

## ANNUAL REPORT OF THE JUDICIAL OFFICER

### Fiscal Year 2011

The Judicial Officer issues the final decision for the Secretary of Agriculture in all cases appealed from initial decisions of USDA's administrative law judges (ALJs). The cases arise under more than 35 statutes administered by the Secretary of Agriculture. During Fiscal Year 2011, the Judicial Officer issued cases arising under the the Agricultural Marketing Agreement Act; the Animal Welfare Act; the Commercial Transportation of Equine for Slaughter Act; the Organic Foods Production Act; the Packers and Stockyards Act; the Perishable Agricultural Commodities Act; and the Plant Variety Protection Act. The Judicial Officer also rules on motions filed by parties to proceedings and questions submitted by ALJs and issues reparation orders for money damages under the Packers and Stockyards Act and the Perishable Agricultural Commodities Act. Appeals from the Judicial Officer's decisions lie primarily to the United States Courts of Appeals, but, under some statutes, appeals lie to the United States District Courts. The Department has no right of appeal from a decision by the Judicial Officer.

The Office of the Judicial Officer is staffed by three persons: the Judicial Officer, an attorney, and a legal technician, who also serves as secretary, paralegal, and administrative assistant.

The following three tables provide an indication of the production of the office and the direction of the backlog in the office. I have not included in these tables the 3 Packers and Stockyards Act reparation decisions and the 426 Perishable Agricultural Commodities Act reparation decisions issued by the Judicial Officer in FY 2011.

#### CASES AND MOTIONS RECEIVED – DECIDED – PENDING<sup>1</sup>

	FY 09	FY 10	FY 11
Cases and Motions Pending Beginning of Year	8	7	1
Cases and Motions Received During Year	37	82	33
Cases and Motions Decided During Year	38	88	27
Cases and Motions Pending End of Year	7	1	7

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<sup>1</sup>Beginning in FY 2010, the numbers reflect all cases and motions received, decided, and pending. Prior to FY 2010, motions for extensions of time were not included.

**NUMBER OF CASES DECIDED BY JUDICIAL OFFICER**

<b>Fiscal Year</b>	<b>No.</b>
2000	35
2001	30
2002	30
2003	29
2004	37
2005	53
2006	46
2007	34
2008	30
2009	38
2010	88
2011	27

**INTERVAL BETWEEN REFERRAL TO JO AND JO DISPOSITION**

<b>Fiscal Year</b>	<b>Median Interval</b>	<b>Longest Interval</b>	<b>Number of Cases Over 4 Months</b>	<b>Number of Cases Over 8 Months</b>
2000	3 wk.	6 mo. 2 wk.	1	0
2001	1 wk.	2 mo.	0	0
2002	2 wk.	3 mo. 2 wk.	0	0
2003	1 wk.	11 mo. 2 wk.	3	3
2004	1 wk.	1 yr. 5 mo.	4	4
2005	1 wk. 3 da.	1 yr. 6 mo.	3	1
2006	2 wk.	1 yr. 2 wk.	6	4
2007	1 mo. 3 wk.	11 mo. 1 wk.	6	2
2008	2 wk.	1 yr. 7 mo.	10	7
2009	1 wk. 3 da.	1 yr. 11 mo.	9	5
2010	5 days	7 mo. 3 wk.	10	0
2011	1 day	5 mo. 3 wk.	2	0

A list of the pending cases referred to the Judicial Officer is attached as Appendix 1; a list of decisions issued by the Judicial Officer, which were appealed in FY 2011, is attached as Appendix 2; and a list of Court dispositions in FY 2011 is attached as Appendix 3.

William G. Jenson  
Judicial Officer

Attachments (3)

Distribution:

Assistant Secretary for Administration  
Chief Administrative Law Judge

## APPENDIX 1

September 30, 2011

### PENDING CASES APPEALED TO THE JUDICIAL OFFICER

1. Samuel S. Petro; Bryan C. Herr, Petrs.  
PACA APP 09-0161 & 0162 – **Ref to JO 5/27/11**  
Chris Young & Ciarra Toomey, OGC  
Davenport, CALJ – **D&O 4/7/11**  
Response to Appeal Petition 5/27/11  
Appeal Petition 5/9/11
2. Carolyn & Julie Arends, Resps.  
AWA Docket No. 11-0147 – **Ref to JO 8/1/11**  
Carroll, OGC  
Bullard, ALJ – **D&O 6/9/11**  
Answers to Basis for termination of USDA license, 8/1/11  
C's petition for appeal, 7/7/11, 7/12/11
3. Colorado Certified Potato Growers Assn.  
PVPA 11-0102 – **Ref to JO 9/9/11**  
Ertman, OGC
4. Melanie Boynes, Pet.  
AWA 11-0012 – **Ref to JO 9/12/11**  
Carroll, for OGC  
Davenport, CALJ – **D&O 8/4/11**  
R's response to Pet's appeal 9/12/11  
Pet's appeal 9/1/11
5. Cheryl Taylor, Pet.  
PACA APP 06-0008; APP 06-0009  
R's reply brief 9/1/11  
Pet's brief on remand 8/2/11  
R's brief on remand 7/14/11
6. Richard L. Reece, Resp.  
P&S D-11-0213 – **Ref to JO 9/23/11**  
Sylvester, OGC  
Bullard, ALJ – **DD&O 7/19/11**  
C's response to R's appeal 9/22/11  
R's appeal 9/14/11
7. Mitchell Stanley, Resp.  
AQ 11-0235 – **Ref to JO 9/26/11**  
Bolick, OGC  
Davenport, CALJ – **DDO 8/12/11**  
C's response to R's appeal 8/23/11  
R's appeal 9/8/11

## APPENDIX 2

### JUDICIAL OFFICER'S DECISIONS APPEALED

#### Fiscal Year 2011

1. *In re Empire Kosher Poultry, Inc.*, \_\_ Agric. Dec. \_\_\_\_ (July 20, 2011), *appeal docketed*, No. 11-3231 (3d Cir. Aug. 17, 2011).
2. *In re Todd Syverson*, 67 Agric. Dec. 1326 (2008), *aff'd in part, rev'd in part, and remanded*, 601 F.3d 793 (8th Cir. 2010), *final decision on remand*, \_\_ Agric. Dec. \_\_\_\_ (Dec. 22, 2010), *appeal docketed*, No. 11-1363 (8th Cir. Feb. 16, 2011).

**APPENDIX 3**  
**COURT DISPOSITIONS**

**Fiscal Year 2011**

**A. Courts affirmed the following decisions issued by the Judicial Officer.**

1. *In re Kimberly Copher Back*, \_\_ Agric. Dec. \_\_\_\_ (Mar. 17, 2010), *aff'd*, 2011 WL 4056319 (6th Cir. Sept. 14, 2011).
2. *In re Marvin Horne*, 67 Agric. Dec. 18 (2008), *aff'd*, No. CV-F-08-1549-LJO-SMS, 2009 WL 4895362 (E.D. Cal. Dec. 11, 2009), *aff'd*, 2011 WL 2988902 (9th Cir. July 25, 2011).
3. *In re Sam Mazzola*, 68 Agric. Dec. 822 (2009), *dismissed*, No. 10-3653 (6th Cir. Oct. 27, 2010).
4. *In re Lorenza Pearson*, 68 Agric. Dec. 685 (2009), *aff'd*, 411 F. App'x 866 (6th Cir. 2011).
5. *In re Promiseland Livestock, LLC*, \_\_ Agric. Dec. \_\_\_\_ (Oct. 19, 2010), *appeal dismissed*, Civ. Action No. 8:11-CV-62 (D. Neb. June 30, 2011).
6. *In re Ronald Walker*, \_\_ Agric. Dec. \_\_\_\_ (Jan. 13, 2010), *appeal dismissed*, No. 10-9511 (10th Cir. May 17, 2011).
7. *In re ZooCats, Inc.*, 68 Agric. Dec. 737 (2009), *aff'd*, 417 F. App'x 378 (5th Cir. 2011).

**B. Courts reversed the following decision issued by the Judicial Officer.**

*In re Cheryl Taylor*, 68 Agric. Dec. 1210 (2009), *rev'd in part and remanded*, 629 F.3d 241 (D.C. Cir.), *reh'g granted and amended*, 636 F.3d 608 (2011).