

**REMARKS OF**

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**STATE OF THE COURT ADDRESS**

**BOOK CADILLAC**

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## **I. Judicial Officers**

This has been a year of transition for our Court, with a number of changes, and some deeply felt loss in our district judge and magistrate judge ranks. We lost two valued and close colleagues over the past year. Retired District Judge George La Plata passed away on November 14, 2010. Judge La Plata served the Eastern District of Michigan from April 4, 1985 until August 3, 1996. More recently, Senior Judge John Feikens passed away on May 15, 2011. Judge Feikens had an illustrious career with the Court, originally appointed on an interim basis to the Eastern District of Michigan Bench on October 7, 1960 by President Eisenhower. He served just over one year of that recess appointment but was then formally appointed again on December 1, 1970 by President Nixon. Judge Feikens was not only a mentor but a true friend to me and the other members of the Bench. He remained actively involved with a caseload until just several months before his death.

Judge Anna Diggs Taylor has taken “inactive” senior status and closed her chambers in Detroit on December 31, 2010. Judge Taylor was appointed by President Carter on November 2, 1979. She served as Chief Judge from December 31, 1996 until December 31, 1998 when she took senior status.

As you may know, the Court is authorized 15 active judgeships and there are currently, two district judge vacancies, which is what I reported to you at

last year's State of the Court presentation. I'm told there are names in the vetting hopper, but there has not yet been any formal nominations made by President Obama.

Once these two vacancies are filled, our Bench has determined that one of the two new district judges will be assigned to sit in the Flint Courthouse along with District Judge Mark Goldsmith and Magistrate Judge Hluchaniuk. The addition of a second judge to Flint will help the Court to immediately address caseload imbalances with both the civil and criminal dockets in Flint. Our Bench is also considering some other changes that would allow for more equitable caseload distribution for the judges between the Flint and Bay City places of holding Court. To make room for the new district judge in Flint, the Court, with some significant financial assistance from the Sixth Circuit, has funded a renovation and expansion of a magistrate judges' chambers and courtroom to make it suitable for a district judge to handle both civil and criminal matters.

I would be remiss if I did not mention our seven senior judges who continue to contribute substantially to the work of the Court. Judges Cohn, Zatkoff, Duggan, Friedman, O'Meara and Tarnow receive cases at the same rate as district judges in active service. Judge Cook continues with case assignments slightly below a full 100% draw. In total, the senior judges

account for about 32% of all criminal cases filed and about 31% of all civil cases filed.

We have also seen a number of changes on our Magistrate Judge Bench. In fact, over the past decade or so, we have seen almost a complete turnover in our magistrate judges, with the exceptions being Magistrate Judge Komives, who was first appointed in 1971 and continues to serve the Court in recall status and Magistrate Judge Binder who serves the Court in Bay City and has done so since 1984.

This past year, the Court said farewell to Magistrate Judge Donald A. Scheer who retired on September 30, 2010 after serving two full eight-year terms and a partial third, for the Eastern District of Michigan. The vacancy created by Magistrate Judge Scheer's retirement was filled by Laurie J. Michelson who began her service to the Court on February 22, 2011.

Following Magistrate Judge Scheer, Magistrate Judge Virginia M. Morgan retired on April 30, 2011 after 26 years of service to the Eastern District of Michigan. We have nominated David Grand of Miller, Canfield to fill the vacancy created by Magistrate Judge Morgan's retirement, and we look forward to David joining us once he has completed his background investigation. David will be assigned to the Ann Arbor courthouse where he will occupy the chambers vacated by Magistrate Judge Morgan.

As I noted just a moment ago, the “dean” of the magistrate judge corps both in our district and nationally, Magistrate Judge Paul J. Komives continues to serve the Court in recall status. Magistrate Judge Komives is currently approved to serve the Court through July 2012 and our Bench just recently approved a new request for an additional year that will carry him through July 2013.

Before I give the remainder of my remarks, I would be remiss if I did not make special note of, and express the Courts’ appreciation for George Bedrosian who has served as our Court Ombudsman for many years now. George continues to service the Bench and the Bar as an important liaison and carries out his responsibilities with grace, finesse and tact. So, on behalf of all of my Colleagues, I want to again extend our appreciation to him for his service.

## **II. Theodore Levin U.S. Courthouse**

Last year on this agreeable occasion, I provided a detailed report to you regarding the on-going challenges we face with the Levin Courthouse, and reported that we had not been successful in addressing any of these challenges, which I first discussed with you at the State of the Court luncheon *four years ago*. Well, following another year of frustration, bureaucratic chicanery, skyrocketing federal deficits and some inter-agency finger pointing,

I am sorry to have to report that we still have made absolutely no progress toward resolving the problems in the Levin Courthouse.

To say that we are frustrated with the lack of progress, or even commitment, towards resolving these problems either by the Judiciary or our landlord the General Services Administration, is an understatement of some magnitude. Though our Regional GSA representatives in Chicago have been very supportive of what we believe to be the best solutions to our problems, the GSA Central Office in Washington D.C. and the Administrative Office of the Courts have obstructed every effort towards a cost- effective solution for our Court and the greater Eastern District community. In fact, in the course of our struggles, we have learned that other important Federal agencies such as the FBI, IRS and the Immigration Service are facing similar severe space and facilities issues that lessen their ability to properly and safely serve the citizens in the Eastern District of Michigan.

The Court's best hope at the moment is that GSA will be able to obtain funding in Fiscal Year 2015, to pursue an infrastructure renovation of the Levin Courthouse. And that is just to obtain the funding. But even if the funding is approved, the project will not address any of the serious security problems in the Levin Courthouse, which include wholly inadequate setbacks from public streets, no prisoner sally port which results in almost daily contact between

judges and prisoners in the Courthouse basement, no secure prisoner circulation within the courthouse and other very serious security issues. Then, there continues to be the problem of where and how the Court will operate during the renovation, not to mention how long it will take to prepare this temporary “swing space”, as we will likely have to vacate the Levin Courthouse for about four years during the proposed renovation.

Meanwhile, the Courthouse continues to deteriorate alarmingly. It seems that direct Congressional support and action may be our only hope, and in the coming weeks, I will again be meeting with members of our Congressional Delegation, members of the GSA leadership in Washington, D.C. and the AO to attempt to secure some commitment towards a resolution to our problems. I and my colleagues will of course continue to do everything we can address these problems.

### **III. Budget**

I hate to continue this report with even more downbeat news, but as the Judiciary approaches Fiscal Year 2012, beginning on October 1, 2011, the Eastern District of Michigan - - like the Federal Judiciary nationally - - is facing very steep cuts in funding. In past years, I have avoided discussion of Budgets, and our financial situation, because I find these topics dry and often mind-numbing. This year, I cannot avoid a discussion.

Just a short recap is in order. The Court did not receive its final fiscal year 2011 budget, which began on October 1, 2010, until May 2011. This resulted in the District Clerk's Office payroll account being funded at 92%, and the Probation Department and Pretrial Services Agency payroll accounts being funded at 93% of their respective staffing formulas. Our operational and information technology accounts were reduced by 7.6% across-the-board for the District Clerk's Office, and 20% for the Probation Department and Pretrial Services Agency in fiscal year 2011. But even with these reductions, I am happy to report that the Court was able to fulfill its mission without any significant adverse impact on the Bar or public. Unfortunately, for this coming fiscal year - - which begins next week - - I am not sure I can predict the same happy prospect with any degree of confidence.

In fiscal year 2012, our Court and courts across the nation will be facing financial challenges that we have never before seen. In a word, our situation is indeed challenging and a source of immense frustration because there continues to be a significant level of uncertainty regarding the FY 2012 budget, complicated greatly by the recent debt ceiling crisis. The House of Representatives had marked up the Judiciary Budget Proposal some time ago and we were surprised to learn that just two weeks ago, the Senate marked up its version of the proposal. If the budget is not finalized before the report of the Debt Reduction Panel is due Thanksgiving week, the Judiciary may not ever



see a final budget for fiscal year 2012 and may be required to operate under a year-long Continuing Resolution.

As a result, the Judicial Conference's Executive Committee and the Administrative Office have advised all Court Units to plan for at least an 18% reduction in overall funding. The projected budget, combined with other recent Judiciary fee revenues, would result in significant staffing losses in the courts in FY 2012. Preliminary estimates indicate that if the Judiciary budget is approved at the House level, the Federal Judiciary will have to cut spending nationally on salaries by the equivalent of about 5,000 court support staff through a combination of layoffs, furloughs, buyouts, and early retirements.

Under these circumstances, it is virtually impossible to plan a budget with any certainty or confidence. So, here is what we are doing, which is about the best we can do. The Judicial Conference's Executive Committee met recently to approve an interim financial plan assuming that the Federal Judiciary will begin FY 2012 operating under a Continuing Resolution (CR) beginning October 1, 2011. We were recently provided details of their meeting, including the Committee's decisions regarding what are being referred to as "quick hit" spending reductions. The Committee has approved several cost-cutting measures, including absolutely no pay increases for any Judiciary employees, in addition to significant reductions to non-personnel budget accounts. It is

hoped that these reductions may reduce the 18% overall reduction in funding to approximately 13.65%.

But even if we can do this, the 13.65% reduction will still result in significant shortfalls in the personnel budgets of all of the Court Units, which include the Clerks's Office, Probation Department and Pretrial Services Agency. However, the most frustrating fact is that with the new Fiscal year beginning next week, we simply do not yet know what the true situation will be, either near-term or long-term. However, we did see some of these problems on the horizon last year, and in order to prepare for the anticipated deficit, our Court offered voluntary Early Out/Buy Out (EO/BO) opportunities in the Clerk's Office and the Probation Department. In the Clerk's Office a total of eight Early Out/Buy Out offers and one normal retirement were accepted for a total of nine voluntary separations. In the Probation Department two offers were accepted.

These voluntary staff separations bring the staffing level for the District Clerk's Office, Probation Department and Pretrial Services Agency to 50 positions under our authorized and essential staffing level - - that's right 50 positions below needed levels - - and though these voluntary separations helped to further reduce the projected deficits, it has not eliminated them entirely.

In fact, I deeply regret to have to report that there is a real possibility that

the Court will not be able to meet all of its payroll obligations in fiscal year 2012. This may result in involuntary staff separations and/or a contingency plan to implement a rolling furlough program (i.e., days off without pay) to cover shortages in the payroll accounts.

Rest assured I and our administrative team are doing everything possible to avoid this unhappy prospect, and having seen this possibility on the horizon, we have already taken a number of significant steps to help alleviate the situation. For example, beyond the early retirements I've already described, we have harvested use-it-or-lose-it FY2011 funds and reprogrammed that money this year into things that we would otherwise have had to spend money on next year, thus, freeing up some FY2012 money to be reprogrammed into necessary personnel costs.

Here, I must pause to give great credit and thanks to our outstanding staff and emphasize that they have been doing more with less for several years now and will continue to do so. Every court in our nation is facing the same challenges we face, some even greater. This is not only a very difficult and frustrating time for all of us in the Eastern District of Michigan, it is an unprecedented time in the history of the Federal Judiciary. If Congress does not adequately fund the Judiciary, it will be a tremendous challenge to continue

to provide the level of services that the Court currently provides to the Bar and public.

But, despite all of the bleak news I have described, you may be assured that we remain steadfast in our commitment and undaunted by the challenges ahead. As I have told my colleagues, this is a time for us to pull together. In all challenges, there are opportunities, and we will look for opportunities to make lemonade out of the lemons we have been dealt, and continue to work diligently to find ways to address our coming challenges. I will certainly keep you advised if it become necessary to cut any services that would affect the Bar or public, such as reduced public hours and/or limited access to court facilities due to the budget constraints we are facing.