

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

Jennifer Evans Marsh

Federal Judicial Center
2001

updated 2003

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The views expressed are those of the author and not necessarily those of the Federal Judicial Center.

This page intentionally left blank to facilitate printing this document double-sided.

Contents

Foreword	v
Preface	vii
Acknowledgments	xi
Chapter One: Authority for the Use of Visiting Judges	1
Authority for the use of Article III judges	1
A note on the lender/borrower rule	2
A note on visiting magistrate judges	3
Roles of judges & court personnel in coordinating judge visits	4
Chapter Two: Finding a Visiting Judge	7
Steps in getting a visitor from within your circuit	7
Steps in getting a visitor from outside your circuit	9
Chapter Three: Hosting a Visiting Judge	13
Planning & preparing for the visit	13
Preparing the visiting judge's calendar	13
Selecting & assigning cases	14
Providing the visiting judge with case information	17
Arranging travel & accommodations	17
Selecting a jury	18
Orienting the visiting judge & staff to the host court before their arrival in the district	18
Managing the visit	19
Orienting the visiting judge & staff to the host court after their arrival in the district	19
Providing support staff & space	20
Anticipating parties' reactions to visiting judges	21
Managing cases after trial	22
The impact of advances in technology on the use of visiting judges	22
Keeping records	25
Essential ingredients for a successful visit	26
Chapter Four: Getting a Visiting Judge Assignment	29
How to get a designation within your circuit	29
How to get a designation outside your circuit	30
A note to senior judges who wish to serve as visiting judges	31

The Use of Visiting Judges in the Federal District Courts

Chapter Five: Serving as a Visiting Judge	33
Chapter Six: Successful Visiting Judge Programs: Maximizing the Impact of Visitors on the Courts	35
The District of Arizona	35
The Middle District of Florida	36
The Fifth Circuit	37
The Western District of Arkansas/Eastern District of Texas	38
The Southern District of Alabama	39
Chapter Seven: Conclusion	41
Appendix A: Study Methodology	43
Appendix B: Three Districts with Visiting Judge Manuals	47
Appendix C: Certificate of Necessity	49
Appendix D: Consent Forms for Visiting Judges	51
Appendix E: Guidelines for the Intercircuit Assignment of Article III Judges	55
Appendix F: Checklist for Courts Hosting a Visiting Judge	59
Appendix G: JS-10A: Monthly Report of Visiting Judge Activity	63
Appendix H: Checklist for Visiting Judges	65

Foreword

Today, as always, judges, circuit executives, clerks, and others seek ways to more effectively and efficiently manage rising caseloads in the federal courts. Using visiting judges is one method that has been successful. In addition to helping with heavy caseloads, judges visit to assist in recusal situations, judicial illness or disability, or where judgeship vacancies exist. Many judges have responded to the call of courts in need. Data provided by the Administrative Office's Statistics Division indicate that in 1999, eighty-seven active judges and eighty-two senior judges provided visitor services in sixty-nine district courts.¹

Developing a program that works well for visiting judges and the borrowing courts can be challenging. In 1999, at the direction of the Judicial Officers Resources Working Group appointed by the Chief Justice, the Federal Judicial Center conducted studies of the use of visiting judges in the district courts. From our interviews, we learned that many borrowing courts have created successful visiting judge procedures that minimize administrative burdens and maximize benefits to the court and the visitor.

Not surprisingly, we found that certain components are important to the successful use of visiting judges. Each court, however, must ultimately create a program that meets its specific needs. To assist courts in that goal, we developed this guide. It describes the collective wisdom of judges and clerks from borrowing courts, as well as that of judges who have visited. We invite you to collaborate with your colleagues as you use the guide to craft and refine your own procedures for using a visiting judge or serving as one.

Fern M. Smith
Director, Federal Judicial Center

1. Administrative Office of the U.S. Courts, 1999 Annual Report of the Director, at Table V-I.

This page intentionally left blank to facilitate printing this document double-sided.

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:²

- 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 2000.³ 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.

This page intentionally left blank to facilitate printing this document double-sided.

Acknowledgments

I would like to thank the chief judges, visiting judges, and clerks who graciously agreed to be interviewed for the 1999 and 2000 studies of the use of the visiting judges in the district courts. I am also grateful to Melissa Deckman and Stefanie Lindquist, my former colleagues, who were my fellow researchers on the 1999 study. I received very helpful review and commentary from Jeff Hennemuth, David Cook, Nancy Miller, and Joyce Bridges, all of whom work at the Administrative Office of the U.S. Courts. Finally, I would like to thank Donna Stienstra of the Federal Judicial Center for her extensive review and thoughtful comments.

This page intentionally left blank to facilitate printing this document double-sided.

Chapter One

Authority for the Use of Visiting Judges

Even when courts are able to handle continuing caseload problems over an extended period, a court may find an already precarious condition exacerbated by a surge in filings, a prolonged vacancy, or an extended illness. In most courts, at one time or another, all of the resident judges will have recused themselves from a case because of conflicts of interest. Under such circumstances, a chief judge may decide to request the temporary services of an Article III judge or magistrate judge from another district, a judge from an intermediate appellate court, or a judge from the Court of International Trade. If this request is granted, a judge is designated to sit in the court that requested assistance, and the judge is given the authority to carry out the full range of judicial activities.

Authority for the use of Article III judges

Two types of assignments are authorized by statute: assignment of judges to other courts within their circuits and assignment of judges to courts outside their circuits. Both types of assignments are relatively straightforward and easy to process, although they require different procedures. The key differences between within-circuit and outside-circuit assignments are who has the authority to make the assignment and who must give consent to the assignment. Within the statutory requirements, each circuit has developed its own procedures for making visiting judge assignments.

For assignments within a circuit, the chief circuit judge has the authority to designate active judges⁴ and senior judges⁵ to serve in other districts. A senior judge may be assigned only with his or her consent.⁶ There is no statutory requirement that consent be obtained from an active judge, but each assignment of a visiting judge in active service must receive the consent of both the chief circuit judge and the chief judge of the lending court.⁷ Neither the chief circuit judge nor the chief judge of the lending circuit

4. 28 U.S.C. §§ 291(b), 292(b) (1993).

5. *Id.* § 294(c).

6. *Id.*

7. *Id.* § 295.

must consent to the assignment of senior judges. There is no requirement for consent by the chief judge of the borrowing district, but such approval is an obvious, if informal, prerequisite for the use of a visiting judge.

Assignments outside a circuit require a higher level of authority. Only the Chief Justice has the authority to designate active and senior district and court of appeals judges to serve in courts outside their circuits.⁸ The chief circuit judge must submit a request for assistance on behalf of a specific court within the circuit and must certify that assistance is needed.⁹ This request is made to the Judicial Conference Committee on Intercircuit Assignments, which processes the paperwork and submits the request to the Chief Justice. An intercircuit assignment of an active judge requires approval by the chief judge or circuit council of the lending circuit and the chief judge of the lending court,¹⁰ but there is no statutory requirement that they consent to the assignment of a senior judge. Senior judges must consent before an intercircuit assignment is made,¹¹ but there is no statutory requirement that active judges consent to an intercircuit assignment—however, it would be unusual to assign any judge, senior or active, without first consulting with that judge.

The Judicial Conference’s four-judge Committee on Intercircuit Assignments assists the Chief Justice in his responsibilities under the statutes, including maintaining rosters of active and senior judges available for intercircuit assignment. The roster generally consists of judges who have volunteered for such assignments. The Administrative Office provides staff for the committee.

A note on the lender/borrower rule

Intercircuit assignments must conform to the “lender/borrower rule,” a nonstatutory rule, which the Chief Justice approved in its current form in

8. *Id.* §§ 291(a), 292(d) (active judges); *id.* 294(d) (senior judges). The Chief Justice may also designate and assign a judge of the Court of International Trade to a court of appeals or district court in any circuit, 28 U.S.C. § 293(a) (1993), and conversely, may designate and assign a district judge to serve as a judge of the Court of International Trade, 28 U.S.C. § 292(e) (1993).

9. *Id.* §§ 292(d), 292(e) (active judges); *id.* § 294(d) (senior judges); *id.* § 293(a) (Court of International Trade judges).

10. *Id.* § 295.

11. *Id.* § 294(d).

1997. Generally, a circuit that lends active judges may not borrow from another circuit; a circuit that borrows active judges may not lend.¹² The lender/borrower rule does not apply to senior judges and may be relaxed in appropriate situations, provided the chief judge of the lending circuit or court is consulted to ensure that the needs of that circuit or court are met first. The lender/borrower rule also does not apply when an active judge is borrowed or lent for a particular case or cases after the disqualification of all judges in the borrowing circuit or in other emergency situations. In the event that all judges of a given circuit disqualify themselves, the chief judge must notify the chair of the Committee on Intercircuit Assignments who, in consultation with the Chief Justice, will select a judge or panel of judges as needed. To avoid the appearance of impropriety or conflicts of interest, judges of the borrowing circuit, once recused, may not participate in the selection of the visiting judge or judges.¹³

A note on visiting magistrate judges

In emergency situations, district courts needing assistance may also borrow active magistrate judges from other districts within and outside the circuit.¹⁴ The appointment may be made only with the concurrence of the chief judges of the lending and borrowing districts. The chief judge in the borrowing court must issue an order specifying the following:¹⁵

- the emergency situation or reason for the visit;
- the duration of the assignment; and
- the duties the visitor is authorized to perform.¹⁶

Magistrate judges may also be designated to serve in a district adjoining the district of appointment.¹⁷ In addition, retired magistrate judges may be

12. See Guidelines for the Intercircuit Assignment of Article III Judges (approved by the Chief Justice, Oct. 21, 1997). The Guidelines are available on the J-Net under “Judges’ Corner” <<http://jnet.ao.dcn/judgescorner/judges/guidelines.html>>.

13. *Id.*

14. 28 U.S.C. § 636(f) (1996).

15. *Id.* § 636(f).

16. *Id.* Guidelines for the Intracircuit and Intercircuit Assignments of United States Magistrate Judges, in III Guidelines for Judiciary Policies and Procedures, § B, ch. VIII (AO May 2000). Visiting magistrate judges in active service may be assigned to perform all the duties that can be assigned to magistrate judges under 28 U.S.C. § 636(a), (b), and (c).

17. 28 U.S.C. § 631(a) (1996).

The Use of Visiting Judges in the Federal District Courts

recalled to serve in any judicial district by the circuit judicial council of the court needing assistance.¹⁸ The retired magistrate judge and the chief judge of the court needing assistance must consent to the assignment. A request for the intercircuit recall of a retired magistrate judge must be forwarded to the Administrative Office and requires approval by the Judicial Conference Committee on the Administration of the Federal Magistrate Judges System. For a description of a visiting judge program involving recalled magistrate judges, see *infra* Chapter Six.

Within the framework of these provisions, procedures of varying degrees of formality have evolved within circuits and among courts and judges by which (1) courts identify potential visiting judges; (2) potential visiting judges make their availability known; and (3) potential visits, both intracircuit and intercircuit, are prepared for, processed, and approved. The section below summarizes the roles played by judges and staff in effecting visiting judge assignments.

Roles of judges & court personnel in coordinating judge visits

Chief Justice of the United States	Has the sole authority to make assignments of Article III judges to serve outside their home circuits (“intercircuit assignments”).
The Judicial Conference Committee on Intercircuit Assignments	Assists the Chief Justice in keeping rosters of judges and finding judges for visits. Assists chief circuit judges, chief district judges, visiting judges, and court clerks in arranging assignments.
The Judicial Conference Committee on Administration of the Federal Magistrate Judges System	Approves requests for intercircuit recall of retired magistrate judges.
Chief circuit judges	May designate and assign judges to visit other courts within the circuit (“intracircuit assignments”). May request an intercircuit visitor by submitting a Certificate of Necessity to the Judicial Conference Committee on Intercircuit Assignments.

18. *Id.* § 636(h).

Chapter One: Authority for the Use of Visiting Judges

Chief district judges	Must consent to any temporary assignment of an active judge from that court. May request that the chief circuit judge request an inter-circuit visitor for the district.
Visiting judge	Should consult with chief circuit and district judges prior to accepting a temporary assignment in another district or circuit. Senior judges cannot be appointed without their consent.
Circuit executives	May be asked by the chief circuit judge or a chief district judge to contact the Committee on Intercircuit Assignments to request visiting judge assistance. May manage the intracircuit assignment process in some circuits.
Clerks of court	In most districts, they plan, prepare for, and manage visits. Some chief judges and clerks delegate these tasks to other personnel.

This page intentionally left blank to facilitate printing this document double-sided.

Chapter Two

Finding a Visiting Judge

Most courts seek visiting judges to help out during periods of heavy case filings (especially multidefendant criminal cases) and during periods of numerous judicial vacancies. Secondary reasons include coverage for recusals or judges who are on vacation or ill. The court seeking assistance should state in writing its reasons for seeking judges and state the time frame of the visit.

A chief judge can seek visitors from within or outside the circuit, and there are pros and cons to each. Visitors from within the circuit should be more familiar with circuit law and policies. They may also be more familiar with the laws of the states within the circuit. Visitors from other circuits, however, are often senior judges who can spend more time and who have more experience than some active judges. Some circuits may have special policies about selecting visitors from within or outside the circuit. It is important to check with the chief judge or circuit executive of the circuit to determine whether such special policies exist.

Many courts use informal means to find visiting judges. These include word-of-mouth and telephone calls within and outside the district and circuit. Often, courts have already identified the judges they would like to have visit before contacting the circuit executive's office or the potential visitor's chief judge to make a formal request. Some courts maintain an informal roster of regular visitors. Some chief circuit judges, chief district judges, and circuit executives regularly contact the Committee on Intercircuit Assignments for assistance in finding visitors. For assistance in finding visiting magistrate judges, courts contact the Magistrate Judges Division of the Administrative Office.

Steps in getting a visitor from within your circuit

This section and the next outline the steps to take in seeking intra- and intercircuit visitors. The suggestions are based on the advice of judges and clerks we interviewed.

If seeking a judge from within your circuit, remember that the chief circuit judge must authorize intracircuit assignments. Notify the chief circuit

The Use of Visiting Judges in the Federal District Courts

judge when seeking an intracircuit visitor, then get the word out in the district and in the circuit that a visitor is needed. The circuit executive may be able to assist in this effort. Consider circulating a memo to other chief judges and the circuit executive or post a notice on your district's or your circuit's Web page. Include the following information in your request:

- when the assistance is needed and for what purpose;
- what 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; or a high-profile, all-judge recused case);
- whether there is a preference for active or senior judges;
- 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); and
- the name and phone number of the person in the court to contact if a judge is interested in visiting.

After receiving responses from judges who would like to visit, develop a roster of prospective visitors.

When following up with a judge who is interested in visiting your court, have additional information available:

- 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;
- docket sheets for the case(s) the visiting judge will be asked to handle (if the case(s) have been selected in advance of the contact; occasionally, prospective visitors may have questions about the cases they may be asked to handle);
- the facilities and personnel the court will supply;
- which tasks the courtroom deputy performs for the visiting judge;
- the name and phone number of the contact person in the court for the visiting judge to call if he or she has questions about the assignment;
- the name and phone number of the contact person in the court for the visiting judge to call if he or she has case-related questions; and
- whether the district clerk has been made aware of the district court's request for an assignment.

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:

- 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

The Use of Visiting Judges in the Federal District Courts

identified an available visitor before they contact the chief circuit judge for a Certificate of Necessity.

- 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 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. It is ideal if the borrowing court can submit the Certificate of Necessity form one month or more in advance of the assignment. As a courtesy, some chief circuit judges send a copy of the completed Certificate of Necessity to the chief judge of the borrowing court.
- The visiting judge must prepare and submit a consent form to the Chair of the Committee on Intercircuit Assignments when an inter-circuit assignment is initially arranged. 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. Senior judges can consent to their own assignment after consulting with the chief judge of their courts to determine that the "needs at home" are met first. However, active district and circuit judges need the written consent of their circuit chief judge or, for active judges of the Court of International Trade, the chief judge of that court. 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;

Chapter Two: Finding a Visiting Judge

- how long a visitor is needed;¹⁹
- 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;
- docket sheets for the case(s) the visiting judge will be asked to handle if the case(s) have been selected in advance of the contact (occasionally, prospective visitors may have questions about the cases they may be asked to handle);
- the facilities and personnel the court supplies;
- which tasks the courtroom deputy performs for the visiting judge;
- the name and phone number of the person the visiting judge should call if he or she has questions about the assignment;
- the name and phone number of the person the visiting judge should call if he or she has case-related questions;
- whether the borrowing circuit, circuit executive, and district clerk have been made aware of the district court's request for an assignment.

Finally, send a letter to the visiting judge that outlines the terms of the visit. 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 judge 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 the 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.

To facilitate future judge visits, maintain a list or database of judges who are interested in visiting your district, their availability, their preferences, and their areas of expertise. This may be updated on a regular basis

19. *Guidelines for the Intercircuit Assignment of Article III Judges* (*infra* Appendix E) 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.

The Use of Visiting Judges in the Federal District Courts

by sending a letter to or telephoning the judges who have indicated an interest in visiting your district.

For more detail on the procedures involved in intercircuit visits, see Appendix E. Additional information, including an overview of the intercircuit assignment process, a description of committee assistance with recruitment of visiting judges, and a downloadable version of the Certificate of Necessity, is available on the J-Net under the “Judges Corner” icon <<http://jnet.ao.dcn/judgescorner>>.

Chapter Three

Hosting a Visiting Judge

Some inherent challenges need to be addressed in order for a judge's visit to be successful. Despite the common ground provided by case law and the federal rules of procedure, when a judge visits in another court he or she is serving in an unfamiliar milieu. And the host court, where a set of routine procedures is taken for granted, is faced with adjusting its staff and facilities to the expectations and practices of an invited guest. Whether a visit is productive may rest substantially on the extent to which the court and the visiting judge can mesh their needs, expectations, and resources. The following chapter provides advice given by judges and court personnel in interviews conducted by FJC staff.²⁰

Planning & preparing for the visit

A planning checklist is given at Appendix F. The following sections describe in detail the tasks involved in planning and preparing for a judge's visit.

Preparing the visiting judge's calendar

Recognizing that the luxury of substantial advance notice is not always available, begin the planning process as soon as possible. Lead times can range from as little as one week to as much as five months, depending on the nature of the visit and the cases to be handled. Courts that borrow continually are always preparing for outside judges. More time is necessary when a calendar is being prepared from scratch, as opposed to having a visitor take over a resident judge's calendar.

One of the most important and difficult tasks in preparing for a visitor is setting the cases on a calendar. The importance and the difficulty arise from the same goal: making sure there are enough cases on the visiting judge's calendar to last the duration of the visit.

20. The information and advice provided here is derived from the Center's study of visiting judge programs. The study was conducted for the Judicial Officers Resources Working Group (see *infra* Appendix A for more information on the design and methodology of the study).

The Use of Visiting Judges in the Federal District Courts

The number of cases set on a calendar depends on the type of cases selected and the length of the visitor's stay. Not surprisingly, many courts set more than enough cases to accommodate settlements and pleas.

Many courts use a trailing calendar for visitors, setting the oldest cases first. It is important to clearly articulate the expectations the visiting judge and the court have for this calendar. Judges and clerks we interviewed listed the following options for setting a calendar:

- The judge visits for a set period of time, not for a particular calendar. The visitor's responsibility is to try as many cases as possible during his or her stay. Those cases not reached are returned to the resident judges' calendars.
- The visiting judge agrees to try one complex civil case or one multidefendant criminal case. If the trial finishes earlier than the time allotted for it, the visitor may elect to return home early or to stay on in the host court and handle several small matters in the remaining days or weeks. Conversely, the visiting judge should be aware that complex cases may sometimes take longer than expected.
- The visiting judge agrees to take on a block of cases and stay as long as it takes to dispose of the matters that must be handled in person. Some case-related work may be completed in the visitor's home chambers before or after the visit to the host court. Such visitors tend to be senior judges whose calendars are more open and flexible.

The chief judge of the host court may assign responsibility for setting the calendar to the clerk, who may, in turn, enlist the assistance of the resident courtroom deputies. After the calendar has been set, the clerk and the deputy assigned to the visitor are usually responsible for contacting attorneys and monitoring the status of cases assigned to the visiting judge.

Selecting & assigning cases

Cases assigned to visiting judges vary depending on the needs of the district, the character of its caseload, and the individual preferences of the courts.

In many courts with extensive experience using visiting judges, the selection of cases for a visiting judge begins with the chief judge, who informs the resident judges that a judge is available to visit. The resident judges can then forward some of their cases to the chief judge who then decides which cases will be assigned to the visitor. Some courts are reluctant to use this method because they believe it creates unnecessary tension between the

Chapter Three: Hosting a Visiting Judge

chief judge and the resident judges. In those courts, the chief judge assigns to the visitor (without review) the cases selected by the resident judges or may assign the visitor only newly filed cases. In a large district with many visitors, the district's case-assignment committee works with the clerk's office to select and assign cases. In one ongoing visiting effort in a state with two districts, the borrowing court selects cases for the visiting judges, then the lending court's chief judge assigns the cases to his judges, who then visit the borrowing court.

Many borrowing courts prefer that visitors handle civil cases, because they are easier to schedule and require fewer visits.²¹ In one district, for example, visiting judges are assigned civil cases that are over three years old and are trial ready with no pending motions. In another court, civil cases are assigned first; if they settle during the visit, the chief judge then asks the visitor to hear "stacked" criminal cases. Several courts, however, in districts with heavy criminal case filings (especially those in the south and southwest) need judges to handle criminal cases in order to comply with the Speedy Trial Act. In one district in the south, visiting judges who come for longer periods (i.e., greater than five or six weeks) take on a term²² of criminal cases. Courts give visiting judges who try criminal cases the option of returning to sentence criminal defendants or allowing a local judge to preside at sentencing.

Many districts ask visiting judges to handle trial-ready cases. Other districts ask visitors to handle blocks of cases (e.g., ten civil cases or twenty criminal cases) where the cases may be at any point from filing to disposition. Most courts prefer visitors who are willing to take cases at whatever stage the court wishes to assign them. In specific recusal situations, the visitor handles the case from filing to disposition.

Judges and clerks described the following array of methods for assigning cases to visiting judges:

- Local magistrate judges are assigned to cases to hear pretrial motions in civil or criminal cases, and the visiting judge conducts any trials in

21. All statements about numbers of districts or districts generally are based on interviews with chief judges and clerks from courts that borrow. See *infra* Appendix A for details about how the data were collected.

22. "Term" refers to a group of cases arising from indictments handed down when a grand jury completes its term.

The Use of Visiting Judges in the Federal District Courts

those instances. This method is used in courts that have a backlog of both civil and criminal cases.

- Local magistrate judges hear pretrial motions only in criminal cases, and the visiting judge conducts the trials in those cases. This method is used primarily in courts that have heavy criminal dockets that are trying to meet Speedy Trial Act deadlines.
- Visiting judges decide motions only, rather than trials. This method is often used to dispose of a calendar that includes cases that can easily be resolved through motions hearings, including motions to dismiss and summary judgment motions. These kinds of cases are usually referred to as “paper cases,” which can often be resolved by the visiting judge in his or her home chambers.
- Intercircuit visitors handle trials only, while intracircuit visitors handle cases from filing to disposition. This method may be used when civil or criminal trials are expected to be lengthy or to present complex issues. The intercircuit visitors are often senior judges who can visit for longer periods of time.

Most chief judges do not accommodate visiting judges’ case-type preferences because they believe it is too burdensome. Only one court accommodates in this way on a regular basis. Most chief judges prefer visiting judges who will handle any matters they are given.

Keeping in mind the variety of approaches described above, courts should consider the following issues when deciding how to select and assign cases to visiting judges:

- Does the caseload consist primarily of civil cases or criminal cases?
- Do the judges in the district prefer that resident judges handle certain types of cases?
- If a visitor is assigned criminal cases, who will handle sentencing in those cases?
- Does the district have any regular visiting judges? If so, what are their preferences?
- How long are the visitors able to stay in the court? Given the length of their availability, what types of cases can be handled in that time period?

Whatever method is chosen when selecting, assigning, and scheduling cases for visiting judges, ensure cooperation from the resident judges by informing them about the visitor’s assignment. The resident judges should

Chapter Three: Hosting a Visiting Judge

make sure they do not create scheduling conflicts by requiring an attorney to be in their courtroom at the same time the attorney is scheduled before a visiting judge. Likewise, attorneys should alert judges to potential scheduling conflicts.

Providing the visiting judge with case information

Visits by judges who regularly assist the host court require less preparation and effort than visits by new visiting judges. Regular visitors are usually familiar with the host court's practices, including the way cases are managed by the clerk's office. In addition, the host court is usually familiar with the visitor's practices. Even so, some information about the cases must be provided whether the visitor is new to the court or a regular visitor.

Clerks we interviewed described several ways of managing the exchange of documents and case files:

- Because mailing the case pleadings back and forth can be a burden on the clerk's office, resident judges may elect to order the parties to file original documents with the court and send copies to the visiting judge's chambers. This shifts the responsibility to the parties.
- The clerk's office may routinely send copies of pending motions and briefs on these motions to visiting judges before their arrival. Here, the responsibility lies with the clerk.
- Some visiting judges request copies of the case files prior to their visits. When asked, the clerks will comply, but many do not routinely send visitors the complete files, preferring to send copies of only the docket sheets, pleadings, and orders. This is easier to do in courts with electronic files.

Regular visitors may be less likely to request case files prior to the visit because they are often more familiar with the host court's practices and may feel less need to prepare before visiting.

The clerk's office may wish to develop a checklist of the documents that will be routinely copied and mailed to the visiting judge in advance of the visit. At the same time, be responsive to any requests for additional documents made by the visitor.

Arranging travel & accommodations

The clerk's office often assists the visiting judge's secretary in making arrangements for housing and for travel to the host district. In a few districts,

The Use of Visiting Judges in the Federal District Courts

the local chapter of the Federal Bar Association has offered to assist in arranging travel and housing for visiting judges.

It is important to check with the visitor before arranging travel and housing. Some visitors choose to stay with family members or friends rather than in a hotel. Some judges may prefer to travel to the host district in their own cars, others by train or by airplane. Preferences for housing and travel often depend on the length of the stay. In districts in which judges visit the court for several weeks and visitors are coming in a constant stream, the clerks may want to find a local apartment or suite that can be rented on a long-term basis.

Selecting a jury

If the visiting judge will be trying cases, one of the last tasks involved in preparing for the visit is jury selection. Check to see if the visiting judge wishes to have a jury empaneled prior to his or her arrival in the district—if so, the host court may have one of its resident judges select a jury. Some visitors choose to select their own juries.

Orienting the visiting judge & staff to the host court before their arrival in the district

Ideally, orientation to the host court begins soon after the assignment has been made and before the visiting judge and accompanying staff arrive in the district.

Most courts provide visiting judges with an informal orientation to the court. Several courts have developed handbooks or guides for visiting judges—these guides are sent out soon after the assignment is made and typically include the following:

- welcome;
- frequently used telephone numbers;
- telephone directory for resident judges;
- courthouse information, including court security, clerk's office hours, library hours, parking, and building access;
- information about staff and local attorneys, including U.S. attorneys, federal public defenders, U.S. marshals, probation and pretrial services officers, secretaries, law clerks, courtroom deputies, court reporters, computer assistants, and interpreters;
- chambers and courtroom information, including information about

Chapter Three: Hosting a Visiting Judge

computers, telephones, fax machines, photocopying machines, and supplies;

- procedural information about the court and its local rules and practices, including case assignments, filings (paper or electronic), document imaging, orders, and prisoner details;
- trial information, including oaths, verdicts, evidence and exhibits, and court practices regarding contacts with counsel and jurors after verdict;
- jury information (e.g., orientation, venire, jury selection, hours, breaks, attendance certificates, telephones, juror note taking, jury instructions and verdict forms, and voir dire oaths and affirmations);
- information about hotels, restaurants, rental cars, and local attractions; and
- a map of the area surrounding the courthouse.

Before a visit, courts often send the visitor a letter confirming the dates of the visit and any arrangements that have been made. The letter might also include the contact information of a liaison in the host court. The liaison may be a chief deputy clerk, a courtroom deputy coordinator, or, sometimes, a resident judge.

Managing the visit

Managing the caseload of a visiting judge can be labor-intensive for the host court and involves the following responsibilities:

- orienting the visiting judge and staff to the host court after their arrival in the district;
- providing support staff and space;
- anticipating parties' reactions to visiting judges; and
- managing cases after trial.

Orienting the visiting judge & staff to the host court after their arrival in the district

In-person orientation begins when the judge and accompanying staff arrive in the district. The liaison assigned to the visiting judge may be asked to provide directions or transportation from the airport or train station to the court. If the visitor comes by car, the liaison may wish to send the visitor detailed instructions about how to get to the court, how to get to his or her lodgings, and where to park in those locations. The liaison should acquaint

The Use of Visiting Judges in the Federal District Courts

the visiting judge and staff with chambers space and courtrooms, provide keys and access cards to buildings and parking, provide identification badges or papers, and tour the facility with them. To ease the unfamiliarity between the visiting judge, the visitor's staff, and the court staff, some clerks place name cards on the bench, on the desks of courtroom deputies and docketing clerks, on counsel's tables, and on the marshal's desk.

Visiting judges may be oriented in person or through the use of a visiting judge handbook. It is a good idea for host courts to provide copies of local rules or to ask the visitor to review the local rules on the host court's Web site prior to the visit. In some districts, chief judges meet with visiting judges upon their arrival, describe local practices, and introduce them to resident judges and court staff—in other districts the chief judge designates a resident judge, the clerk, or a visiting judge coordinator to do so. Some chief judges encourage the resident judges to invite visitors to lunch or to dinner during their stay. Some courts have turned to the local chapter of the Federal Bar Association or other local bar associations for assistance. The bar has responded enthusiastically, holding dinners and receptions for visitors.

Providing support staff & space

The support staff and space available for visitors varies from court to court. Currently, judge visits are funded through several sources. The travel and subsistence costs of visiting judges and two accompanying staff members are covered by the central fund for judges' travel managed by the Administrative Office of the U.S. Courts. Other staff, such as a courtroom deputy or a court reporter, is usually funded by the borrowing court's clerk's office. Courts have taken a number of approaches to providing staff for visiting judges. Most courts permit visiting judges to bring two staff persons, usually a law clerk and a secretary, and provide visitors with a local courtroom deputy and a court reporter. However, borrowing courts can also

- use contract court reporters for visiting judges;
- ask visitors to bring their own courtroom deputies instead of a law clerk or a secretary; or
- temporarily assign docket clerks, division managers, relief courtroom deputy clerks, docket supervisors, and former courtroom deputies

Chapter Three: Hosting a Visiting Judge

(who have gone to other positions in the court) as courtroom deputies to the visiting judge.

Although the primary staffing requirement from the borrowing court's standpoint is for a courtroom deputy, a visitor's needs extend beyond the courtroom. Consider alerting all court personnel to the presence of visiting judges. Local staff members should be attentive to visitors' needs and be available to answer questions and offer assistance whenever possible.

Some courts have no problems providing courtroom and chambers space, but others find this difficult because they are either currently remodeling existing facilities or waiting for a new courthouse to be completed and opened for use. Clerks we interviewed described the following options for providing courtroom and chambers space:

- where courtroom and chambers space are at a premium, have only one visitor at a time;
- invite judges to visit at courthouses that have extra space available;
- invite judges to visit when resident judges are not in trial or are on vacation; and
- assign visitors to appellate, bankruptcy, or magistrate judge courtrooms that are not in use.

Courtroom availability will in some instances determine the length of a visitor's stay. If a visitor is using the courtroom of a resident judge who is temporarily off the bench or who is on vacation, the visitor will probably stay only a week or two (unless additional space becomes available).

Limited courtroom space suggests that the use of visiting judges will be greatest in the summer months when resident judges are on vacation, but nonjudicial staff shortages during these months may present other problems.

Anticipating parties' reactions to visiting judges

Out of courtesy to attorneys and litigants, notify them in advance that a visiting judge will handle their cases. Although the parties have no right to challenge the assignment of a visiting judge, some parties would prefer to have resident judges hear their cases because they know what to expect from them. Other parties may be neutral or even prefer a visitor. Alerting the parties beforehand to the presence of a visiting judge will help counsel prepare and will help mitigate problems. In addition, suggest that law firms, U.S. attorney's offices, and federal public defender's offices have a substitute

The Use of Visiting Judges in the Federal District Courts

or back-up lined up for an attorney who is scheduled before a visiting judge to ensure that no continuances are needed.

Managing cases after trial

Most cases have posttrial activities that require the attention of a judge. This is especially true for criminal cases, where sentencing is the major posttrial event. When a visiting judge has tried several criminal cases and sentencing for all of them can be scheduled for a single visit, he or she is likely to return to the court to impose the sentences. In general, however, the courts do not have a uniform approach to this situation. In some courts, a visitor may return to give the sentence, while in others a resident judge will carry out this task.

In contrast, posttrial events in civil cases are usually easier for both the visitors and the host court to handle. A common practice is to send motions to the visitor, who rules on them and sends an order back to the court. In some courts, magistrate judges handle such matters with the consent of the parties or by issuing reports and recommendations, which the visiting judge or resident judge must review *de novo* if a party objects. Visitors usually prepare opinions in nonjury civil cases after they have returned to their home courts.

The impact of advances in technology on the use of visiting judges

The federal courts are moving toward increased automation of court operations. Most courts use electronic mail, the Internet, and telephone conferencing extensively in their day-to-day operations. Some courts are using videoconferencing on a regular basis. Visiting judges also use these technologies.

When they are asked to handle pretrial matters, visitors usually handle them by telephone. A few courts, however, require that visiting judges conduct hearings in person. These courts report that they value the importance of face-to-face interaction and the public's right to attend court hearings. Other chief judges neither encourage nor discourage case management by telephone. One court encourages visiting judges to use conference calls and videoconferencing to handle preliminary matters in civil cases from their home chambers; the chief judge in this district, however, prefers that crimi-

nal matters be handled in person by the visiting judge or a local magistrate judge.

Visiting judges rarely use videoconferencing for case-related matters in the host districts. However, two districts have a policy of encouraging both their resident and visiting judges to use videoconferencing technology to handle preliminary matters, such as expert witness depositions, status conferences, and motions hearings. One of these two courts is in the Ninth Circuit, which requires a criminal defendant's consent to the use of video technology. Once the court has obtained a defendant's consent, even guilty pleas may be taken by videoconferencing. Many courts have established video links with federal prisons for use in inmate litigation. This technology reduces the burdens and costs associated with transporting inmates to court and can result in more expedient resolution of these claims.²³ Note however, that there may be some restrictions on the use of videoconferencing and other technologies in certain situations. It is best to consult the federal rules, circuit law, and local rules, as well as the chief judge in the host court, before using these technologies as a visiting judge.

An example from the District of Massachusetts illustrates the potential of videoconferencing for civil pretrial motions and even for jury-waived trials. The chief judge of the district was eager to help overburdened districts, but his schedule did not permit him to travel. He volunteered to handle several nonjury civil trials for the District of Arizona from his home chambers and from the automated courtroom in his district's courthouse in Boston. Argument on pretrial motions to dismiss and for summary judgment were held via videoconferencing after the relevant motion papers had been sent to Boston and reviewed. Pretrial conferences were handled by telephone, and case information was docketed in the Integrated Case Management System (ICMS) in Arizona. Initial case documents (e.g., the complaint and answer) were filed in Arizona, and then the originals were mailed to the judge in Massachusetts. Attorneys were asked to send copies of their pleadings to the judge in Massachusetts. In addition, the Massachusetts clerk was given access to Arizona's Chambers Access to Selected Electronic

23. The Prison Litigation Reform Act encourages courts to conduct pretrial proceedings with inmates by telephone, videoconference, or other telecommunications technology without removing the prisoner from the prison facility. 42 U.S.C. § 1997(f) (1994).

The Use of Visiting Judges in the Federal District Courts

Records (CHASER) through the judiciary's intranet. A set of exhibits was sent to Massachusetts for the judge's review, while a working set of exhibits remained in Arizona. On trial days, the camera in the Massachusetts courtroom was on the judge, while the camera in the Arizona courtroom was on the witness. The judge, courtroom deputy, and court reporter functioned in Boston. Once set up by Arizona systems staff, the attorneys in Phoenix could easily turn their camera and audio off and on as needed.

One of the newest technologies currently being developed for the federal courts is electronic case filing (ECF). ECF systems consist of procedures and methods for using computers and other electronic equipment to file, maintain, and retrieve case-file information.²⁴ Using these systems, attorneys and litigants will be able to file cases and motions from their offices home computers, and computers provided at the courthouse. Benefits include improved access to case-file information, including documents; cost savings and efficiencies through increased productivity and more effective use of staff, space, and other resources; reduced physical handling, maintenance, and copying of file documents; improved docketing, scheduling, case management, and statistical reporting; and enhanced accuracy and efficiency in record maintenance.²⁵ ECF is currently being piloted in nine prototype courts, and there are plans to make ECF available to courts nationwide.²⁶ Initial response to the technology has been positive.

These new technologies will facilitate case management by visiting judges and the borrowing courts. Judges often visit districts to try cases in which pretrial motions hearings have already been conducted by resident judges or magistrate judges in the host district. If the hearings were recorded using digital audio recording technology, a visiting judge who wishes to review the case before the visit could do so simply by clicking on an electronic file of the proceedings that has been E-mailed to the his or her chambers. Court staff in the borrowing district need not engage in the time-consuming process of making and sending copies of audiotapes. Likewise,

24. Administrative Office of the U.S. Courts, *Electronic Case Files in the Federal Courts: A Preliminary Examination of Goals, Issues, and the Road Ahead—Discussion Draft* (1997).

25. *Id.*

26. The nine prototype courts include four district courts (Missouri Western, New York Eastern, Ohio Northern, and Oregon) and five bankruptcy courts (Arizona, California Southern, Georgia Northern, New York Southern, and Virginia Eastern).

Chapter Three: Hosting a Visiting Judge

electronic case filing should be of great assistance to visiting judges and borrowing courts, because judges and clerks in the lending and borrowing districts will have easy access to the case files assigned to the visiting judge. This access will eliminate the need for host court clerks and attorneys to photocopy and transmit documents to the visitor. Visiting judges may also easily monitor the progress of cases they are or will be managing by checking the case files on a regular basis.

Technology undoubtedly has the potential to make the work of visiting judges and host court staff easier and more cost-effective. Using videoconferencing, visiting judges may hold hearings from their home chambers on motions to dismiss and summary judgment motions. In cases in which parties consent, judges can preside at trials without having to travel to the host district, so judges who are not able to travel to other districts are able to assist other courts. Use of technology can save both time and money when judges and staff don't need to travel to the host court.

Keeping records

Host courts use the AO's JS-10A²⁷ form to track the contributions of visiting judges (see *infra* Appendix G). Copies of the form are available from the Statistics Division of the Administrative Office. It will soon be available on the J-Net for printing or downloading. Instructions for using it are on the J-Net: go to the Guide to Judiciary Policy and Procedures, Volume XI, Statistics Manual <<http://jnet.ao.dcn/library/guide/vol11>>, and click on the downloadable file <06_DTRL.pdf>.

A chief judge may wish to ask the circuit executive or district clerk to maintain a database that includes information about the visiting judges, the reasons for the visit, and the ways in which visiting judges are used to assist the court. Maintaining records on the use of visitors will help to identify patterns or trends so that courts can more effectively anticipate and meet future needs for assistance. Courts using visiting judges routinely, or even from time to time, should consider keeping a database or list of judges who are interested in visiting.

27. The JS-10A form, "Monthly Report of Visiting Judge Activity," is similar to the JS-10, the form that resident judges use to report their work. However, the JS-10A includes fields such as "Reporting District" and "Home District."

Essential ingredients for a successful visit

In summary, the chief judges and clerks from host courts and the visiting judges we interviewed agree that the two most important principles for a successful visit are (1) keep the visitor busy, and (2) keep the visitor happy. Within these broad guidelines, they emphasized a number of practices and policies they believe ensure a successful visit by a judge:

- In advance, clarify the judge's expectations about the following four critical issues: the kinds of cases the judge expects to handle; the procedural stage the judge expects these cases to have reached; the kind of staff support the judge expects; and whether the judge is coming to handle a block of cases or to spend a period of time.
- Keep the visiting judge busy. Schedule more, not fewer, cases than the judge can preside over during the visit. Have enough backup cases ready, a sufficient number of jurors impaneled, and a staff in place. Suggest that law firms, U.S. attorney's offices, and federal public defender's offices have a substitute lined up for an attorney who is scheduled before a visiting judge.
- Set an effective calendar that estimates as accurately as possible the length of each trial and the potential for settlements.
- Where possible, tailor the calendar to the visitor's preferences.
- Many cases can be disposed of without going to trial and without the visiting judge traveling to the host court. Remember that visitors are often willing to handle these "paper" cases from their home chambers by reviewing the case files, ruling on motions, and using telephone and videoconferencing to communicate with the parties.
- If a visitor is assigned trials, make sure the cases are ready for trial; there should be no pending motions in these cases unless the visitor has agreed to decide them.
- Where possible, agree in advance on what will happen if the visiting judge disposes of the assigned cases before the visit ends. Will the judge stay and handle other matters, or will the judge return home early?
- Give the visitor enough case material ahead of time so that he or she arrives with some knowledge of the case(s) to be handled. The more complete the visitor's knowledge, the more effective will be the visit.
- Either have a resident judge order the parties to file original documents with the court and send copies to the visiting judge's home chambers or have the clerk's office send copies of documents to vis-

Chapter Three: Hosting a Visiting Judge

iting judges for review before arrival in the host district. You may wish to develop a checklist of documents that will be routinely copied and mailed to the visiting judge in advance of the visit. If case files are maintained electronically, provide the visitor with the necessary access. At the same time, be responsive to any requests for additional documents made by the visitor.

- Ask whether the visitor has a preference for selecting his or her own juries. If the visitor has no preference, consider having a resident judge select juries in advance for cases assigned to the visitor.
- Inform the visiting judge about your district's policies regarding the use of audio and video technologies for performing host court work in the visitor's home chambers. If your district has case law or a written policy regarding the use of these technologies, send a copy of the case(s) or the policy to the judge as soon as the judge has accepted the invitation to visit.
- As a courtesy to the attorneys and litigants, notify them in advance that a visiting judge will be handling their cases.
- Give the visitor and his or her staff a complete orientation to the court when they arrive.
- Give the visitor good support from the clerk's office, including computer and typing services, enough work space, a flexible staff, and ongoing attention from the clerk before, during, and after the visit.
- Keep a database on visitors' preferences. Include information about courtroom and case-management preferences, jury selection, and practical matters such as the visitor's preferred method of travel to your district, favorite places to stay, and favorite restaurants and activities.
- Bring in only as many visitors as the resident staff can serve while simultaneously meeting the needs of the resident judges.
- Ensure cooperation from the resident judges. They should assist the visitor in general, but more importantly, they should make sure they do not create scheduling conflicts by requiring an attorney to be in their courtroom at the same time that attorney is scheduled before a visitor. Likewise, attorneys should alert judges to potential scheduling conflicts.
- Make sure that appropriate reports of the visiting judge's activities (i.e., JS-10A: Monthly Report of Visiting Judge Activity) are filed with the Administrative Office.

This page intentionally left blank to facilitate printing this document double-sided.

Chapter Four

Getting a Visiting Judge Assignment

For those who wish to serve as a visiting judge, there are several ways to learn more about the process. For example, the Article III Judges Division of the Administrative Office includes discussion of visiting judge assignments in the retirement planning and benefits seminars the division conducts periodically around the country. Information about temporary assignments is also included in the Administrative Office's publication *Senior Status and Retirement for Article III Judges* (1999). Information is also available from the chair and staff of the Judicial Conference Committee on Intercircuit Assignments. The committee staff can be reached at (202) 502-1180. For more information on serving as a visiting judge, see *infra* Chapter Five.

How to get a designation within your circuit

One advantage of an intracircuit judicial visit is your familiarity with circuit law and practice. Another advantage is that you may not need to travel far from home. In addition, you will have the opportunity to meet and work with judges outside your district. If you would like to visit within your own circuit, consider the following steps:

- First, talk with your chief district judge about serving in other courts within the circuit. Explain why you wish to serve, where you wish to serve, and what you hope to achieve by visiting. Discuss when you expect to be available to visit. The chief judge may be able to alert you to any anticipated needs in your own court and elsewhere in the district and circuit, as well as assist in deciding on the best times to visit other courts. Some districts develop forms with this information that are distributed to resident judges on a regular basis.
- After consulting with the chief district judge, tell the chief circuit judge and circuit executive of your interest in serving in other courts within the circuit. Consider writing letters to the chief judges of other districts within the circuit describing your interest in serving and your availability, but determine whether your chief judge wishes to write them or make telephone calls before taking this step yourself. If you

send the letters, send copies to your chief judge for his or her information.

- If other courts request that you visit, be sure to coordinate any arrangements with your chief judge, the clerk of your district, and the clerk of the host district.
- Although the statutes governing the use of visiting judges do not require active judges' consent for intracircuit assignments, assignments typically are made with the agreement of the visiting judge who is in active service. Some circuits may have developed consent forms for this purpose. Check with your circuit executive to see if you must complete a form indicating your consent to the assignment.

How to get a designation outside your circuit

Serving as a visiting judge outside the circuit presents challenges but also opportunities—to become familiar with similarities and differences in circuit law and to meet and work with judges outside the circuit. If you would like to visit outside your own circuit, consider the following steps:

- First, talk with your chief judge about your interest in serving in other courts outside your circuit. Explain why you wish to serve, where you wish to serve, and when you expect to be available to visit. Some circuits may have special policies about visiting within or outside the circuit. It is important to check with the chief judge or circuit executive of your circuit to determine whether special policies exist. In addition, if you are an active judge, find out whether your circuit is currently borrowing judges—if so, you may not be permitted to visit another circuit. The lender/borrower rule generally prohibits a circuit that borrows active judges from other circuits from lending its own active judges (see Appendix E).
- Once the chief district judge has given approval, discuss whether you or the chief judge should send a letter to the chief circuit judge notifying him or her of your wish to assist courts outside the circuit.
- After consulting the appropriate judges within your circuit, you should notify the Committee on Intercircuit Assignments. The committee periodically distributes questionnaires that are used to update its rosters of available judges. If you have not recently completed and returned a questionnaire to the committee, contact the committee staff (202-502-1180) for a copy. Once your completed questionnaire is received, the staff will include the information in the current

roster of judges available to take intercircuit assignments. The roster then serves as a resource for the committee and the courts in finding judges to take assignments.

- If and when your services are needed in another court, you will most likely receive a telephone call from the chief judge of the borrowing district or the chair or staff of the Committee on Intercircuit Assignments. The chief circuit judge of the borrowing circuit will complete a Certificate of Necessity (see *infra* Appendix C) certifying a need for your services and will forward it to the chair of the Committee on Intercircuit Assignments.
- For senior judges, you must prepare and submit a consent form (Consent to the Intercircuit Assignment of a Senior United States Judge, *infra* Appendix D) to the Chair of the Committee on Intercircuit Assignments. As a senior judge, the approval or signature of your chief circuit judge is not needed. However, you should consult with the chief judge of your circuit and district before accepting an inter-circuit assignment. For active judges, the process is different. You must prepare and submit a consent form (Consent to the Intercircuit Assignment of a United States Judge in Active Status, *infra* Appendix D) to your chief circuit judge, who signs and returns it to the committee chair, indicating approval of the assignment to the borrowing court.
- Once the above paperwork is complete, visiting judges are authorized to perform judicial duties in the borrowing court for a specified period of time. Be sure to coordinate any arrangements for visiting with your chief judge, the clerk of your district, and the chief judge and clerk of the borrowing court.

For more detail on the procedures involved in intercircuit visits, see *infra* Appendix E (*Guidelines for the Intercircuit Assignments of Article III Judges*). Additional information, including an overview of the intercircuit assignment process and a description of Intercircuit Assignments Committee assistance with recruitment of visiting judges is available at the “Judges Corner” on the J-Net <<http://jnet.ao.dcn/judgescorner>>.

A note to senior judges who wish to serve as visiting judges

Senior judges, because they are often available to visit in other courts for longer periods of time, are in especially high demand. And a circuit that

The Use of Visiting Judges in the Federal District Courts

lends senior judges is not discouraged (under the “lender/borrower rule”) from borrowing active judges from another circuit. Thus, even if your circuit borrows active judges from other circuits, seniors from your circuit may still visit in other circuits.

There are several ways to learn about visiting other courts. The primary method is by word-of-mouth; senior judges should get the word out to other judges, especially chief judges, that they wish to visit. In addition, the Judicial Conference Committee on Intercircuit Assignments provides each judge who takes senior status with a copy of *Guidelines for the Intercircuit Assignment of Article III Judges* (see *infra* Appendix E) and a questionnaire for judges who are willing to take intercircuit assignments. The database of questionnaire responses is updated monthly by the committee’s staff. Information about temporary assignments is also included in the Administrative Office’s publication *Senior Status and Retirement for Article III Judges* (1999).

Finally, senior judges should contact other senior judges who have served as visiting judges. For assistance in finding them, contact the staff of the Committee on Intercircuit Assignments (202-502-1180). For more information on how to get an assignment, see the sections *How to get a designation within your circuit* and *How to get a designation outside your circuit* earlier in this chapter.

Chapter Five

Serving as a Visiting Judge

Advice about serving as a visiting judge comes from our interviews with judges who visited other courts, and from the judges and personnel in courts that host visitors. Whether visiting within or outside the circuit, the following is a list of issues for judges to consider prior to and during a visit:

- Before visiting in another circuit, ensure that the Consent to Assignment form is complete and has the appropriate signatures (e.g., your chief circuit judge) before it is forwarded to the chair of the Committee on Intercircuit Assignments.
- Ask for the name, telephone number, fax number, and E-mail address of the contact person or liaison in the host court. Provide the same information to the host court contact.
- Confirm the dates of any visits to the host court.
- If the host court has a visiting judge packet, ask that one be sent. If it does not, and your visit involves travel to the host court, ask for hotel and travel recommendations. Confirm whether the host court or your secretary will be making your travel arrangements. Consider whether a rental car is needed. If so, ask for parking instructions and a map.
- Many districts permit visitors to bring two staff members. Most visitors bring a secretary and a law clerk. However, consult first with the host district to see what staffing resources are available there. Some courts prefer that visitors bring a courtroom deputy instead of or in addition to a secretary and a law clerk.
- If you plan to bring your spouse or family members along, mention this to the chief judge or clerk of the host court. They may be able to suggest activities your family would enjoy while you are working.
- Make needs and preferences known to the host court clerk. If you would like a formal orientation to the host court on the first visit, for example, ask the clerk if this is possible. Alert the host court's clerk in advance if you have any preferences or standard practices for case management. For example, if you prefer to handle status conferences or motions hearings by telephone or video, inform the host court chief judge and the clerk of your preference. They will alert you to any local rules or district or circuit policies that may affect your use of telephone or video conferences in the host court. Inform the host

The Use of Visiting Judges in the Federal District Courts

court clerk if you would like to select your own juries or would like them selected for you prior to your visit. At the same time, be flexible and willing to adapt to the host court's practices.

- If problems arise while serving in the host court, inform the clerk or the designated contact person in a timely manner. Make suggestions about how a problem might be solved.
- Do not cancel a visit at the last minute unless absolutely unavoidable. If unsure about whether you will be able to follow through with an assignment, do not volunteer to visit.
- At the conclusion of a visit and/or an assignment in a host court, provide the court's chief judge, clerk, and contact person with constructive feedback on what worked well during the visit and what could be improved.

See Appendix H for a checklist of items to consider when arranging and preparing for an assignment as a visiting judge. The key to a successful, productive visit is open communication between the host court and the visiting judge. Be assertive, and at the same time be flexible and cooperative. Your initiative in asking questions and your willingness to change your practices to conform to the host court's practices will be greatly appreciated.

Chapter Six

Successful Visiting Judge Programs: Maximizing the Impact of Visitors on the Courts

The experiences of courts with creative approaches for using visiting judges may be helpful in understanding what makes a visiting judge program successful. The following section describes the strategies currently used by several courts.

The District of Arizona

The District of Arizona (Ninth Circuit) is one of the fastest growing districts in the nation. Arizona's criminal caseload has increased rapidly over the past five years, and the district has had to rely on the services of visiting judges to help alleviate the civil case backlog. In response to this increased caseload, the Judicial Conference has recently recommended that the district receive five new judgeships.

When seeking visiting judge assistance, the chief judge in the District of Arizona solicits input from judges across the country regarding who may be available and interested in traveling to assist the district. The chief judge then contacts the circuit executive's office to coordinate the necessary paperwork for judges inside and outside the circuit to travel to the District of Arizona. To familiarize visiting judges with the district's practices, the clerk of court sends a visiting judge handbook, along with a copy of the local rules, to each visitor prior to arrival in Arizona.

The District of Arizona has two divisions, Phoenix and Tucson. In Phoenix, the district uses a "block assignment" program in which visiting judges are typically assigned fifteen to twenty civil cases, ranging from newly filed cases to cases ready for trial. Once visiting judges receive their assignments, they set their own dockets and work as much as possible from their home districts (via written orders, telephone, and videoconference). Visits to other districts are scheduled only when necessary—for example, to conduct an evidentiary hearing or a trial. Many cases are resolved without a single trip to the district.

The Use of Visiting Judges in the Federal District Courts

In Tucson, instead of assigning blocks of civil cases, visiting judges are often scheduled to sit for a period of time to assist with the criminal calendar. During visiting judges' assignments, they conduct change of plea hearings, motion hearings, and sentencings.

Contract court reporters are hired and reimbursed by the District of Arizona to assist visiting judges sitting in the district, but because of staffing shortages, the district is not able to provide courtroom deputy support to the visiting judges. Each visiting judge is asked to bring a courtroom deputy, along with a secretary and law clerk, if necessary. Here, the travel costs of the courtroom deputy are borne by the clerk's office in which the deputy is regularly employed.

The Middle District of Florida

The Middle District of Florida (Eleventh Circuit), in addition to seeking more judgeships,²⁸ uses visiting judges to assist with a backlog of cases that the court attributes to several years of sharply increasing filings. The chief judge prefers to recruit senior judges because they are able to commit more time to their visits. The district enlists only judges who agree to hear both civil and criminal cases and both jury and nonjury cases. The circuit executive handles the designation paperwork, securing the chief circuit judge's approval.

The clerk assigns a staff member to assist the visiting judge with a variety of arrangements, including lodging, chambers and courtroom space, access to the court, parking, and computers. This contact person orients every visiting judge and visiting staff with an on-site greeting, a tour of the facilities, and an introduction to the resident judges and key people in the clerk's office and the U.S. marshal's office. Prior to the judge's arrival, the contact person compiles a calendar, gives a copy to the visiting judge, and provides relevant case information, such as copies of docket sheets, indictments, and complaints. Visiting judges are asked to bring their own law clerks; when possible, the court provides courtroom deputy and court reporter assistance.

Visiting judges are asked to visit for at least four weeks and generally are asked to conduct trials only. Their calendars include civil and criminal, jury

28. In November 1999, Congress created four additional judgeships. In July 2000, the Judicial Conference recommended two additional judgeships for the court.

and bench trials. Resident judges manage all other aspects of the cases placed on the visiting judges' calendars. The chief judge often asks visiting judges to hear cases either in Tampa, where a new courthouse recently opened, or in Fort Myers, where there is a resident magistrate judge and a staffed new courthouse but no resident district judge. Occasionally, visiting judges have also been asked to sit in Orlando and Jacksonville. Regardless of which division the visiting judge serves during the visit, the calendar may include cases from any division of the court.

The Fifth Circuit

Because of extremely heavy caseloads in the Fifth Circuit's districts bordering Mexico, the chief circuit judge of the Fifth Circuit recently launched an initiative to assist judges in those districts. She appointed a senior district judge with extensive visiting experience to coordinate recruitment of judges from within and outside the circuit. Because the judge-coordinator has served as a visiting judge in many of the border courts, he can share his personal experiences with judges who express an interest in visiting. Moreover, he is continually updated on the needs of the individual courts and can assist visitors in locating assignments that fit their availability.

According to the judge-coordinator, the use of long-term designations is important to the success of the program. With the approval of the chief circuit judge, a number of active and senior judges from within the circuit are designated to sit in the border districts (in addition to their home courts) for extended periods, often for an entire year. Active and senior judges from outside the circuit have received year-long designations (which must, like all intercircuit designations, be approved by the Chief Justice and handled through the Committee on Intercircuit Assignments).

A crucial aspect to success in the Fifth Circuit's visiting judge program is obtaining "buy-in" from the receiving court. The court needing the help must coordinate logistics, plan effectively, and choreograph fully all players. This means having the space (chambers and courtrooms) and support staff (courtroom deputies and court reporters/recorders) to handle the flurry of activity occasioned by visitors. Resources in the federal court system are allocated where the case is filed, so the receiving court already should be obtaining—and deploying—the kind of support a visiting judge program re-

The Use of Visiting Judges in the Federal District Courts

quires. Court managers in the border districts have demonstrated a keen sensitivity to resource issues.

This visiting judge program, which includes the appointment of a judge-coordinator, the use of long-term designations, and the border courts' commitment to deploy support resources, has helped the border judges of the Fifth Circuit to cope with a huge caseload. Until more judges are appointed to serve in the border districts, the chief judge plans to continue using visitors extensively.

The Western District of Arkansas/Eastern District of Texas

The Western District of Arkansas and the Eastern District of Texas use cross designations to assist judges with their caseloads. *Cross designation* usually refers to an arrangement in which, for example, a judge from District A is designated to serve in nearby District B. For the same time period, a judge from District B is designated to serve in District A. Each judge still serves his or her home district as well.

The federal courthouse in Texarkana straddles the state line between Texas and Arkansas. It houses the chambers and courtrooms of judges from both the Eastern District of Texas, which is in the Fifth Circuit, and the Western District of Arkansas, which is in the Eighth Circuit. For the past five years, a judge from Texas Eastern and a judge from Arkansas Western have been cross designated to serve in one another's districts. The Chief Justice has approved this intercircuit designation on an annual basis. The judges have assisted one another with criminal matters, including trying cases, taking guilty pleas, and handling supervised release revocation hearings. They have also helped each other with civil matters.

Because they are each the only district judge in their respective divisions, the two judges appreciate the support, assistance, and collegiality this arrangement provides. Moreover, they value the opportunity to learn the case law and practices of another circuit. These judges, by making the best of the location of these two court divisions, have developed a working relationship that benefits both the Fifth and the Eighth Circuits.

The Southern District of Alabama

The Southern District of Alabama, which is in the Eleventh Circuit, developed a method for handling caseload pressures while waiting for a magistrate judgeship to be filled.²⁹ The program was temporary and lasted from March to December 1999. In January 2000, a fourth resident magistrate judge was seated.

The program is not a visiting (district) judge program of the sort developed by other districts. Instead, it demonstrates a strategy for alleviating the problems caused by magistrate judge vacancies in a court that has a liberal magistrate judge use policy, where a magistrate judge vacancy is likely to have a greater impact than in courts that make more limited use of magistrate judges.³⁰

With the Administrative Office's assistance in planning and implementing the program and the intercircuit recall's approval by the Judicial Conference's Committee on Administration of the Magistrate Judges System, the district recalled three retired magistrate judges (one from Montana and two from Florida) to assist them for one month at a time, each on a rotating basis. The district provided each with a caseload that consisted of arraignments, criminal preliminary motions, Social Security cases, and habeas actions.

Because this method was successful in reducing caseload pressures, the district plans to implement it again as needed when district or magistrate judgeships are vacant or senior judges retire.

29. This program is described in greater detail in William Cassady, *Recall Brings Relief in Southern Alabama*, Federal Magistrate Judges Association Bulletin, May 1999, at 3, 5.

30. To facilitate the number of cases handled by the magistrate judges, the district has instituted a reviewed reference "opt-out" docket. Civil cases and related matters (excluding pro se prisoner and habeas cases) are assigned to a magistrate judge and will be reassigned to a district judge at any party's request or if, at some point in the case, the parties do not execute an express consent.

This page intentionally left blank to facilitate printing this document double-sided.

Chapter Seven

Conclusion

The use of visiting judges is one approach to alleviating heavy caseloads and vacancies. Nonetheless, despite the benefits of improving collegiality between and among judges and court personnel, as well as giving visiting judges experience in a different court or circuit, visiting judges can strain the resources of host courts. Adjusting to a visitor's style and case-management methods can be labor-intensive and time consuming. At the same time, visiting judges have helped many busy courts dispose of large numbers of cases, and have enjoyed the opportunity to try different types of cases, to work with judges in other districts and circuits, and to see how other courts handle their caseloads. Despite occasional difficulties, most judges visit because they have a sense of duty to their colleagues in other districts and circuits.

The use of visiting judges depends in part on easily accessible information and adequate staff and facilities—matters that must be and are being addressed on national and circuit levels. Many courts—and the visitors, too—have benefited from the practice of visiting. We hope this guide will help make visiting even more effective.

This page intentionally left blank to facilitate printing this document double-sided.

Appendix A

Study Methodology

1999 Study (Phase One)

At the request of the Judicial Officers Resources Working Group, in the spring of 1999 the Federal Judicial Center conducted a limited study of the use of visiting judges in district courts. Preliminary results were presented at the Conference for Chief U.S. District Judges held in Washington, D.C., in May 1999. We later summarized those results in a report prepared for the Working Group.³¹ This section describes the methodology used in that study.

In total, we interviewed by telephone twelve chief district judges and seven clerks of court from thirteen courts. These courts have a range of experience with borrowing judges—some of the courts have borrowed heavily, while others have borrowed little, and one had not borrowed at all. The twelve borrowing courts we interviewed represent a small portion of courts that have borrowed judges from other districts—in the past three years, on average, seventy-four courts per year borrowed judges.³² We also interviewed by telephone thirteen judges who have sat by designation in courts other than their own. The experiences of these thirteen judges range from visiting one court to visiting more than ten courts in the past three years. On average, during that time, ninety-eight active judges and sixty-nine senior judges visited other district courts annually.³³

Research design

We conducted telephone interviews to collect information about the range of experiences involving visiting judges. The guide reflects the experience of those we interviewed; we do not purport to catalogue or measure all experiences with visiting judges.

31. Melissa Deckman & Jennifer Evans Marsh, A Report on the Use of Visiting Judges in the U.S. District Courts (1999) (on file with author, Federal Judicial Center).

32. The mean number of courts that have borrowed judges was derived using data from Administrative Office of the U.S. Courts, 1996–1998 Annual Reports of the Director, at Table V-1.

33. *Id.*

The Use of Visiting Judges in the Federal District Courts

The chief district judges and clerks we interviewed came from one of two categories. The first category included courts that had borrowed at least three judges who collectively handled ten cases within the last three years; some of these courts had heavy caseloads,³⁴ some did not. Once courts that met this minimum requirement were identified, we grouped them according to the number of judges the courts had borrowed and the number of cases handled by these judges. From each of the four groups that resulted,³⁵ we selected two courts for interviews (i.e., eight courts altogether).

The remaining five courts in our sample came from a second group of courts—those with heavy caseloads that have borrowed very little, if at all.³⁶ This group was studied separately because of the Working Group's interest in the views of courts that appear to need the assistance of visitors but who do not use them or use them very little.

In total, we interviewed twelve chief judges and seven clerks representing thirteen districts in seven circuits.³⁷ We interviewed the chief judge and clerk together in a few districts, at the request of the chief judges. Table 1 details some characteristics of the thirteen districts, based on data submitted for fiscal 1998 to the Administrative Office of the U.S. Courts.

34. To determine whether a court had a heavy caseload, we looked at weighted filings per judgeship adjusted for the number of vacancies on the court and the number of senior judges currently serving the court (with the assumption that sitting senior judges carry half of the workload of an active judge). Those districts that ranked in the top ten districts in terms of caseload were contacted. Three of those courts—each of which was represented in this study—have a good deal of experience with borrowing judges. Seven of the districts have not borrowed judges frequently in the past few years (if at all).

35. The four categories were constructed as follows: (1) courts that had during the past three years borrowed more than five visitors who had collectively handled more than ninety-five cases; (2) courts that had during the past three years borrowed more than five visitors who had collectively handled fewer than ninety-five cases; (3) courts that had during the past three years borrowed fewer than five visitors who had collectively handled more than ninety-five cases; and (4) courts that had during the past three years borrowed fewer than five visitors who had collectively handled fewer than ninety-five cases.

36. Seven courts fit this criteria, all of which were contacted to be part of this study. Chief judges from five of these districts agreed to be interviewed.

37. In one district, the chief judge asked the clerk of court to respond on his or her behalf.

Appendix A

Table 1. Districts included in visiting judge study (13 districts interviewed, from 7 circuits)

	Range (FY 98)
Weighted filings per judgeship	275–1,000
Number of authorized judgeships	3–18
Number of visiting judges	0–15
Civil terminations per visiting judge	0–300
Criminal terminations per visiting judge	0–30
Trials completed per visiting judge	0–55

Note: Some numbers have been rounded.

We also interviewed thirteen judges—both active and senior—who have served as visiting judges, either within their circuits, outside of the circuits, or both. We originally identified judges who had served outside their districts in the past three years and placed them into three categories (high, medium, and low) regarding number of visits. These categories considered the number of courts that judges had visited as well as the number of cases they handled during their visits.³⁸ We contacted four judges in the high-visit category and five each in the medium- and low-visit categories to be part of this study. All but one of the visiting judges agreed to be interviewed. Twelve of the judges interviewed are from district courts, while one sits on the Court of International Trade. Table 2 details some characteristics of these visiting judges.

38. Judges in the high-visit category had visited three or more courts and had handled at least ten cases. Judges in the medium-visit category had visited one or two courts and had handled ten or more cases. Judges in the low-visit category had handled between five and nine cases (regardless of the number of courts visited). Judges who had handled fewer than five cases in other districts were excluded from consideration.

Table 2. Visitors interviewed for visiting judge study (13 judges interviewed)

	Number
Type of judge	7 senior 6 active
Visited only intracircuit	2
Visited only intercircuit	2
Visited both intracircuit and intercircuit	9
Number of courts visited per judge	1–13

Finally, some chief judges also offered their opinions about and described their own experiences regarding the use of visiting judges in discussion groups held at the Center's Conference for Chief U.S. District Judges in May 1999.

2000 Study (Phase Two)

After reporting the results of our 1999 interviews to the Working Group at its meeting in October 1999, we decided to collect additional data from courts that had experiences with visiting judges. Our purpose was to increase the sample size of the courts that borrow. For this second round of interviews, we selected six additional courts that had had six or more visitors during fiscal 1998. We sent a letter requesting interviews to chief judges and clerks of court in the six additional districts. Four chief judges, three clerks, and one courtroom deputy coordinator (who was designated as the interviewee for her court) from five of the six districts agreed to telephone interviews. A total of eight interviews were conducted in January and February 2000.

The results from both phases of the study are incorporated in this guide. In total, the results represent the experiences of eighteen district courts that have borrowed visiting judges, as well as the experiences of thirteen judges who visited in courts outside their districts and their circuits.

Appendix B

Three Districts with Visiting Judges Manuals

Middle District of Alabama

Contact person:

Debra P. Hackett, Clerk
U.S. District Court
Middle District of Alabama
Office of the Clerk
P.O. Box 711
Montgomery, AL 36101-0711
Phone: (334) 223-7308
FAX: (334) 223-7114

District of Arizona (two handbooks—Phoenix and Tucson)

Contact person:

Kurt Lichtenburg, human resources specialist
U.S. District Court
District of Arizona
Human Resources
230 North First St.
Phoenix, AZ 85025
Phone: (602) 514-7110

Central District of California

Contact person:

Lydia Yurtchek, special projects
U.S. District Court
Central District of California
312 North Spring St.
Los Angeles, CA 90012
Phone: (213) 894-8249
FAX: (213) 894-4422

This page intentionally left blank to facilitate printing this document double-sided.

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.

This page intentionally left blank to facilitate printing this document double-sided.

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.

The Use of Visiting Judges in the Federal District Courts

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

CONSENT TO THE INTERCIRCUIT ASSIGNMENT
OF A SENIOR UNITED STATES JUDGE
(Revised October 1997)

Pursuant to 28 U.S.C. § 294(d), I certify that I am willing and able to undertake the following intercourt designation and assignment. The Chief Judge of my Circuit (and District, if applicable) has been notified and has no objection to this 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.

Signature:

Senior Judge (typed name)

District Court (if applicable)

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

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

CONSENT TO THE INTERCIRCUIT ASSIGNMENT OF A
UNITED STATES JUDGE IN ACTIVE STATUS

(Revised October 1997)

As required by 28 U.S.C. § 295, I consent to the following intercircuit designation and assignment of a United States judge in active status. (If this involves a district judge, the Chief Judge of the lending District Court has been contacted and does not object to this assignment.)

Name of judge to be assigned: _____

Title of judge to be assigned: _____

Court from which judge will be assigned: _____

Court to which judge 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.

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.

This page intentionally left blank to facilitate printing this document double-sided.

Appendix E

Guidelines for the Intercircuit Assignment of Article III Judges

Guidelines for the Intercircuit Assignment of Article III Judges
Approved by the Chief Justice
October 21, 1997

Authority for the assignment of United States judges to courts in other circuits or to special courts is vested in the Chief Justice, as provided in Chapter 13 of Title 28, United States Code. To assist the Chief Justice in discharging this responsibility, the Judicial Conference of the United States authorized the appointment of the Committee on Intercircuit Assignments, with staff support to be provided by the Director of the Administrative Office of the U.S. Courts. The Guidelines for such assignments are:

1. A federal judge has responsibility: first, to the particular court of which he or she is a member; second, to the other courts within his or her own circuit; and third, to courts outside his or her circuit.
2. The chief judge of the borrowing circuit must certify the necessity for a judge to be assigned from another circuit. Assignment of judges from their statutory bases will be on the basis of the need of the borrowing circuit. This standard governs the assignment of both active and senior judges.
3. Although 28 U.S.C. § 291(a) was amended in 1992 to permit the intercircuit assignment of circuit judges “upon request by the [borrowing] chief judge or circuit justice of such circuit,” based largely upon fiscal considerations the Judicial Conference has determined that an intercircuit assignment for a circuit judge will be processed only where there is a bona fide certificate of necessity from the chief judge of the borrowing circuit.
4. Circuits in need of assistance should forecast their needs as much as possible and advise the Committee of the type of help, courts (and dates) in which help is needed, and the number of judges that may be required.
5. A circuit which lends active judges may not borrow from another circuit; a circuit which borrows active judges may not lend—this is referred to as the “lender/borrower rule.” (This rule does not apply to senior judges.)
6. The lender/borrower rule may be relaxed in appropriate situations provided the chief judge of the lending circuit (or other court) is consulted to assure the needs of that circuit (or other court) are met first.
7. When an active judge is borrowed or lent for a particular case or cases due to the disqualification of all judges in the borrowing circuit or in other emergency situations, the lender/borrower rule does not apply.

The Use of Visiting Judges in the Federal District Courts

8. In the event all judges of a given circuit disqualify themselves, the chief judge thereof shall notify the Chairman of the Committee on Intercircuit Assignments who, in consultation with the Chief Justice, will select a judge or panel of judges as the case may be. To avoid the appearance of impropriety or conflict of interest, judges of the borrowing circuit, once recused, will not participate in the selection of the visiting judge or judges.

9. Courts of appeals should make an effort to have a visiting judge serve for a regular sitting, as defined by that circuit. However, if necessary to meet an appellate court's needs, assignments for periods of two or three days (particularly with respect to an appellate sitting for a district judge) will be processed. Only in an extraordinary situation will an intercourt assignment to a court of appeals for one day be processed. If circumstances result in a minor rescheduling of the dates of an approved intercourt appellate sitting, no modification of the authorization is necessary.

10. 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.

11. A visiting judge, if deemed necessary by the judge, may be accompanied by up to two members of his or her staff. The borrowing court will be expected to furnish additional supporting personnel as required. (For the purposes of this guideline, "staff" includes the judge's secretary and law clerks, and, if the borrowing court is unable to provide them, a courtroom deputy clerk and/or a court reporter.)

12. All intercourt assignments will be for the period or case[s] specified, and for such time as needed in advance to prepare, and thereafter as required to complete unfinished business. It is stressed, however, that no judge should take any official action in a case in another circuit in the absence of a completed intercourt assignment, *i.e.*, until the assignment has been approved by the Chief Justice and that approval has been filed in the borrowing circuit. (Participation in settlement efforts alone does not necessitate an intercourt assignment.)

13. Intercircuit assignments are not appropriate for non-case specific activities such as wedding and naturalization ceremonies.

Operating Procedures

A. Forms

- *Certificate of Necessity (Revised October 1997)*
Pursuant to 28 U.S.C. § 291(a), 292(d), 292(e), 293(a), or 294(d), and the ICA Guidelines, the chief circuit judge (or chief judge of a special court) certifies that there is a need for a judge to be assigned from another circuit (or special court).

Appendix E

- *Consent Form for Senior Judges (Revised October 1997)*

Pursuant to 28 U.S.C. § 294(d), senior judges may consent to their own assignments. However, as indicated on the form, senior judges are to consult with their chief circuit judge (and chief district judge, if applicable) before formally consenting to an intercourt assignment, to ensure that the needs of their courts are sufficiently met such that there is no objection to the proposed intercourt assignment.

- *Consent Forms for Active Judges (Revised October 1997)*

Pursuant to 28 U.S.C. § 295, intercourt assignments for judges in active status require the consent of their chief circuit judge (judges of the Court of International Trade in active status need the consent of their chief judge). Where applicable, chief district judges should be consulted to ensure that the needs of the district are sufficiently met such that there is no objection to the proposed intercourt assignment.

- *Consent Form for Retired Justices (Revised October 1997)*

Pursuant to 28 U.S.C. § 294(a), a retired Chief Justice or Associate Justice of the Supreme Court certifies that he or she is willing to undertake an assignment to another court.

B. Processing intercourt assignments

It should be noted initially that a substantial majority of intercourt assignments are undertaken by senior judges, and that the great majority of intercourt assignments are arranged informally between the borrowing court and the affected judge. However, the Committee always stands ready to (and does) assist in identifying and obtaining judges who are willing and able to be of assistance to courts in need.

The appropriate way to initiate a formal request for an intercourt assignment is for a circuit chief judge to send a Certificate of Necessity to the Chairman as soon as arrangements for the assignment are confirmed. If time is pressing, because an intercourt assignment requires processing through the Committee, the Administrative Office, and the Chief Justice, the Certificate should be submitted via facsimile. It is ideal if the borrowing court can submit the Certificate of Necessity one month or more in advance of the assignment. The visiting judge must prepare and submit a consent form to the Chair of the Committee on Intercourt Assignments when an intercourt assignment is initially arranged. Senior judges can consent to their own assignment, after consulting with the chief judge of their courts to determine that the needs “at home” are met first. However, active district and circuit judges need the written consent of their circuit chief judge or, for active judges of the Court of International Trade, the chief judge of that court.

Once both the Certificate of Necessity and Consent to Assignment forms are received, the Chairman will submit the Committee’s recommendation to the Di-

The Use of Visiting Judges in the Federal District Courts

rector of the Administrative Office. The Director will prepare a proposed designation order and forward it with the Committee's recommendation and all supporting material to the Chief Justice for review and approval.

Upon approval by the Chief Justice, all documents will be returned to the Director for distribution to the clerks of the lending and borrowing courts, as provided by 28 U.S.C. § 295. Chief judges, the visiting judge, and circuit executives (if applicable) will be provided courtesy copies of the approved assignment.

The permanent records of intercircuit assignments are maintained by the Administrative Office of the United States Courts.

Appendix F

Checklist for Courts Hosting a Visiting Judge

Note: This checklist was modeled after checklists used in Middle District of Florida courts (Jacksonville and Tampa). You are welcome to print or photocopy this checklist for your own use. You may also wish to develop your own checklist using this one as a guide.

Checklist for Courts Hosting a Visiting Judge

Host court:

Host court liaison:

Phone:

FAX:

E-mail:

Visiting judge:

Lending district:

Phone:

FAX:

E-mail:

Contact person in lending court:

Phone:

FAX:

E-mail:

If an intercircuit assignment, have the following forms been completed?

- Certificate of Necessity
- Consent Form (version: retired justice, senior judge, active judge)

Visiting judge packet sent? (includes manual for district, information on lodging, rental cars, restaurants, local attractions)

Initial Preparation

Purpose of visit (trial term or case specific):

Dates of visit:

Names/positions of accompanying staff:

- 1.
- 2.

The Use of Visiting Judges in the Federal District Courts

Accommodations

Hotel arrangements (number of rooms/reservations/location):

Travel information (carrier/flight or train number/arrival date & time):

Rental car needed?

Parking instructions & map provided:

Facilities

Courtroom:

Chambers:

Witness rooms:

Jury room:

Equipment (serviceability checked):

Heating

Air conditioning

Lighting

Telephones

Sound system

Clocks

Calendars

Computers/fax machines

Security measures (keys, card readers, computer passwords, etc.)

Office supplies

Coffee machine & ingredients

Staffing support

Courtroom deputy

Court reporter

U.S. marshal (as needed)

Before the Judge's Visit

Ensure that visit forms are completed (letters from judges, consent forms for visitors)

Prepare and distribute calendar

Forward copies of the following documents to the visitor (as appropriate):

Docket

Calendar

Local rules

Case files (if requested)

Pretrial motions resolved?

Judge notified of recent case events?

Check for new motions just prior to judge's arrival in district

Appendix F

Ensure facilities are clean, set up, and ready for visit
Ensure bench is stocked with forms, directories, bench books, etc.
Prepare name cards for visiting judge, visiting staff, and host court staff
Ensure that entry keys are available for visitor and staff
Ensure that federal/local rules and the Benchbook are on the bench

Upon Visiting Judge's Arrival

Meet judge and staff upon arrival
Orient visitors to courthouse and facilities
Introduce visitors to contact persons and security staff
Brief on current status of cases (have case files available in chambers)
Discuss preparation of JS-10A forms
Provide judge and staff with keys

Case & Trial Considerations

Does visiting judge have any preferences or limitations on cases that will be calendared?

Identify case number(s) and type:

For civil cases: Does the visitor wish to hold the pretrial conference? If so, can the visitor do so by videoconferencing? Or do local rules require that it be done in person?

This page intentionally left blank to facilitate printing this document double-sided.

Note: This form is for information only. Please contact your clerk's office or the Statistics Division of the Administrative Office for JS-10A forms.

63

This page intentionally left blank to facilitate printing this document double-sided.

Appendix H

Checklist for Visiting Judges

Note: You are welcome to print or photocopy this checklist for your own use. You may also wish to develop your own checklist using this one as a guide.

Checklist for Visiting Judges

Visiting judge:

Lending district:

Phone:

FAX:

E-mail:

Contact person in lending court:

Phone:

FAX:

E-mail:

Dates of assignment:

Dates of travel to the host court:

Host court:

Host court liaison:

Phone:

FAX:

E-mail:

If an intercircuit assignment, has the appropriate consent form been forwarded to the chair of the Intercircuit Assignments Committee?

Visiting judge packet received from the host court?

If no packet available, request hotel and travel recommendations.

Initial Planning & Preparation

Names/positions of staff that will accompany you to the host court:

- 1.
- 2.

Accommodations

Hotel arrangements (number of rooms/reservations/location):

The Use of Visiting Judges in the Federal District Courts

Travel information (carrier/flight or train number/arrival date & time):

Rental car needed?

Parking instructions & map needed?

Facilities provided by the host court

Courtroom:

Chambers:

Witness rooms:

Jury room:

Special facilities needs?

Staffing support provided by the host court

Courtroom deputy?

Court reporter?

U.S. marshal?

Before Visiting

Have you received a list of cases you have been asked to handle?

Have you requested all documents you would like to review?

Docket

Calendar

Local rules

Case files

Have you received all documents you would like to review?

Docket

Calendar

Local rules

Case files

Have you expressed any preferences you have regarding case management?

If you are trying cases, have all pretrial motions been resolved?

If not, who will be handling the motions hearings and pretrial conferences?

What are the host court's policies regarding telephone conferences?

What are the host court's policies regarding video conferences?

Upon Arrival in the Host Court

Introductions

Courthouse & chambers tour

Provision of keys, access cards & passwords (as needed)

Location of federal/local rules & benchbook

Discuss preparation of JS-10A forms

Appendix H

Briefing on current status of cases

At Conclusion of Assignment

As a courtesy to the host court, provide the chief judge, clerk, and/or your contact person with constructive feedback on what worked well and what could be improved

This page intentionally left blank to facilitate printing this document double-sided.

The Federal Judicial Center

Board

The Chief Justice of the United States, *Chair*

Judge Stanley Marcus, U.S. Court of Appeals for the Eleventh Circuit

Judge Pauline Newman, U.S. Court of Appeals for the Federal Circuit

Chief Judge Jean C. Hamilton, U.S. District Court for the Eastern District of Missouri

Senior Judge Robert J. Bryan, U.S. District Court for the Western District of Washington

Judge William H. Yohn, Jr., U.S. District Court for the Eastern District of Pennsylvania

Judge A. Thomas Small, U.S. Bankruptcy Court for the Eastern District of North Carolina

Magistrate Judge Virginia M. Morgan, U.S. District Court for the Eastern District of Michigan

Leonidas Ralph Mecham, Director of the Administrative Office of the U.S. Courts

Director

Judge Fern M. Smith

Deputy Director

Russell R. Wheeler

About the Federal Judicial Center

The Federal Judicial Center is the research and education agency of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The Director's Office is responsible for the Center's overall management and its relations with other organizations. Its Systems Innovation & Development Office provides technical support for Center education and research. Communications Policy & Design edits, produces, and distributes all Center print and electronic publications, operates the Federal Judicial Television Network, and through the Information Services Office maintains a specialized library collection of materials on judicial administration.

The Judicial Education Division develops and administers education programs and services for judges, career court attorneys, and federal defender office personnel. These include orientation seminars, continuing education programs, and special-focus workshops. The Interjudicial Affairs Office provides information about judicial improvement to judges and others of foreign countries, and identifies international legal developments of importance to personnel of the federal courts.

The Court Education Division develops and administers education and training programs and services for nonjudicial court personnel, such as those in clerks' offices and probation and pretrial services offices, and management training programs for court teams of judges and managers.

The Research Division undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, often at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal system. The Federal Judicial History Office develops programs relating to the history of the judicial branch and assists courts with their own judicial history programs.