

# ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS: A FEDERAL AGENCY LIKE NO OTHER

Created by Congress in 1939, the Administrative Office of the United States Courts (AO) is the central support entity for the federal government's judicial branch, providing a wide range of services to the federal courts. *The Federal Lawyer* asked **JAMES C. DUFF**, the director of the AO, to give readers a closer look at the agency he leads.



**Q:** *The AO does not participate in the federal courts' decision-making process, so why does it exist?*

**A:** Judicial decisions are the end products of the federal courts' mission of providing equal justice under law, but maintaining a system of justice that can bring about such decisions from more than 2,000 judges in nearly 200 different courts is no small endeavor.

Before 1939, much of the judiciary's administrative responsibilities fell to the attorney general of the United States, an executive branch official. Legislation to create the AO was strongly supported by Attorney General Homer Cummings, who wrote: "I am convinced that the functions of the [j]udiciary cannot be performed efficiently and expeditiously unless the courts are equipped with proper and adequate administrative machinery which they themselves can control and for which they will be responsible. The independence of the [j]udiciary would seem to require that its administrative work should not be handled by one of the executive departments, or be under the control of the chief litigant in the federal courts." I think Cummings was right on target.

Today's AO, among other things, provides administrative, legal, financial, management, program, and information technology services as well as legislative advice to the courts. No agency in the executive branch or legislative branch has such broad responsibility over so wide a range of services and functions. Our lawyers, public administrators, accountants, systems engineers, analysts, architects, statisticians, and other staff members are part of an operation that has something of an executive branch nature within the judicial branch.

**Q:** *Institutionally, where does the AO fit into the judicial branch?*

**A:** The Administrative Office works in partnership with the federal courts, under the supervision and direction of the Judicial Conference of the United States, which is headed

by the Chief Justice of the United States. The AO assists in the development and implementation of judicial policies and procedures that are formulated through the Judicial Conference and its committees; provides the various services listed above; seeks needed resources, legislation, and other assistance from Congress and the executive branch; and promotes accountability to the public.

**Q:** *So the AO has an ongoing relationship with Congress and the executive branch?*

**A:** Very much so. Justice Robert Jackson described the "separate but independent branches of government" in his concurring opinion in the steel seizure case, *Youngstown Co. v. Sawyer*. The AO is the very embodiment of that relationship. We interact regularly with the Congress not only for our budget but also on many legislative matters. On behalf of the Judicial Conference, we transmit draft bills to Congress and arrange for members of the Judicial Conference's committees and other judges to testify as expert witnesses at congressional hearings. As the House and Senate draft legislation that would affect the federal courts, the AO communicates the concerns, interests, and positions of the Judicial Conference and also suggests changes or compromises.

The Administrative Office also responds to congressional requests for information about the judiciary by providing briefings, judicial impact statements, statistics, and other materials. And, of course, as I mentioned, Congress appropriates the money to fund the judiciary, so we are regularly keeping Congress informed of needed resources. The AO also is responsible for helping maintain the judiciary's relationship with the executive branch. For example, the General Services Administration provides courthouse facilities, in essence, serving as our landlord. Another example is the U.S. Marshals Service, which is part of the U.S. Department of Justice and provides security for judges, staff, and judicial facilities. I recently toured our southwest border courts with John Clark, the director of the Marshals Service, to observe the severe conditions in these facilities and the security needs of those courts.

**Q:** *How does the AO set its priorities?*

**A:** That is part of the challenge of being director. The AO has many diverse functions. For example, the AO must work effectively with a probation system that supervises more than 50,000 offenders and needs to develop and deploy the latest information technology. To a great extent, the Judicial Conference sets priorities for the AO. Earlier this year, the AO adopted a strategic direction that includes five goals:

- to enhance our delivery of core services and programs;
- to expand and strengthen the AO's partnership with the courts;
- to promote effective communication within and on behalf of the judicial branch;
- to streamline operations and focus resources within the AO to accomplish our mission more efficiently; and
- to develop, recruit, and retain in the AO a highly capable and productive workforce.

Each of these goals includes several specific objectives that helps keep the AO's workforce focused on what needs to be done.

**Q:** *What is the relationship between the Judicial Conference and the AO?*

**A:** One of our primary responsibilities is to provide support to the Judicial Conference and its committees. I serve as the secretary of the conference and the AO maintains the official records of the Judicial Conference. Senior members of the AO staff serve as counsel to the conference committees. Many of the AO's efforts and accomplishments are related to the activities of the Judicial Conference.

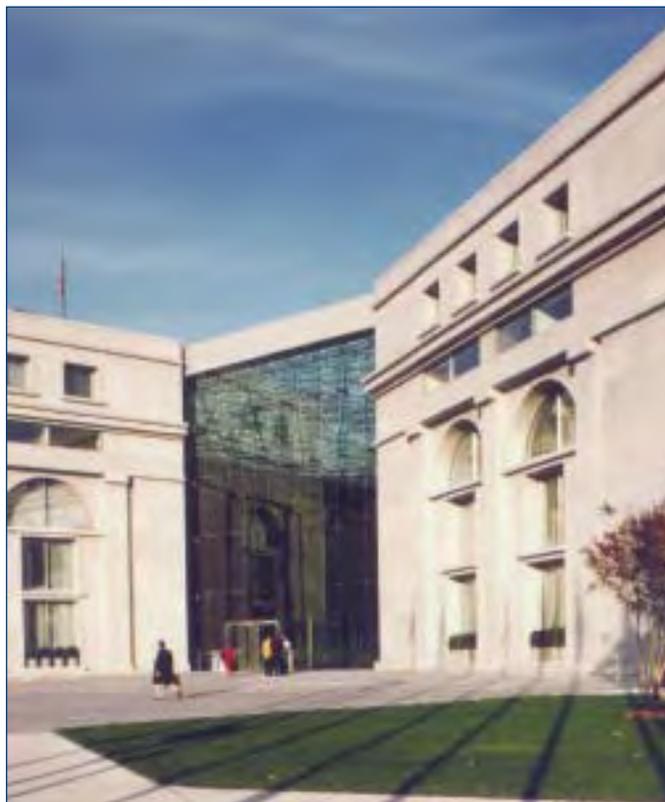
**Q:** *How large is the AO, and where is the agency located?*

**A:** For the first 56 years of the AO's existence, all of its employees were based in the District of Columbia—in the Supreme Court building—but the office outgrew the space that was available there. Today, most of the AO's 1,100 staff members are based in the Thurgood Marshall Federal Judiciary Building in Washington, D.C., and in an emergency operations office in suburban Virginia. Since 1995, the AO has had a training and support center in San Antonio, Texas, and a software testing services branch in Phoenix, Ariz. We recently opened a national training academy for new probation and pretrial services officers at the Federal Law Enforcement Training Center in Charleston, S.C. Through cost-containment measures we have initiated since I became director, however, the AO has fewer employees today than it did 15 years ago.

**Q:** *What is the AO's organizational structure?*

**A:** Deputy Director Jill Sayenga and I are proud of the dedicated and talented AO staff. When I began my tenure in 2006, I articulated as my number-one goal ensuring that the AO is the most responsive and respected agency in the federal government, because the judiciary deserves that kind of support. I truly believe we have the people in place to live up to that goal.

The AO is divided into 13 offices. One of them, the Office of General Counsel, is headed by our associate director and general counsel. Each of the other 12 offices is led by an assistant director; these are the Offices of the Judicial Conference Executive Secretariat, Legislative Affairs, Public Affairs, Court Administration, Defender Services, Facilities and Security, Finance and Budget, Human Resources, In-



**THURGOOD MARSHALL FEDERAL JUDICIARY BUILDING. PHOTO COURTESY OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**

formation Technology, Internal Services, Judges Programs, and Probation and Pretrial Services.

Some of those directorates have multiple responsibilities, and some share responsibilities with other directorates. For example, the various divisions within the Office of Court Administration work closely with the staffs of appellate, district, and bankruptcy courts; support the Judicial Conference's Committee on Court Administration and Case Management; team with the Office of Information Technology to support the judiciary's Case Management/Electronic Case Files system; and oversee the popular Public Access to Court Electronic Records (PACER) system. As another example, the Office of Judges Programs has divisions that support the work of Article III, bankruptcy, and magistrate judges while other divisions collect and publish all judicial branch statistics and support the Judicial Conference's rule-making process.

**Q:** *Can you tell us about the rulemaking process, and how members of the Federal Bar Association can participate in that process?*

**A:** The Federal Rules govern procedure, practice, and evidence required in all federal courts and set forth the procedures for the conduct of court proceedings. Congress has authorized the federal judiciary to prescribe the rules, subject to the ultimate legislative right of the Congress to

**ADMINISTRATIVE OFFICE** *continued on page 48*

reject, modify, or defer any of the rules. The rulemaking process is actually a seven-step endeavor.

- Step 1 is initial consideration of a proposed new or amended rule by one of the Judicial Conference's advisory committees, which needs the permission of the Standing Committee on Rules to publish the proposal for public comment.
- Step 2 consists of publishing the proposal and receiving public comment. This is where the FBA and others have a role. Publication involves printing and distributing the proposal to the bench and bar, to publishers, and to the general public. The mailing list for the proposals contains more than 10,000 persons and organizations, including many bar associations. The public comment period typically last six months and includes one or more public hearings.
- Step 3 is the advisory committee's review of the public comments and final approval of the proposal.
- Step 4 involves consideration and approval of the proposal by the Standing Committee on Rules.
- Step 5 is the full Judicial Conference's consideration and approval of the proposal.
- Step 6 is the U.S. Supreme Court's approval of the proposal.
- Step 7 consists of a review of the proposal by the U.S. Congress.

The process most often takes more than a year, and the AO's Rules Committee Support Office plays a key role throughout.

**Q:** *The AO's leadership reports to you and your deputy director, but to whom do you report?*

**A:** Chief Justice John Roberts appointed me, in consultation with the Judicial Conference. I work very closely with the Chief Justice, the conference, and the conference's Executive Committee. But in a larger sense, I also work for all 2,200 federal judges and for the thousands of court unit executives nationwide who look to the AO for support. The entire AO staff works for all of the judiciary's 32,000 employees and for the American public.

**Q:** *You previously mentioned "accountability to the public." How does this responsibility compare in importance to providing services, and what role do the AO and you personally play?*

**A:** They are both very important. We serve both the courts and the American public by promoting the accountability of judicial administration. Excellence and accountability are core values that enable the federal judiciary to sustain public confidence in the integrity of the American judicial system. These values apply not only to the judicial decision-making function but also to the administration of the courts. Just as the adjudicative process is founded on prin-

ciples of judicial independence and the rule of law, these are principles that support the administrative process.

Many of our administrative matters are handled by the circuits, and local decision-making also takes place within a framework of statutes, judiciary policies, and administrative guidelines. Moreover, mechanisms for checks and balances at the district, circuit, and national levels all promote stewardship of resources, effective program management, and integrity of operations. The AO plays a vital role within this multitiered system to ensure institutional excellence, integrity, and accountability.

Access to information about the work of the courts is a key element of public accountability. The courts operate in a remarkably open fashion, with most court proceedings and case records available to the public. The AO manages an electronic public access system that enables virtually anyone to view case records from any computer that has Internet access. In addition, we publish a vast array of statistics about the work of the federal courts.

Prudent stewardship of public resources is another key element of public accountability. As the chief administrative officer for the federal courts, the director of the AO is charged by statute with a wide range of administrative and fiduciary duties, including a responsibility for audit. Sound internal control procedures are required for every court. The AO carries out a comprehensive audit program for all judiciary funds in accordance with generally accepted government audit standards. We expend millions of dollars annually to ensure that we have a robust audit program.

Each year, the staff auditors in our Office of Audit, augmented by contracts with national accounting firms, conduct more than 100 financial and administrative audits of judiciary funds, financial activities, internal control practices, operations, and systems. Independent CPA audits are completed in every court unit on a regular cycle that covers approximately 30 percent of all court units each year. In addition, the AO provides investigative services to address allegations of fraud, waste, and abuse. AO staff also conducts regular reviews and special studies and evaluations aimed at improving services, increasing efficiency, and containing costs.

**Q:** *Do AO directors enjoy long tenures?*

**A:** They have. In the AO's 70-year history, it has had seven directors, and I am the seventh. The AO has a remarkably stable workforce, which serves the judiciary very well. We have many experienced professionals and staff who have been in public service with the AO for a long time. It's a great place to work. **TFL**