FEDERAL BAR ASSOCIATION
LOS ANGELES CHAPTER

FBA LAwyer

VOLUME 1, ISSUE 1 JUNE 2011

The Importance of Extending or Converting to Permanent the Temporary Judgeship in the Central District of California

by Chief Judge Audrey B. Collins, United States District Court, Central District of California

The United States District Court for the Central District of California needs the support of the bar to prevent the loss of one of its federal judgeships.

The Central District of California spans a vast geographic area that includes over 40,000 square miles, seven counties, and a population of approximately 19.4 million people – more than half the population of the state of California. To serve this large and growing population, the District Court has only 28 authorized district judgeships, one of which is currently vacant. This vacancy is in the Court's Eastern Division, which serves Riverside and San Bernardino counties, and has been vacant since November 2009.

One of the District's 28 authorized district judgeships is temporary and becomes eligible to lapse on October 27, 2013. This is a resource we cannot afford to lose.

The Temporary Judgeship

The District's temporary judgeship was authorized on November 2, 2002 by Public Law 107-273, also known as the *21st Century Department of Justice Appropriations Authorization Act*, which became effective on July 15, 2003. The temporary judgeship was filled by District Judge Dale S. Fischer, who was confirmed by the Senate on October 27, 2003. Because the judgeship, and not the judge, is temporary, Public Law 107-273 provides that the first vacancy in the office of district judge occurring ten years or more after the confirmation date of the judge named to fill this temporary judgeship shall not be filled. This means that the judgeship occupied by the first judge in the Central District who takes senior status or leaves the Court while in active service after October 27, 2013 will lapse. In practical terms, this means that the District will lose one judgeship.

The Importance of Keeping All of Our Judgeships

Last year, 15,279 civil and criminal cases were filed in the Central District of California. That figure is almost 25 percent higher than the number of annual filings seen in this District just five years ago. To handle this enormous and ever-increasing caseload, the Court needs all 28 of its judgeships, and more, as demonstrated by the surveys of judgeship needs conducted every two years by the Judicial Resources Committee of the Judicial Conference of the United States.

Based on this District's weighted caseload, a standard measure used for comparison, the Judicial Conference of the United States recommended in March 2011 that this District receive eight additional permanent judgeships and one additional temporary judgeship, and that the existing temporary judgeship be converted to a permanent

(continued on page 3)

UPCOMING EVENTS:

- **APPELLATE PRACTICE WORKSHOP**
  June 21, 2011
- **ANNUAL SUPREME COURT REVIEW**
  September 28, 2011
- **8th ANNUAL BANKRUPTCY ETHICS SYMPOSIUM**
  December 9, 2011

Visit our website:
www.fbala.org

President's Column

Mary Carter Andrues
President, Federal Bar Association, Los Angeles

"We are also concerned about the lack of permanent and temporary judgeships in this District."

I would like to welcome you to our first FBA LA-Chapter Newsletter. If you are a new Chapter member, please feel free to contact me or any of the Board members with ideas for expanding and enhancing the services and programs we provide to our Chapter members. If you are not a FBA member, please consider joining - which is easily done by following the link at www.FBALA.org.

We have had a terrific year of programs beginning with our annual Supreme Court Review presented by Dean Erwin Chemerinsky on September 30, 2010, followed by a reception for judicial law clerks in November, the 7th Annual Bankruptcy Ethics Program in December, a visit by the National FBA Board in January 2011 to meet and discuss issues with the federal judiciary in the Central District; and in March 2011, the annual State of the Circuit/District Courts presentation, with keynote remarks by Chief Judges Kozinski and Collins, for the Ninth Circuit and District Court, respectively; and Bankruptcy Court Chief Judge Peter Carroll. Last month, we sponsored a program entitled "It's a Wild Web World," which featured Judge Ronald Lew, Lee Cheng, General Counsel of Newegg, Inc., J. Scott Evans, Senior Legal Director at Yahoo, and Board Member Yuri Mikulka as panelists. Throughout the year, we have organized "Brown Bag" lunches with judges in the District, most recently with District Court Judge Gee and Magistrate Judge Segal, which garnered more than 30 participants. Coming up on June 21st we will host our signature Appellate Program. Be sure to check the website for new and exciting programs.

We also have made greater efforts to assist issues facing the District Court. This year, the Magistrate Judges Civil Consent Pilot Project was up for review; and on behalf of the Chapter I submitted a letter supporting the renewal of the pilot project. The project was renewed for an additional two years and our Chapter has committed to providing additional information and training to local federal practitioners about the project. We also circulated a request from the District Court that all attorneys practicing before the Court consent to electronic service. Paper service costs the Court thousands of dollars annually and requires significant staff resources. In these tight budgetary times, it is important to assist in the reducing the Court's costs. So please, if you have not done so already, sign-up for electronic service. It is easily done by sending an e-mail to the Court's ECF Helpdesk at ecf-helpdesk@cacd.uscourts.gov, or give the Helpdesk a call at 213-894-0242.

We also are concerned about the lack of permanent and temporary judgeships in this District. In March 2011, the Judicial Conference of the United States recommended our District receive eight additional judgeships, one additional temporary judgeship and convert the existing temporary judgeship into a permanent position.

(continued on page 4)

(l to r) Former California Supreme Court Justice, the Honorable Carlos R. Moreno; Lisa D. Angelo, Esq.; Chief Judge, United States District Court for the Central District of California, the Honorable Audrey B. Collins; Heather L. Mills, Esq.; and Evan Jenness, Esq. at the Reception Honoring the Federal Judiciary

Your Newsletter

Ron Maroko, Editor

The goal of this newsletter is to provide you the member with useful information that will enhance your practice and promote our community.

We hope to include as regular features: practice tips from the Judges in our District, news and photos from FBA events, vintage-tales (aka **short** "war" stories") from our members, opportunities that you may want to know about, and member accolades.

As this is the first issue, we would appreciate your feedback and suggestions (and articles too). Email your thoughts to: fbala@emaoffice.com

Central District Judgeships

(cont. from page 1)

judgeship. In fact, the Judicial Conference has recommended at least four additional permanent judgeships for the District in each survey since 2005, and at least two additional permanent judgeships in each survey since 2000. Despite these recommendations, the last judgeship authorized for the District was the temporary judgeship in November 2002, and the last permanent judgeship authorized for the District was in December 1990, when five additional judgeships were authorized.

Losing a judgeship would require the remaining judges in the District to absorb the caseload of the lost position. While this would be unfortunate for our already overloaded judges, it would also negatively impact litigants throughout the Court. Increased caseloads have an adverse effect on the Court's ability to render justice in a timely and efficient manner. Criminal defendants are guaranteed a speedy trial, but the already long lines of civil cases waiting for trial dates would only get longer. Increased caseloads expand already crowded dockets, delay proceedings, and hamper the ability to set firm trial dates, so individual cases take longer to reach resolution as the number of cases each sitting judge must oversee increases. Such delays undoubtedly increase the cost to the litigants, but may also negatively affect their rights.

How You Can Help

In light of current economic conditions and the state of the federal budget, the Court's short-term objective is the conversion of the temporary judgeship to a permanent judgeship before it becomes eligible to lapse in 2013, or, at a minimum, the extension of the term of the temporary judgeship. Because of the impact that losing a judgeship would have on our Court's already over-burdened judicial resources and the attendant effects on litigants, the District is exerting an all-out effort to prevent the temporary judgeship from lapsing.

Our efforts have been met with some success, but we still need your help. On May 17, 2011, Senator Dianne Feinstein introduced the Emergency Judicial Relief Act of 2011, which would, among other things, convert the Central District of California's temporary judgeship to a permanent judgeship. The Act is co-sponsored by Senators Jon Kyl, John Cornyn, Amy Klobuchar, Barbara Boxer, John McCain, Kay Bailey Hutchison, and Al Franken, but the bill must still travel a long and arduous road before passage. We urge you to bring the importance of retaining this judgeship to the attention of your congressional representatives so the timely administration of justice can be preserved in our District. Any assistance you can provide in support of the Emergency Judicial Relief Act of 2011 would be greatly appreciated.

"Losing a judgeship would require the remaining judges in the District to absorb the caseload of the lost position."

FBA-LA Mentorship Program

The Federal Bar Association is pleased to invite its members to participate in unique mentorship circles. The mentoring circles are small and informal groups composed of lawyers, judges and others from a variety of federal practice areas and experience levels. Participants are matched based on their areas of interest, type of practice and other criteria and enjoy the opportunity to meet multiple people in similar practice areas.

If you are a law student or in legal practice for fewer than 5 years, you are welcome to apply as a mentee. This program will offer you a unique opportunity to interact with more senior lawyers and judges in the group and to benefit from their wisdom and advice. It will be a wonderful tool for your career development. If you are interested in becoming a mentor, you will benefit from the opportunity to participate in an important and rewarding activity.

Visit the FBA-LA website at **www.fbala.org** for more details.

You must be a current member of the FBA to participate in this program.

Proposal to Amend Rule 11 of the Fed. R. Civ. P. - A Request for Comments

by Robert E. Kohn
John G. McCarthy

Congress is now considering a proposal to modify, through legislation, the provisions of Rule 11 of the Federal Rules of Civil Procedure. The proposal is contained in H.R. 966, the proposed "Lawsuit Abuse Reduction Act of 2011." On March 11, 2011, the House Subcommittee on the Constitution received testimony concerning H.R. 966 from three witnesses supporting and opposing the bill. Within the FBA, the Federal Litigation Section's Committee on Federal Rules of Civil Procedure and Trial Practice is currently studying the bill and other proposals to modify or retain Rule 11 as currently written or otherwise to regulate the conduct of counsel and litigants in federal litigation. We seek your comments.

Proposed Amendments in H.R. 966

The H.R. 966 bill would repeal amendments that the Judicial Conference of the United States proposed for adoption effective in 1993, thereby in part reinstating an earlier version of Rule 11 that had been in force between 1983 and 1993. It would also add a new provision for punitive monetary sanctions to be paid into court.

Under the bill, there would no longer be a "safe harbor" provision that allows an adverse party to withdraw or modify a challenged pleading or other paper before a sanctions motion can be filed or

(continued on page 5)

President's Column

(continued from page 2)

Evan Jenness, Esq. at the Bankruptcy Ethics Symposium

The last judgeship authorized for the Central District was a temporary judgeship in November 2002. This temporary judgeship is now set to lapse on October 27, 2013. If this temporary judgeship lapses, we will lose one judgeship in this District, which will further strain our judicial resources. With no relief in sight for the recommended judgeships, it is imperative that we work to extend the temporary judgeship presently in place. As noted by Chief Judge Collins, Senator Diane Feinstein has introduced the Emergency Judicial Relief Act of 2011, which would convert the temporary judgeship in our District, to a permanent judgeship. It is imperative that we support Senator Feinstein's efforts. If you are interested in helping with this effort, please feel free to contact me.

I look forward to seeing all of you at our upcoming Chapter events and keep an eye on the website for news about future Chapter events and our efforts to assist the Courts in this Circuit and District.

(l to r) The Honorable Robert N. Kwan, United States Bankruptcy Judge for the Central District of California and Susan M. Spraul, Clerk of the Court, United States Bankruptcy Appellate Panel of the Ninth Circuit

(l to r) Immediate past chapter President, the Honorable Yolanda Orozco, Los Angeles County Superior Court Judge and current chapter President, Mary Carter Andrues, Esq.

Proposal to Amend Rule 11 of the Fed. R. Civ. P.

(continued from page 4)

otherwise presented to the court. *See* Fed. R. Civ. P. 11(c)(2). That safe harbor clause was adopted effective in 1993.

The bill would also provide that sanctions awards would once again be mandatory, rather than discretionary, in cases where a court has found that a pleading or other paper was signed without adequate factual or legal grounds. Sanctions had been mandatory from 1983 to 1993. The bill would specify that, in addition to any other sanctions the court might impose, "the sanction shall consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the violation, including reasonable attorneys' fees and costs."

In doing so, the bill would repeal the current provision in Rule 11(c)(2) that that fees and costs "may" be awarded "if warranted." In place of that provision, the bill would further authorize punitive monetary awards, to be paid into the court, "if warranted for effective deterrence."

Testimony Supporting and Opposing the H.R. 966 Bill

According to testimony on behalf of the National Federation of Independent Business and the U.S. Chamber Institute for Legal Reform, the changes are necessary because frivolous lawsuits and staggering litigation costs are creating a climate of fear for America's small businesses. In their view, the current "safe harbor" means that preparing a motion for sanctions may serve only to increase the costs for the moving party – which is, generally, the defendant. And even if a plaintiff does not withdraw his or her claims for relief, and even if the court finds them to be frivolous, the discretionary nature of the current sanctions provision means that the court may choose not to impose any sanction other than dismissing the case. These trade associations also believe that the current version of Rule 11 discourages judges from imposing sanctions for the purpose of compensating defendants for their attorney's fees and costs.

In opposition to the H.R. 966 bill, a professor at the University of Houston Law Center has testified that the 1993 amendments of Rule 11 were adopted in the face of studies suggesting that the 1983 version of Rule 11 was deterring the filing of meritorious cases. Additionally, in practice, civil rights and employment discrimination plaintiffs were impacted the most severely under the earlier version of Rule 11 as adopted in 1983. Studies also showed that plaintiffs had been the targets of sanctions far more often than defendants, even though the terms of Rule 11 apply to all pleadings and other papers – including a defendant's answer containing denials and affirmative defenses. Scholars and practitioners had noted that the 1983 version actually increased costs and delays by encouraging "the Rambo-like use of Rule 11 by too many lawyers," and that the resulting increase in sanctions-oriented motions practice had led to a breakdown of civility and professionalism. This professor cited a 1991 study by the Federal Judicial Center, which revealed that few judges polled thought the then-current 1983 version of the rule was "very effective" in deterring groundless pleadings. In a 2005 survey of 278 district judges polled by the Federal Judicial Center, more than 80% of the judges said that "Rule 11 is needed and it is just right as it stands now."

"The bill would also provide that sanctions awards would once again be mandatory…"

Call for Comment and Proposals from the Federal Litigation Bar

The Committee on Federal Rules of Civil Procedure and Trial Practice seeks your comments. Comments may be submitted concerning any of the proposed revisions contained in the H.R. 966 bill; or concerning any other proposals to modify Rule 11; or concerning whether to retain the text of Rule 11 as currently in force. We also welcome any other proposals that are germane to the application or purposes of Rule 11. Upon request, we will handle any comment as confidential. Anonymous comments will also be accepted. Please comment by June 30, 2011.

Rob Kohn and John McCarthy are co-chairs of the Committee on Federal Rules of Civil Procedure and Trial Practice. Kohn is also the Secretary and Treasurer of the Federal Litigation Section, and a member of the Los Angeles chapter of the FBA; and McCarthy is Chapter President of the Southern District of New York chapter of the FBA.

Kohn may be reached at rkohn@kohnlawgroup.com or (310) 461-1520. McCarthy may be reached at jmccarthy@sgrlaw.com or (212) 907-9703.

FBA Annual Meeting

This year's national Federal Bar Association annual meeting will be held in Chicago, September 8-11, 2011 at the Sheraton Chicago Hotel and Towers. More information is available on the Federal Bar Association's website: www.fedbar.org.

Federal Bar Association
Los Angeles Chapter

210 N. Glenoaks Boulevard, Suite C
Burbank, CA 91502

Phone: 818-843-1020
E-mail: fbala@emaoffice,com
website: www.fbala.org

About Us

"The premiere bar association serving the federal practitioner and judiciary."

Federal Bar Association Mission Statement

The mission of the Association is to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary and the public they serve.

The Federal Bar Association

The FBA represents the Federal legal profession. We consist of more than 15,000 federal lawyers, including 1,200 federal judges, who work together to promote the sound administration of justice and integrity, quality and independence of the judiciary. The FBA also provides opportunities for scholarship and for judges and lawyers to professionally and socially interact.

The Los Angeles Chapter

The Los Angeles Chapter is one of the oldest chapters of the FBA. Originally chartered in 1937, the Los Angeles Chapter covers the Los Angeles Division of the Central District of California.

With more than 450 members, the Los Angeles Chapter is the largest in the Ninth Circuit. Members come from private practice, government agencies, military branches, law schools and the bench.

The Los Angeles Chapter is committed to meeting the needs of the federal practitioner through educational seminars, training programs and social functions among the federal bar.