition for Review	479	1	8	12	44	36	58	53	42	53	31	39	58	44	0	0
Action on Petition for Review Petition Denied	465	1	8	17	41	34	65	56	8	57	34	39	54	51	0	0
Matter Returned to Chief Judge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Matter Returned to Chief Judge for Appointment of Special Committee	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Received Special Committee Report	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Action on Special Committee Report																
Complaint Dismissed	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Not Misconduct or Disability	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Merits Related	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Allegations Lack Sufficient Evidence	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Otherwise Not Appropriate	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Corrective Action Taken or Intervening Events	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Remedial Action Taken	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table S-22B. (September 30, 2009—Continued)

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC [1]	CIT [2]
Censure or Reprimand	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Suspension of Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Action Against Magistrate Judge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Removal of Bankruptcy Judge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requesting of Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certifying Disability of Circuit or District Judge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Additional Investigation Warranted	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Returned to Special Committee	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Retained by Judicial Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Actions by Chief Justice																
Transferred to Judicial Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Received From Judicial Council	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Complaints Terminated as Final Between																
October 1, 2008, and September 30, 2009	1,130	12	35	90	81	71	126	103	30	136	60	146	96	144	0	0
Complaints Pending on September 30, 2009	911	7	15	13	75	120	34	83	175	11	20	301	29	28	0	0

NOTE: Excludes complaints not accepted by the circuits because they duplicated previous filings or were otherwise invalid filings.

[1] CC = U.S. Court of Federal Claims.

[2] CIT = U.S. Court of International Trade.

[3] Revised.

[4] Number of complainants may not equal total number of filings because each complaint may have multiple complainants.

[5] Each complaint may involve multiple allegations.

[6] Each complaint may have multiple reasons for dismissal.