

**REPORT OF THE PROCEEDINGS  
OF THE JUDICIAL CONFERENCE  
OF THE UNITED STATES**

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*SEPTEMBER 23, 1997*

*WASHINGTON, D.C.*

*JUDICIAL CONFERENCE OF THE UNITED STATES  
CHIEF JUSTICE WILLIAM H. REHNQUIST,  
PRESIDING  
LEONIDAS RALPH MECHAM, SECRETARY*

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**REPORT OF THE PROCEEDINGS  
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OF THE UNITED STATES**

**September 23, 1997**

The Judicial Conference of the United States convened in Washington, D.C., on September 23, 1997, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella  
Chief Judge Joseph L. Tauro,  
District of Massachusetts

Second Circuit:

Chief Judge Ralph K. Winter, Jr.  
Chief Judge Peter C. Dorsey,  
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter  
Chief Judge Edward N. Cahn,  
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III  
Judge W. Earl Britt,  
Eastern District of North Carolina

**Fifth Circuit:**

**Chief Judge Henry A. Politz  
Judge William H. Barbour, Jr.,  
Southern District of Mississippi**

**Sixth Circuit:**

**Chief Judge Boyce F. Martin, Jr.  
Judge Thomas A. Wiseman, Jr.,  
Middle District of Tennessee**

**Seventh Circuit:**

**Chief Judge Richard A. Posner  
Chief Judge Michael M. Mihm,  
Central District of Illinois**

**Eighth Circuit:**

**Chief Judge Richard S. Arnold  
Judge Donald E. O'Brien,  
Northern District of Iowa**

**Ninth Circuit:**

**Chief Judge Procter Hug, Jr.  
Chief Judge Lloyd D. George,  
District of Nevada**

**Tenth Circuit:**

**Chief Judge Stephanie K. Seymour  
Judge Clarence A. Brimmer,  
District of Wyoming**

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**Eleventh Circuit:**

**Chief Judge Joseph W. Hatchett  
Judge Wm. Terrell Hodges,  
Middle District of Florida**

**District of Columbia Circuit:**

**Chief Judge Harry T. Edwards  
Chief Judge Norma H. Johnson,  
District of Columbia**

**Federal Circuit:**

**Chief Judge Glenn L. Archer, Jr.**

**Court of International Trade:**

**Chief Judge Gregory W. Carman**

Circuit Judges Stephen H. Anderson, Emmett R. Cox, Paul V. Niemeyer, Norman H. Stahl, and David R. Thompson and District Judges J. Owen Forrester, Julia Smith Gibbons, John G. Heyburn, II, D. Lowell Jensen, George P. Kazen, Philip M. Pro, Barefoot Sanders, Alicemarie H. Stotler, and Ann C. Williams attended the Conference session. Linda Ferren, Circuit Executive for the District of Columbia Circuit, was also present.

Senators Orrin Hatch and Patrick J. Leahy spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director,

Public Affairs. Judge Rya W. Zobel and Russell R. Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice; Mary Ann Willis, Supreme Court Staff Counsel; and judicial fellows Robert Clayman, David Pimentel and Harry L. Pohlman.

## **REPORTS**

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Zobel spoke to the Conference about Federal Judicial Center programs, and Judge Richard Conaboy, Chairman of the United States Sentencing Commission, reported on Sentencing Commission activities.

## **EXECUTIVE COMMITTEE**

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### **UNITED STATES SENTENCING COMMISSION**

On recommendation of the Executive Committee, the Judicial Conference approved the following names for presentation to the President of the United States for appointment, subject to the advice and consent of the Senate, to fill vacancies on the United States Sentencing Commission:

For reappointment:

Honorable A. David Mazzone, District of Massachusetts.

For appointment:

Honorable Peter Beer, Eastern District of Louisiana  
Honorable John C. Coughenour, Western District of Washington  
Honorable William B. Enright, Southern District of California  
Honorable Diana E. Murphy, Eighth Circuit  
Honorable Donald E. O'Brien, Northern District of Iowa  
Honorable Gerald E. Rosen, Eastern District of Michigan.



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## **AD HOC STRATEGIC PLANNING COMMITTEE OF THE FEDERAL JUDICIAL CENTER**

In 1996, the Chief Justice appointed an Ad Hoc Strategic Planning Committee of the Federal Judicial Center to review and to make recommendations concerning the operations of the Federal Judicial Center (FJC) in relation to its statutory missions. The report and recommendations of the Ad Hoc Committee were approved by the FJC Board in June 1997. Several of the recommendations of the Ad Hoc Committee's report expressly involve the relationship between the Administrative Office and the Federal Judicial Center, including recommendations 4 and 7, which concern, respectively, education and training in the third branch and the creation of a high-level interagency working group to resolve potential interagency conflicts. The Director of the FJC submitted to the Executive Committee two motions (identified as Motions A and B) to implement these two recommendations. On recommendation of the Executive Committee, the Judicial Conference authorized the creation of an ad hoc committee, consisting of members of the Conference to be selected and appointed by the Chief Justice, to study the merits of Motions A and B related to the *Report of the Ad Hoc Strategic Planning Committee of the Federal Judicial Center*. The ad hoc committee is to make a report and recommendation for consideration by the March 1998 Judicial Conference.

The Director of the Federal Judicial Center also proposed a motion relating to improved communication between the Director and the Executive Committee concerning matters involving the FJC. In response, the Executive Committee adopted the following:

The Executive Committee agrees to consider improved means by which the Director of the Federal Judicial Center may confer directly with the Committee on matters involving the Center's missions of research and education or the Center itself. The Committee is likewise receptive to receiving information about the Center's research activities.

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**RESOLUTIONS**

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who will complete their terms of service in 1997:

The Judicial Conference of the United States recognizes with appreciation, respect and admiration the following judicial officers:

**HONORABLE J. OWEN FORRESTER**  
Committee on Automation and Technology

**HONORABLE ANN C. WILLIAMS**  
Committee on Court Administration and Case Management

**HONORABLE BAREFOOT SANDERS**  
Committee on the Judicial Branch

**HONORABLE JAMES K. LOGAN**  
Advisory Committee on the Federal Rules of Appellate Procedure

**HONORABLE D. LOWELL JENSEN**  
Advisory Committee on the Federal Rules of Criminal Procedure

Appointed as committee chairs by Chief Justice William H. Rehnquist, these outstanding jurists have played a vital role in the administration of the federal court system. These judges served with distinction as leaders of their Judicial Conference committees while, at the same time, continuing to perform their duties as judges in their own courts. They have set a standard of skilled leadership and earned our deep respect and sincere gratitude for their innumerable contributions. We acknowledge with appreciation their commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

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## **FINANCIAL MATTERS**

The Committee approved interim fiscal year 1998 financial plans for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts. The Committee authorized the Director of the Administrative Office to make technical and other adjustments to these plans, as deemed appropriate. In addition, for any year in which the judiciary does not receive new appropriations, the Committee authorized the continuation of judicial branch operations from all available sources of fees and no-year appropriations, subject to any necessary approval of congressional reprogramming requests, until such time as those funds are exhausted and under such guidance and direction as the Director of the Administrative Office deems appropriate.

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## **JUDICIAL CONFERENCE COMMITTEE MATTERS**

Every five years each committee of the Judicial Conference must recommend to the Executive Committee, with a justification, whether it should be maintained or abolished (JCUS-SEP 87, p. 60). Pursuant to this mandate, each committee submitted to the Executive Committee a completed self-evaluation questionnaire, which was considered by the Executive Committee at its August 1997 meeting. The Executive Committee made no changes to the committee structure itself, but, on request of the respective committees, revised the jurisdictional statements of the Committees on Automation and Technology, Budget, Court Administration and Case Management, Defender Services, Federal-State Jurisdiction, and Judicial Resources. The Executive Committee declined to approve a requested modification to the jurisdictional statement of the Intercircuit Assignments Committee.

On recommendation of the Committee on Security, Space and Facilities, the Executive Committee changed the name of that committee to the Committee on Security and Facilities, effective October 1, 1997.

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## MISCELLANEOUS ACTIONS

### The Executive Committee:

- Agreed, on recommendation of the Committee on the Administration of the Magistrate Judges System, to continue the part-time magistrate judge position at San Bernardino, California for an additional 180 days or until a successor is approved to fill the part-time magistrate judge position at Barstow, California, whichever occurs first.
- Approved a recommendation of the Committee on the Budget that the Conference seek an amendment to title 28 permitting the Director of the Administrative Office to designate disbursing and certifying officers in the third branch.
- Authorized a 60-day suspension of the \$.50 per page miscellaneous copying fee in the district and bankruptcy courts of North Dakota to enable attorneys impacted by flood conditions in the district to reconstruct their files in pending cases (see also *infra*, "Waivers in Natural Disaster Emergencies," pp. 60-61).
- Approved a recommendation of the Committee on the Judicial Branch that the Judicial Conference take no position on section (2)(a) of H.R. 930 (105<sup>th</sup> Congress), which would authorize the Administrator of General Services to issue regulations that would require the use of the government-issued travel charge card for all payments of expenses of official government travel, because it appears not to apply to the judiciary. In the event the proposed legislation is amended or clarified to cover the judiciary, then the Judicial Conference will oppose it.
- Agreed to amend the fiscal year 1997 financial plan for the Defender Services appropriation to revise the distribution of allocations between activities within the plan and to increase the total by up to \$5,197,000, and to notify Congress of the change.
- On recommendation of the Committee on Security, Space and Facilities, approved the release of space in the Federal Building in Leavenworth, Kansas.

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- Tentatively concurred in procedures outlined by the Committee on International Judicial Relations for receipt of funds and for international travel by judiciary representatives, subject to further review by the Executive Committee at a later date.
- Established a mechanism whereby each Judicial Conference committee shall periodically review the text of a judicial improvements bill in the form in which it was last introduced in Congress with regard to items within its jurisdiction, and make specific recommendations to the Executive Committee regarding deletions for the next bill. These recommendations will be presented for Judicial Conference action, where appropriate, by the Executive Committee.
- Authorized the long-range planning liaisons from relevant Conference committees to meet annually, if activities warrant.
- Agreed to distribute to the Conference committee chairs for comment a document outlining Conference and committee procedures entitled *The Judicial Conference of the United States and its Committees* and to present the document to the March 1998 Judicial Conference for its approval. If approved, the document will be distributed periodically to all judicial officers.
- Approved a request of the Chair of the Committee on Rules of Practice and Procedure that the Rules Committee and its advisory committees be exempt from the practice of appointing circuit liaisons within the committees.
- Affirmed that the Director of the Administrative Office and his staff (in consultation with the Chair of the Executive Committee) are the designated points of contact for all legislative communications from the judiciary.
- Provided comments to Congress for alternatives more appropriate than the Administrative Office for funding the local courts of the District of Columbia.

## **COMMITTEE ON THE ADMINISTRATIVE OFFICE**

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### **COMMITTEE ACTIVITIES**

The Committee on the Administrative Office reported that it is continuing to monitor developments related to pursuing the legislative goal of relieving the Administrative Office of its responsibility for supporting the District of Columbia Public Defender Service. In addition, the Committee was briefed by the Director of the Administrative Office on the status of legislative activity of interest to the judiciary and on agency activities. After reviewing the results of a study on the Administrative Office's advisory processes, the Committee endorsed a general approach for restructuring the process. The Committee also discussed a report of the Ad Hoc Strategic Planning Committee of the Federal Judicial Center and noted that some aspects of the report would have an impact on the Administrative Office. The Committee endorsed the following statement:

Recognizing that the director of the Administrative Office has the authority to delegate, contract for services, and enter into interagency agreements in exercising his responsibilities, the director is nonetheless under legal obligations, which include his statutory duties and those assigned to him by the Judicial Conference. The director should take no action nor enter into any agreement that would prevent or restrict his ability to carry out those duties.

## **COMMITTEE ON AUTOMATION AND TECHNOLOGY**

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### **INTERNET ACCESS AND USE**

The Internet is a global network of networks, enabling computers of all kinds to communicate and share information throughout much of the world. Demand for access by judges and court staff for information-gathering, research and electronic mail outside the judiciary's Data Communications Network (DCN) is increasing. However, there are security risks associated with use of the Internet. To balance security concerns with the ability of local courts to provide

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Internet access, the Judicial Conference approved a policy, recommended by the Committee on Automation and Technology, that for any computer connected to the DCN, access to the Internet be provided only through national gateway connections approved by the Administrative Office pursuant to procedures adopted by the Committee on Automation and Technology.

Experience outside the judiciary has shown that there are four principal areas of concern associated with uncontrolled access to the Internet: institutional embarrassment, misperception of authority, lost productivity, and capacity demand. On recommendation of the Committee, the Conference agreed to urge all courts to adopt their own policies establishing local responsibility for managing employee access to the Internet and providing guidance on the responsible use of the Internet.

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## **STANDARD ELECTRONIC CITATIONS**

On August 6, 1996, the American Bar Association (ABA) approved a resolution calling for state and federal courts to develop a standard, format-neutral citation system and recommending a format that could be used. After surveying federal judges and providing an opportunity for public comment, including a public hearing, the Committee on Automation and Technology recommended that the Judicial Conference decline to adopt the ABA's recommendation on citation issues at this time. The Judicial Conference approved the Committee's recommendation. The Committee will explore studying the desirability, feasibility, and cost of establishing a centrally maintained, publicly accessible electronic database of all opinions submitted by federal courts for inclusion in the database.

## **COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM**

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### **BANKRUPTCY JUDGESHIPS**

The Committee on the Administration of the Bankruptcy System evaluated the need for 10 temporary bankruptcy judgeship positions that had been

authorized pursuant to the Bankruptcy Judgeship Act of 1992 and were due to expire with the first vacancies occurring as early as 1998. Based on recent judicial workload statistics and other factors, the Committee recommended, and the Judicial Conference agreed to take, the following actions:

- a. Transmit to Congress proposed legislation to make permanent the temporary judgeships in the District of Puerto Rico and the Northern District of Alabama;
- b. Transmit to Congress proposed legislation to extend the temporary judgeships for additional five-year periods in the District of South Carolina, the Western District of Texas, the Eastern District of Tennessee, and the Southern District of Illinois;
- c. Reiterate its recommendation to Congress that the temporary position in the District of Delaware be extended to the first vacancy occurring due to death, retirement, resignation, or removal in the district that occurs 10 years or more after the date on which the temporary judgeship was originally filled; and
- d. Take no action with regard to the status of the temporary judgeships in the District of New Hampshire, the Middle District of North Carolina, and the District of Colorado, which will permit the positions to lapse.

## **COMMITTEE ON THE BUDGET**

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### **FISCAL YEAR 1999 BUDGET REQUEST**

In recognition of congressional funding constraints, the Budget Committee reduced and adjusted the program committees' proposed funding levels for the fiscal year 1999 budget request. The Judicial Conference approved the Budget Committee's lower budget request for fiscal year 1999, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Director of the Administrative Office considers necessary and appropriate.



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## **TEMPORARY EMERGENCY FUND**

The temporary emergency fund (TEF) is used for the employment of short-term temporary secretaries and law clerks to assist judicial officers in emergency situations. Since fiscal year 1996, funds may be reprogrammed between the TEF and tenant alterations (JCUS-SEP 95, p. 73). The circuit judicial councils oversee the spending of TEF funds, but control over the actual funds has remained at the Administrative Office. On recommendation of the Budget Committee, the Judicial Conference approved implementation of the decentralization of the temporary emergency fund so that the actual allotment of the TEF funds will be made to the circuit councils.

## **COMMITTEE ON CODES OF CONDUCT**

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### **COMMITTEE ACTIVITIES**

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 1997, the Committee received 39 new written inquiries and issued 36 written advisory responses. To date in 1997, the average response time for these requests has been 20 days, excluding a response held for discussion at the Committee's meeting. The Chairman received and responded to 33 telephonic inquiries. In addition, individual Committee members responded to 61 inquiries from their colleagues.

## **COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT**

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### **MISCELLANEOUS FEE SCHEDULES**

**Bankruptcy Court.** The Judicial Conference is authorized by 28 U.S.C. § 1930(b) to prescribe miscellaneous bankruptcy fees. With significant input from the Bankruptcy Committee, which recently undertook a review of the Bankruptcy Court Miscellaneous Fee Schedule, the Court Administration and

Case Management Committee recommended a number of revisions to the fee schedule. The Judicial Conference approved these revisions, which would: (a) raise the fee for exemplification of a document because of the additional time and resources required (Item 2); (b) eliminate as burdensome to the clerk's office the requirement that creditors be notified when an amendment is made to a debtor's schedules of creditors or lists of creditors (Item 4); (c) expand the \$30 administrative fee to apply to all chapters under title 11 and eliminate the \$.50 per notice fee (Item 8); (d) eliminate the fee for filing a notice of appeal with the bankruptcy court in proceedings arising under the Bankruptcy Act (i.e., pre-1979) (Item 9); (e) eliminate as burdensome to the clerk's office the \$.25 fee for processing each claim filed in excess of 10 (Item 10); (f) eliminate the fee for "transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff" because it is rarely utilized (Item 11); (g) increase to \$35, to account for inflation, the fee for the "retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court," provided legislation is enacted permitting the judiciary to retain the increase (Item 13); (h) establish that the fee for docketing a notice of appeal or cross appeal from a bankruptcy judge's decision will be equal to the fee for filing an appeal from a district court to a court of appeals (Items 16 and 22); (i) increase the fee for filing a petition ancillary to a foreign proceeding to an amount equal to the fee for commencing a chapter 11 bankruptcy case, contingent upon the enactment of legislation permitting the judiciary to retain the resulting increase (Item 17); (j) establish that the fee for "filing a motion to terminate, annul, modify, or condition the automatic stay provided under 11 U.S.C. § 362(a), a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. 157(d)" will be equal to one-half the fee for instituting a civil action under 28 U.S.C. § 1914(a) (Item 21); and (k) add a new fee for the reopening of bankruptcy cases payable upon the filing of the motion to reopen.

The amended Miscellaneous Fee Schedule for the Bankruptcy Courts reads in pertinent part as follows:

Item 2: For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, \$5. For exemplification of any document or paper, twice the amount of the fee for certification.

\* \* \* \* \*

Item 4: For amendments to a debtor's schedules of creditors or lists of creditors, \$20 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.

\* \* \* \* \*

Item 8: In all cases filed under title 11, the clerk shall collect from the debtor or the petitioner a miscellaneous administrative fee of \$30. This fee may be paid in installments in the same manner that the filing fee may be paid in installments, consistent with the procedure set forth in Federal Rule of Bankruptcy Procedure 1006.

Item 9: For filing a motion to reopen a Bankruptcy Code case, a fee shall be collected in the same amount as the filing fee prescribed by 28 U.S.C. § 1930(a) for commencing a new case on the date of reopening, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets.

Item 10: Repealed

Item 11: Repealed

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Item 13 (Provided the judiciary is authorized to retain the increase): For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, \$35.

\* \* \* \* \*

Item 16: For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. § 158(a) and (b), the fee shall be the same amount as the fee for docketing a case on appeal

or review to the appellate court as required by Item 1 of the Court of Appeals Miscellaneous Fee Schedule. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee.

Item 17 (Provided the judiciary is authorized to retain the increase): For filing a petition ancillary to a foreign proceeding under 11 U.S.C. § 304, a fee shall be collected in the same amount as the filing fee prescribed in 28 U.S.C. § 1930(a)(3) for a case commenced under chapter 11 of title 11.

\* \* \* \* \*

Item 21: For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362 of title 11, a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d), a fee shall be collected in the amount of one-half the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If a child support creditor or its representative is the movant, and if such movant files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

Item 22: For docketing a cross appeal from a bankruptcy court determination, the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Court of Appeals Miscellaneous Fee Schedule.

**District Court.** Item 11 of the District Court Miscellaneous Fee Schedule, prescribed by the Judicial Conference under 28 U.S.C. § 1914(b), sets out a \$50 fee “for admission of attorneys to practice.” Many district courts also charge local attorney admission fees in addition to the fee set out in the Miscellaneous Fee Schedule. There has been some confusion as to whether the District Court Miscellaneous Fee Schedule either permits or requires the collection of a fee for *pro hac vice* admission or for a renewal of an attorney’s

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admission to practice. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference amended item 11 of the Miscellaneous Fee Schedule to clarify that the attorney admission fee applies only to original admissions, as follows:

For original admission of attorneys to practice, \$50 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, \$15.

In addition, the Conference agreed to direct the Administrative Office to inform the courts that: (a) the attorney admission fee prescribed in Item 11 of the District Court Miscellaneous Fee Schedule does not apply to *pro hac vice* requests or renewals of attorney admission to practice; (b) local courts may charge, at their option, a local fee above the \$50 fee for original admission of attorneys to practice, and a fee for *pro hac vice* admissions and for renewals of an attorney's admission to practice; and (c) revenues from local fees may be deposited into a district's local non-appropriated funds account.

The Judicial Conference also approved the recommendation of the Court Administration and Case Management Committee that two revisions to the Miscellaneous Fee Schedule for the Bankruptcy Courts also be made to similar items in the District Court Miscellaneous Fee Schedule. The fee for exemplification of any document or paper is increased (Item 3), and the fee for "transcribing a record of any proceeding by a regularly employed member of the court staff" is eliminated (Item 6). The amended items read as follows:

Item 3: For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, \$5. For exemplification of any document or paper, twice the amount of the fee for certification.

\* \* \* \* \*

Item 6: Repealed

In addition, the Conference approved for the District Court Miscellaneous Fee Schedule an increase to \$35 for retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of

business of the court (Item 8), provided legislation is enacted permitting the judiciary to retain the increase.

**Court of Appeals and Judicial Panel on Multidistrict Litigation.** As was done for the bankruptcy and district courts, the Judicial Conference agreed to raise the fee for retrieval of an archived record from \$25 to \$35 for the courts of appeals (Item 8) and for the Judicial Panel on Multidistrict Litigation (Item 4). This action will be taken upon enactment of legislation permitting the judiciary to retain the increase.

**Bankruptcy Appellate Panels.** Although authorized to establish miscellaneous fee schedules for the appellate, district, and bankruptcy courts, the U.S. Court of Federal Claims, and the Judicial Panel on Multidistrict Litigation (28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932), the Judicial Conference does not have authority to establish a separate fee schedule for bankruptcy appellate panels (BAPs) established under 28 U.S.C. § 158(b)(1). Moreover, the clerks of the BAPs do not have the statutory authority to collect and pay fees into the Treasury. In order to establish a mechanism for collecting fees and ensure that courts charge the same fees for similar services, the Judicial Conference approved a Committee recommendation that it direct the Administrative Office to issue interim guidance to all bankruptcy appellate panel clerks to use the Miscellaneous Fee Schedule for the Courts of Appeals in determining which fees to charge for services provided to the public. All such fees will be collected by the clerk of the court of appeals for the circuit in which the BAP exists.

**Search Fee Guidelines.** In 1993, the Judicial Conference approved search fee guidelines to be utilized in connection with the \$15 fee for a search of court records imposed under the miscellaneous fee schedules for the district and bankruptcy courts in order to provide guidance to the courts and promote uniformity in the application of the fee (JCUS-MAR 93, p. 11). In light of numerous inquiries regarding the guidelines and policy changes, it appears necessary to revise the guidelines to address common questions and clarify certain issues. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference delegated authority to the Committee to approve certain revisions to the search fee guidelines and all future revisions.

**Waivers in Natural Disaster Emergencies.** The Judicial Conference has adopted a general policy to allow a waiver of the miscellaneous fees associated

with obtaining copies of documents required by the Federal Emergency Management Agency in applying for emergency aid in pending cases (JCUS-MAR 95, p. 15). This year, due to spring flooding in North Dakota, it was necessary for the Executive Committee to consider a request, not covered by the Conference policy, for a waiver of copy fees for lawyers who needed to reconstruct their files in pending cases (see *supra*, "Miscellaneous Actions," p. 50). In order to save time during disasters and avoid piecemeal requests, the Judicial Conference approved a Committee recommendation to delegate authority to the Director of the Administrative Office to grant waivers of miscellaneous fees, excluding filing fees, following a natural disaster for a set period of time not to exceed one year, upon the request of the chief judge of the affected court.

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## STATUTORY FEE CHANGES

**Bankruptcy Court.** Under current law, if a bankruptcy case filed under chapter 7 or 13 is converted to chapter 11, a fee of \$400 is collected; yet the current fee for filing a bankruptcy case under chapter 11 is \$800. To correct this inconsistency, the Court Administration and Case Management Committee, with input from the Bankruptcy Committee, recommended that legislation be sought to amend 28 U.S.C. § 1930(a) to increase the amount of the fee for converting a chapter 7 or 13 case to a case under chapter 11 so that the petitioner will pay the same total fees as if the case had originally commenced under chapter 11. The Judicial Conference approved the recommendation. It is suggested that the allocation of this fee be the same as if the case were originally filed as a chapter 11 case, i.e., apportioned among the U.S. Trustee System Fund, the judiciary's Salaries and Expenses account, and the U.S. Treasury's General Fund.

Similarly, the Judicial Conference approved a Committee recommendation to seek legislation to amend 28 U.S.C. § 1930(a)(2) to increase the chapter 9 filing fee to the same amount as provided in 28 U.S.C. § 1930(a)(3) for commencing a case under chapter 11, provided legislation is enacted to permit the judiciary to retain the resulting increase in fees.

In addition, the Judicial Conference approved a recommendation of the Court Administration and Case Management Committee that it seek legislation to amend the statute that currently permits the judiciary to retain revenue from all fees after Item 18 of the Miscellaneous Fee Schedule for the Bankruptcy Courts so

that the judiciary can continue to retain those fees now retained and any newly created fees, without reference to a specific number in the fee schedule.

**Court of Federal Claims.** Under the Federal Courts Improvement Act of 1982 (Public Law No. 97-164) the Judicial Conference has the authority to prescribe fees to be charged by the Court of Federal Claims. Pursuant to that authority, in September 1996, the Conference raised to \$150 the filing fee for the Court of Federal Claims, provided legislation was enacted permitting the judiciary to keep the increase (JCUS-SEP 96, p. 54). Under 28 U.S.C. § 2520, the filing fee that can be charged by the Court of Federal Claims appears to be limited to \$120; however, this statute predates the 1982 Federal Courts Improvement Act and is no longer necessary. On recommendation of the Committee, the Judicial Conference agreed to propose legislation to repeal 28 U.S.C. § 2520.

**Fees for Technology Resources.** Under section 404 of Public Law No. 101-151, the Judicial Conference shall prescribe reasonable fees to be collected by the federal courts for providing public access to information available in electronic form. This authority does not appear to extend to charging fees for the use of other technology provided by the courts (e.g., teleconferencing, electronic filing, and evidence presentation). The Judicial Conference approved a Committee recommendation to seek legislation that would:

- a. Authorize the Judicial Conference to prescribe reasonable fees for use of information technology resources provided by the courts for improved access to, and efficiency of, the court;
- b. Authorize the courts to collect and retain those fees for deposit into the Judiciary Information Technology Fund; and
- c. Make the fees so deposited available to the Director of the Administrative Office, without fiscal year limitation, for reinvestment in information technology resources for purposes of improved court access and efficiency.



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## DIGITAL AUDIO COURT RECORDING

Digital audio recording is a computer-based system with features similar to audio recording systems, except that the recorded proceedings are stored and retrieved through the use of a computer, requiring specialized hardware and software. Potential benefits associated with the use of digital audio recording include: enhanced sound quality; immediate and remote access to segments of the record; savings in storage space; and for simultaneous recording, playback, note-taking and transcribing capabilities for users. As a new method of taking the record, digital audio recording cannot be utilized, even on an experimental basis, without Judicial Conference approval. Since it has been the practice of the Judicial Conference to test new methods of court reporting before approving their use on a permanent basis, the Conference approved a Committee on Court Administration and Case Management recommendation that it:

- a. Authorize the use of digital audio recording equipment as a method of recording court proceedings for the limited purpose of studying its use in selected courtrooms;
- b. Authorize a study of digital audio recording during a one-year period in a minimum of two district, two magistrate judge, and two bankruptcy courtrooms; and
- c. Delegate authority to the Court Administration and Case Management Committee to select the study courts, with the recognition that courts selected for this study may be participating in other ongoing study efforts, such as the Electronic Courtroom Project of the Committee on Automation and Technology.

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## CIVIL JUSTICE REFORM ACT

**Statistical Reporting.** In March 1997, the Judicial Conference, in approving its final Civil Justice Reform Act (CJRA) report to Congress, determined that the CJRA public reporting requirements should remain in effect beyond the Act's sunset date (JCUS-MAR 97, pp. 15-16). To ensure more accurate and consistent statistical reporting in and among districts, the Judicial

Conference, at this session, approved a recommendation of the Court Administration and Case Management Committee that it require courts to use a new ICMS/CJRA software program (Release 96CJ01) beginning with the reporting of statistics relating to pending motions, bench trials, and three-year-old cases for the period ending March 31, 1998.

**Role of Chief Judge.** In October 1971, the Judicial Conference adopted a report entitled "Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases," that provided specific powers to the chief judge to ensure the prompt disposition of cases (JCUS-OCT 71, pp. 71-74). Although the program is not widely known and is rarely used, the Committee on Court Administration and Case Management was of the view that it is valuable in the management of cases. On recommendation of the Committee, the Judicial Conference reaffirmed its October 1971 adoption of the report.

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## **SIZE OF GRAND JURIES**

Legislation has been introduced (H.R. 1536, 105<sup>th</sup> Congress) that would amend 18 U.S.C. § 3321 to reduce federal grand juries to not less than nine nor more than thirteen persons, and require seven jurors to concur in the return of an indictment, as long as at least nine jurors were present. Although this proposal would result in cost savings for the judiciary, the Court Administration and Case Management Committee was of the view that there are also numerous non-monetary considerations that must be taken into account and that any proposed change to decrease the size of grand juries should be aired through the deliberative rulemaking process. The Judicial Conference approved a recommendation of the Committee that the Conference take no position at this time on H.R. 1536, related to the size of grand juries, and refer the issue to the Committee on Rules of Practice and Procedure for consideration under the Rules Enabling Act rulemaking process.

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## **JUDICIAL REFORM ACT OF 1997**

In May 1997, the Judicial Conference considered by mail ballot three sections of the draft Judicial Reform Act of 1997 (H.R. 1252, 105<sup>th</sup> Congress), that would have a major impact on the judiciary (see *infra*, "Judicial Reform Act

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of 1997,” pp. 71 and 81-82, and “Mail Ballots,” pp. 84-85). The proposed bill was subsequently revised, and the Committee on Court Administration and Case Management made recommendations concerning a number of new or revised provisions of the bill. The Conference approved the recommendations of the Committee and agreed to (a) continue to oppose the proposed revision to 28 U.S.C. § 464 concerning the reassignment of a civil case as a matter of right upon motion by a party; (b) oppose section 7 of the bill, regarding random assignment of habeas corpus cases, because it would limit the flexibility of the courts to administer court operations in the most efficient and effective way; and (c) oppose section 8 of the bill, regarding the authority of the individual presiding judge to allow cameras in the appellate courts, because it is contrary to Conference policy, which gives each appellate court the authority to determine whether to permit cameras in the courtroom.

## COMMITTEE ON CRIMINAL LAW

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### JUVENILE CRIME LEGISLATION

In Congress’ last two sessions, juvenile crime has become a priority issue, and the chairs of the Committee on Criminal Law have written to members of Congress expressing the Committee’s concerns on a number of legislative proposals dealing with juvenile crime. The Committee recommended that the Judicial Conference itself go on record as opposing the unwarranted federalization of juvenile crime, a position which is a logical and consistent application of the Conference’s longstanding opposition to federalization of crime traditionally prosecuted at the state and local levels. The Judicial Conference agreed to (a) reaffirm its long-standing position that criminal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts; (b) affirm that this policy is particularly applicable to the prosecution of juveniles; and (c) endorse the concerns previously expressed by the Committee on Criminal Law to Congress regarding recent juvenile crime legislation. See also *infra*, “Juvenile Crime Legislation,” p. 70.

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## **PRETRIAL SERVICES OFFICES**

In an effort to determine whether savings could be achieved by providing pretrial services through probation offices rather than separate pretrial services offices, the Committee on Criminal Law undertook an analysis of the management and administrative support in the 42 courts with separate offices. After full consideration of the results of the analysis, the Committee recommended, and the Judicial Conference agreed, to affirm the principle that decisions regarding the form of organization with which to provide pretrial services should continue to be made by individual district courts and their respective circuit councils. The Conference also authorized the distribution of the Committee on Criminal Law's *Report on the Study of Savings in Probation and Pretrial Services* to all chief district judges and chief probation and pretrial services officers.

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## **FICTITIOUS LIENS AGAINST JUDICIAL OFFICERS**

The practice of filing fictitious liens against judicial officers and federal officials, in an effort to harass, is a long-standing one. The Department of Justice, which is charged through its United States attorneys' offices to represent federal officials in response to these liens, has indicated that it is in the process of drafting legislation that would make it a federal offense to file a fictitious harassing lien. On recommendation of the Committee on Criminal Law, the Judicial Conference agreed to support legislation to be proposed by the Department of Justice that would create a new federal criminal offense for harassing or intimidating a federal official, including a judicial officer, with respect to the performance of official duties, including filing a lien on the real or personal property of that government official.

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## **VICTIMS' RIGHTS LEGISLATION**

In March 1997, the Judicial Conference determined to take no position on a proposed victims' rights constitutional amendment at that time, but authorized the Committee on Criminal Law, with the help of the Committee on Federal-State Jurisdiction and in consultation with the Chair of the Executive Committee, to

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maintain contact with Congress to make known the concerns of the judiciary on the impact of the amendment (JCUS-MAR 97, p. 21). No position was taken on a statutory approach to victims' rights. Subsequently, the Conference was asked for its views on victims' rights legislation proposed as an alternative to a constitutional amendment. On recommendation of the Criminal Law Committee, the Conference approved by mail ballot concluded on April 14, 1997, transmittal of a letter to Congress expressing a strong preference for a statutory approach to victims' rights over a constitutional amendment. The Conference took no position on the specifics of the proposed legislation. See *infra*, "Mail Ballots," pp. 84-85.

## **COMMITTEE ON DEFENDER SERVICES**

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### **DEATH PENALTY REPRESENTATION**

As part of its continuing effort to contain the cost of federal capital habeas corpus litigation, the Defender Services Committee, while acknowledging variation among the circuits in local legal culture and state court practice, recommended establishment of a further mechanism (in addition to the sound discretion of the presiding judicial officer) to ensure that Criminal Justice Act (CJA) expenditures in capital habeas corpus cases are reasonable. The Judicial Conference agreed to urge each circuit judicial council to establish a special process for review of any state death penalty habeas corpus case within the circuit in which attorney compensation exceeds \$100,000. Each circuit judicial council should notify the Judicial Conference of the procedures adopted by providing a written copy to the Conference Secretary.

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### **DISCLOSURE OF COURT APPOINTED ATTORNEYS' FEES**

The Disclosure of Court Appointed Attorneys' Fees and Taxpayer Right to Know Act of 1997 (S. 598, 105<sup>th</sup> Congress) would amend the CJA to require public disclosure of attorneys' fees, including payment vouchers, upon their approval by the court. Judges would be required to disclose CJA payment information during the pendency of a case. The CJA currently provides for the disclosure of "amounts paid" rather than actual vouchers and does not indicate the timing of the disclosure. The Defender Services Committee expressed a number

of concerns with the bill, including the extent of detail required to be disclosed, the timing of the disclosure, and the bill's potential limitation on judicial discretion in this area. On recommendation of the Committee, the Judicial Conference determined to take no position on S. 598, but to provide information to Congress concerning the impact of the bill on the administration of justice.

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### **CIVIL ASSET FORFEITURE REFORM ACT**

The Civil Asset Forfeiture Reform Act (H.R. 1965, 105<sup>th</sup> Congress) would, among other things, give courts discretion to appoint counsel to represent financially eligible claimants in civil asset forfeiture proceedings and to approve compensation at rates equivalent to those provided for representation under the CJA; authorize the appropriation of additional funds under the CJA for such purpose; and afford the government an opportunity to present evidence and examine the claimant at a required hearing to determine whether to appoint counsel. A number of issues are implicated in this legislative proposal including how funding for appointed counsel will be provided and whether counsel may be provided prior to the hearing regarding appointment of counsel. On recommendation of the Committee, the Judicial Conference agreed to communicate the following to Congress:

- a.
  - (1) Its preference that, consistent with current Conference policy expressed in the proposed Federal Courts Improvement Act (H.R. 2294, 105<sup>th</sup> Congress), the judiciary be reimbursed from the Department of Justice Asset Forfeiture Fund and the Department of Treasury Asset Forfeiture Fund for representational services provided in civil asset forfeiture proceedings under H.R. 1965; and
  - (2) The necessity, if such services are to be paid from the Defender Services appropriation, that sufficient additional funds be appropriated for that purpose;
- b. That important considerations flow from the government's role in examining a claimant at the hearing regarding appointment of counsel under H.R. 1965. Claimants may need counsel at such hearings to protect their Fifth Amendment right against self-incrimination and Sixth Amendment right to counsel, which would add to the cost of furnishing representation. Although H.R. 1965 does not contemplate the

appointment of counsel before that hearing, the bill should permit such appointment where there is reason to believe that the claimant could be subject to a criminal prosecution, civil or criminal contempt, or loss of liberty (see paragraph 2.01F(2) of the *Guidelines for the Administration of the Criminal Justice Act*); and

- c. That due to the potential scope and duration of services which might be required of counsel, the bill should provide that the case compensation maximum applicable to the appointment of counsel for a person charged with a felony under the CJA should apply to the appointment of counsel pursuant to H.R. 1965 for a claimant in a civil asset forfeiture proceeding.

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#### **DEFENDER ORGANIZATION FUNDING REQUESTS**

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved a total of \$360,400 in increases to fiscal year 1997 budgets for five federal public defender organizations.

### **COMMITTEE ON FEDERAL-STATE JURISDICTION**

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#### **NATIONAL JUDICIAL COUNCIL OF STATE AND FEDERAL COURTS**

In 1990, the Judicial Conference and the Conference of Chief Justices (CCJ) approved the creation of the National Judicial Council of State and Federal Courts (JCUS-MAR 90, p. 18). The Council was established to consider matters referred to it by the Judicial Conference or the CCJ relating to issues of mutual concern to the state and federal courts; advise the Judicial Conference and the CCJ on improving the relationship between the two court systems; and seek methods to enhance the operations of the local state-federal judicial councils. During much of its existence, the Council struggled with defining its unique responsibilities in the state and federal judicial systems, and it has been inactive since 1994. On recommendation of the Federal-State Jurisdiction Committee, the Judicial Conference joined the CCJ in agreeing to abolish the National Judicial Council of State and Federal Courts, understanding that the work of the Council

will be continued by the Judicial Conference Committee on Federal-State Jurisdiction and the State-Federal Relations Committee of the CCJ.

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## **JUVENILE CRIME LEGISLATION**

Several legislative proposals pending in the 105<sup>th</sup> Congress would enhance the opportunities for prosecuting juveniles in federal court, either as juveniles or as adults, and would expand federal criminal jurisdiction over gang-related activity. The Committee on Federal-State Jurisdiction concurred in the recommendation of the Committee on Criminal Law, approved by the Judicial Conference at this session, that juvenile prosecutions in federal court should be limited to those that cannot or should not be prosecuted in state courts (*see supra* “Juvenile Crime Legislation,” p. 65). As a supplement to that position, on recommendation of the Federal-State Jurisdiction Committee, the Judicial Conference recognized that the appropriate age for prosecuting juveniles as adults in federal court for a violation of federal law is a policy matter to be determined by Congress.

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## **PRIVATE PROPERTY RIGHTS LEGISLATION**

The Private Property Rights Implementation Act of 1997 (H.R. 1534, 105<sup>th</sup> Congress) is intended to “simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of federal agencies or other government officials or entities acting under color of state law.” The Committee on Federal-State Jurisdiction identified issues in this novel legislation. The bill would alter deeply ingrained federalism principles by prematurely involving the federal courts in property regulatory matters that have historically been processed at the state and local levels. The bill may also adversely affect the administration of justice and delay the resolution of property claims. For example, H.R. 1534 would: restrict the use of the abstention doctrine in takings, as well as non-takings, cases; codify the takings provisions within 28 U.S.C. § 1343, which may create confusion because of the availability of the general jurisdictional statute, 28 U.S.C. § 1331; and result in imprudent or inefficient procedures because of the restrictions on the use of the abstention doctrine and the liberalization of the requirement of ripeness. The Judicial Conference approved



the Committee's recommendation to express these concerns to Congress regarding the proposed legislation.

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## JUDICIAL REFORM ACT OF 1997

Section 2 of the Judicial Reform Act of 1997 (H. R. 1252, 105<sup>th</sup> Congress) would require three-judge panels to consider applications for interlocutory or permanent injunctions restraining, on the ground of unconstitutionality, the enforcement, operation or execution of state laws adopted by referendum. In addition, these three-judge panels would be required to expedite consideration of applications for injunctions, and their decisions would be appealable directly to the Supreme Court. At its September 1995 session, the Judicial Conference unanimously opposed an identical provision and reaffirmed its longstanding opposition to three-judge panels generally (JCUS-SEP 95, pp. 83-85). In taking this position, the Conference recognized that it would likely apply in only a limited number of cases. In a mail ballot concluded on May 9, 1997, the Judicial Conference voted to adhere to its 1995 position and to oppose section 2 of H. R. 1252. See *infra*, "Mail Ballots," pp. 84-85.

Section 5 of the Judicial Reform Act of 1997 would prohibit a district court from entering any order or approving any settlement that requires a state or political subdivision of a state to impose, increase, levy, or assess any tax for the purpose of enforcing any federal or state common law, or any statutory or constitutional right or law, unless the court makes certain findings. The Committee on Federal-State Jurisdiction recommended that the Judicial Conference oppose section 5 of H. R. 1252 because it may interfere with the ability of federal courts to fulfill their obligation to enforce remedies required by statute and to fashion appropriate remedies for constitutional violations. The Committee also noted that section 5 raises serious problems of judicial administration. By mail ballot, the Judicial Conference concurred with the Committee and voted to oppose section 5. See *infra*, "Mail Ballots," pp. 84-85.

## **COMMITTEE ON FINANCIAL DISCLOSURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Financial Disclosure reported that as of July 10, 1997, the Committee had received 2,899 financial disclosure reports and certifications for the calendar year 1996, including 1,187 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 324 from bankruptcy judges; 457 from magistrate judges; and 931 from judicial employees.

## **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

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### **COMMITTEE ACTIVITIES**

The Committee on Intercircuit Assignments reported that during the period from January 1, 1997 to June 30, 1997, a total of 104 intercircuit assignments, undertaken by 72 Supreme Court justices and Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance in identifying judges willing to take assignments.

## **COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS**

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### **FUNDING FOR INTERNATIONAL JUDICIAL PROGRAMS**

The Committee on International Judicial Relations was offered a grant by the United States Agency for International Development (USAID) of \$500,000 for the Committee to continue its work with international education programs similar to two programs held in recent years pursuant to a 1994 interagency agreement. On recommendation of the Committee, the Judicial Conference agreed to accept the \$500,000 grant from USAID to use for international judicial-related projects

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and programs. As was the case with the two prior programs, the Executive Committee will be asked to approve the specific programs.

## COMMITTEE ON THE JUDICIAL BRANCH

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### JUDICIAL COMPENSATION

On recommendation of the Committee on the Judicial Branch, which has been working tirelessly to obtain an adequate level of compensation for the federal judiciary, the Judicial Conference approved the following resolution:

That federal judges, Members of Congress, and top officials in the executive branch should receive a cost-of-living salary adjustment, as provided by the Ethics Reform Act of 1989. Such an adjustment to the compensation of these officials is necessary to protect them from increases in the cost-of-living that have occurred since their last such adjustment in January 1993.

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### CERTIFICATION OF SENIOR JUDGES

The Federal Courts Improvement Act of 1996 (Public Law No. 104-317) amended 28 U.S.C. § 371(f) to permit a senior judge to obtain retroactive certification as eligible for salary increases when additional workload in a subsequent year is sufficient to offset reduced workload in a prior year. In addition, the Act permits retired judges to aggregate administrative work with judicial work, although only one-half of the administrative work performed by a judge may be aggregated. On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved conforming amendments to the Rules for Certification of Senior Judges, which are published in the *Guide to Judiciary Policies and Procedures*, Vol III, Ch. VII. The revised rules leave circuit chief judges ample discretion to implement the certification process.

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## JUDGES' TRAVEL REGULATIONS

**Non-Prescribed Meetings.** Under the Travel Regulations for United States Justices and Judges (published in the *Guide to Judiciary Policies and Procedures*, Vol. III, Ch. XV), official travel generally falls into three categories: judicial sittings, prescribed meetings, and other travel. A judge needs no advance authorization to travel for judicial sittings or for prescribed meetings, such as Judicial Conference committee meetings, but with respect to other travel, the travel regulations have dealt only with certain types of non-prescribed meetings, such as meetings of judges' associations and bar associations, and have not contemplated others, such as meetings between government agencies (foreign, federal, state, or local), universities, community organizations, and other entities. The Committee on the Judicial Branch recommended that the Judicial Conference amend the Travel Regulations for Justices and Judges to address the issue of how, as well as how many, judges may be designated as spokespersons for the judiciary at a non-prescribed meeting; to provide for approval by the chair of the Executive Committee when more than one judge is designated to travel abroad at judiciary expense; and to eliminate the necessity for clearance of the travel by the Director of the Administrative Office. The Conference approved the recommendation.

**Senior Judges.** Section 374 of title 28, United States Code, relieves a retired judge of any restrictions as to his or her residence and establishes that the judge's official station for purposes of computation of travel expenses shall be the city or town where he or she actually lives, whether or not court is held at such place. This provision enables a senior judge sitting by designation and assignment to be reimbursed for travel expenses commensurate with the distance actually traveled from home to the place of assignment and was intended to encourage the utilization of the services of retired judges and overcome their reluctance to accept assignments away from their homes. Although unaware of any abuse of the present reimbursement mechanism, the Committee was concerned about the potential unfavorable perceptions of it by those who are not knowledgeable about the generous workload contributions of senior judges. The Committee recommended, and the Conference approved, an amendment to the judges' travel regulations to require that a senior judge who has a principal residence outside the jurisdiction of the court to which the senior judge is designated and assigned (the "home court"), including a judge who resides outside the United States and its territories, be prohibited from receiving reimbursement of travel and subsistence

expenses for travel back to the judge's home court unless such travel is cleared by the chief judge of the circuit in which the judge was commissioned.

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### **MILITARY SURVIVOR BENEFIT PLAN**

Under current law, judges in regular active service, unlike other federal employees who are military retirees, do not have contributions made to the Military Survivor Benefit Plan on their behalf from the military retirement fund. To correct this anomaly, the Judicial Conference approved a recommendation of the Committee that legislation be pursued to amend 28 U.S.C. § 371 to provide for contributions to be made to the Military Survivor Benefit Plan from a judge's military retired pay before the balance of such pay is returned to the United States Treasury as required by law.

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### **PARTICIPATION IN THE MILITARY READY RESERVE**

The Department of Defense is updating a longstanding directive which provides that federal employees who occupy key positions (including the Vice President, Members of Congress, and Article III judges) shall be transferred from the Ready Reserve to the Standby Reserve or Retired Reserve or, where appropriate, discharged. It requested the judiciary's comments. On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to respond to this request by suggesting that an exception be included in Department of Defense Directive 1200.7 that would allow an Article III judge to continue to be a member of the Ready Reserve upon certification by the chief judge of the affected judge's circuit that the mobilization of the Article III judge concerned will not seriously impair the capability of the judge's court to function effectively.

## **COMMITTEE ON JUDICIAL RESOURCES**

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### **CIRCUIT EXECUTIVES' OFFICES**

In September 1991, the Judicial Conference approved a staffing methodology and staffing ceiling for circuit executives' offices. The ceiling was

subsequently adjusted to include additional positions. Three permanent positions above the ceiling were requested (one in the Third Circuit and two in the Eighth Circuit), but the Committee on Judicial Resources recommended that only one three-year temporary position (for the Eighth Circuit) be approved beginning in fiscal year 1999. The Judicial Conference approved the Committee's recommendation.

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## **COURT PERSONNEL SYSTEM QUALIFICATIONS STANDARDS**

In September 1993, the Judicial Conference approved development of the Court Personnel System, which lets courts request delegated authority for personnel actions involving classification, qualifications and compensation, but does not permit exceptions to qualification standards (JCUS-SEP 93, pp. 49-50). In response to requests from court unit executives, the Judicial Resources Committee recommended and the Judicial Conference agreed to permit the following exceptions to be made to the qualifications standards, except for minimum educational requirements for professional line positions, on a case-by-case basis for the following Court Personnel System positions: (1) those subject to recruitment difficulties as evidenced by high turnover, lack of qualified applicants, etc.; and (2) those for which the applicant has legal, paralegal, or graduate education directly related to the position to be filled. The Administrative Office will grant these exceptions for the first year with the understanding that future delegation to the courts is possible.

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## **EARLY RETIREMENT AUTHORITY**

In fiscal years 1996 and 1997, the Office of Personnel Management approved an "early-out" retirement authority for use by the judiciary. This authority has proven to be a useful management tool for many court units in the restructuring of their organizations. The Judicial Conference approved a Judicial Resources Committee recommendation to authorize all court units in fiscal year 1998 to offer early retirement to eligible employees in order to facilitate reorganization as a result of budget restrictions, workload changes, or other good management reasons. Implementation of this action is contingent upon a grant of authority by the Office of Personnel Management.

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## STUDENT LABOR

The child labor provisions of the Fair Labor Standards Act (FLSA) set 14 years as the lowest age for employing students. Although judiciary practices comply with these child labor provisions of the FLSA, written policies in the *Guide to Judiciary Policies and Procedures* fail to reflect current practices. Specifically, the judiciary's written policy on age restrictions sets 16 as the minimum age for employing students. In addition, the FLSA sets detailed rules on when students may work, while the judiciary policy has a more general rule for student workers. Because the judiciary has stated in its report on the Congressional Accountability Act (CAA) that its practices comply with the child labor provisions of the FLSA (see *Study of Judicial Branch Coverage Pursuant to the Congressional Accountability Act of 1995*, December, 1996), the Judicial Conference approved a Committee recommendation that a technical amendment be made to the *Guide to Judiciary Policies and Procedures* to mirror the FLSA requirements with respect to age and hours of employment of student employees.

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## REALTIME COURT REPORTING

In March 1996, the Judicial Conference approved realtime transcript rates, with the fee paid for an unedited realtime transcript, set at \$2.50 per page, to be credited towards the certified transcript fee (JCUS-MAR 96, p. 26). Concerns have been expressed that this rate structure has not offered court reporters adequate incentive to provide realtime services. On recommendation of the Judicial Resources Committee, the Judicial Conference approved a modification to the transcript fee rates for realtime unedited transcripts provided by certified realtime reporters to establish the maximum page rate authorized for the provision of realtime services, including the production and distribution of a realtime unedited transcript, to be \$1 per page. Litigants who order realtime services, and subsequently order an original certified transcript of the same proceeding, will not receive a credit toward the purchase cost of the certified transcript.

## **COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM**

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### **AD HOC RECALL REGULATIONS**

The Committee on the Administration of the Magistrate Judges System recommended that the ad hoc recall regulations for magistrate judges be revised to clarify that certain magistrate judges recalled on less than a full-time basis may continue to practice law while on recall status, subject to the limitations set forth in the Code of Conduct for United States Judges governing part-time judicial officers and the Conflict-of-Interest Rules for Part-Time Magistrate Judges. The Judicial Conference approved the recommendation, amending section 3 of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges to state that a retired magistrate judge recalled to serve under 28 U.S.C. § 636(h) on less than a full-time basis who has retired under chapter 83 or 84 of title 5, United States Code, shall be subject to 28 U.S.C. § 632(b) which deals with part-time magistrate judges, the Code of Conduct for United States Judges governing part-time magistrate judges, and the Conflict-of-Interest Rules for Part-Time Magistrate Judges.

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### **CHANGES IN MAGISTRATE JUDGE POSITIONS**

After consideration of the report of the Committee and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in positions, salaries, and arrangements for full-time and part-time magistrate judge positions. Changes with a budgetary impact are to be effective when appropriated funds are available.

#### **FIRST CIRCUIT**

##### **District of Massachusetts**

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.



District of Puerto Rico

Made no change in the number, location, or arrangements of the magistrate judge positions in the district.

**SECOND CIRCUIT**

District of Connecticut

Made no change in the number, locations, or arrangements of the magistrate judge positions in the district.

**THIRD CIRCUIT**

New Jersey

1. Increased the salary of the part-time magistrate judge position at Fort Monmouth (or Fort Dix) from Level 2 (\$51,600 per annum) to Level 1 (\$56,760 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Middle District of Pennsylvania

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

**FIFTH CIRCUIT**

Eastern District of Texas

1. Authorized an additional full-time magistrate judge position at Texarkana; and
2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Western District of Texas

1. Increased the salary of the part-time magistrate judge position at Big Bend National Park from Level 4 (\$30,960 per annum) to Level 3 (\$41,280 per annum), effective October 1, 1997, or as soon as funds are available; and
2. Redesignated the location of the part-time magistrate judge position at Big Bend National Park as Alpine or Big Bend National Park.

**SEVENTH CIRCUIT**

Eastern District of Wisconsin

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

**EIGHTH CIRCUIT**

Eastern District of Arkansas

Made no change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

**NINTH CIRCUIT**

Southern District of California

Authorized an additional full-time magistrate judge position at San Diego.

**TENTH CIRCUIT**

District of Colorado

1. Increased the salary of the part-time magistrate judge position at Grand Junction from Level 4 (\$30,960 per annum) to Level 2 (\$51,600 per annum), effective October 1, 1997, or as soon as funds are available; and
2. Discontinued the vacant part-time magistrate judge position at Durango.

## **ELEVENTH CIRCUIT**

### **Northern District of Florida**

Increased the salary of the part-time magistrate judge position at Gainesville from Level 6 (\$10,320 per annum) to Level 5 (\$20,640 per annum).

### **Northern District of Georgia**

1. Authorized an additional full-time magistrate judge position at Atlanta; and
2. Made no change in the number, locations, salaries or arrangements of the other magistrate judge positions in the district.

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## **ACCELERATED FUNDING**

The accelerated funding program was established to provide prompt magistrate judge assistance to judicial districts seriously affected by drug filings or impacted by the Civil Justice Reform Act. On recommendation of the Magistrate Judges Committee, the Judicial Conference designated the new magistrate judge positions at Texarkana, Texas; San Diego, California; and Atlanta, Georgia, for accelerated funding in fiscal year 1998.

## **COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS**

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### **JUDICIAL REFORM ACT OF 1997**

The Committee to Review Circuit Council Conduct and Disability Orders reported that it has been following closely the progress of two legislative proposals in the 105<sup>th</sup> Congress that would amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372(c). H.R. 702 and section 4 of the original version of the Judicial Reform Act of 1997 (H.R. 1252) would provide that any complaint of judicial misconduct or disability filed under the Act shall be referred to another

circuit for complaint proceedings. On recommendation of the Committee, the Judicial Conference, in a mail ballot, expressed opposition to the provision (see *infra*, "Mail Ballots," pp. 84-85). The Committee will continue to monitor these legislative proposals.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **FEDERAL RULES OF APPELLATE PROCEDURE**

The Advisory Committee on Appellate Rules completed a style revision project to clarify and simplify the language of the appellate rules. The Committee on Rules of Practice and Procedure concurred with the advisory committee's recommendations and submitted revisions of all 48 Rules of Appellate Procedure and a revision of Form 4, together with Committee Notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments to Appellate Rules 1 to 48 and to Form 4 and agreed to transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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### **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed revisions to Official Bankruptcy Forms 1 (Voluntary Petition), 3 (Application and Order to Pay Filing Fee in Installments), 6 (Schedule F), 8 (Chapter 7 Individual Debtor's Statement of Intention), 9A-9I (Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors and Fixing of Dates), 10 (Proof of Claim), 14 (Ballot for Accepting or Rejecting a Plan), 17 (Notice of Appeal from a Judgment, Order, or Decree of a Bankruptcy Judge), and 18 (Discharge of Debtor), and new Forms 20A (Notice of Motion or Objection) and 20B (Notice of Objection to Claim). The revisions mainly clarify or simplify existing forms. The Judicial Conference approved the proposed revisions to official bankruptcy forms. Implementation of the new forms will take effect immediately, but the superseded forms may also be used until March 1, 1998.

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## **FEDERAL RULES OF CIVIL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a new Federal Rule of Civil Procedure 23(f), together with Committee Notes explaining its purpose and intent. This new subdivision would permit interlocutory appeal from an order granting or denying class action certification in the discretion of the court of appeals. The Judicial Conference approved the proposed new Civil Rule 23(f) and agreed to transmit it to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

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## **FEDERAL RULES OF CRIMINAL PROCEDURE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 5.1 (Preliminary Examination), 26.2 (Production of Witness Statements), 31 (Verdict), 33 (New Trial), 35 (Correction or Reduction of Sentence), and 43 (Presence of the Defendant). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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## **FEDERAL RULES OF EVIDENCE**

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Evidence Rule 615 (Exclusion of Witnesses) together with Committee Notes explaining its purpose and intent. The amendment would expand the list of witnesses who may not be excluded from attending a trial to include persons authorized by statute to attend, e.g., a victim defined in the Victim's Rights and Restitution Act of 1990 and Victim Rights Clarification Act of 1997. The Judicial Conference approved the amendment and agreed to transmit it to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

## **COMMITTEE ON SECURITY, SPACE AND FACILITIES**

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### **COURTHOUSE MANAGEMENT**

In March 1988, the Judicial Conference approved guidelines for the establishment of delegations of authority from the General Services Administration for courts to manage and operate court facilities (JCUS-MAR 88, p. 40). Although Conference policy currently allows up to ten courts to participate in the delegated building management program (JCUS-SEP-89, pp. 81-82), it appears that many more courts may be interested in the program. On recommendation of the Committee on Security, Space and Facilities, the Judicial Conference agreed (a) to expand its policy limiting participation in the delegated building management program to ten courts and to allow any court meeting the Conference-approved conditions to participate in the program; and (b) to amend the conditions established in March 1988, under which courts may assume responsibilities for managing a court facility under a delegation of the General Services Administration's authority, by adding the following:

All courts and court units occupying a building must approve a request for a delegation of General Services Administration's management and operations authority prior to submission of the request by the Administrative Office to the General Services Administration.

### **MAIL BALLOTS**

The Judicial Conference completed two mail ballots since its last session. On April 14, 1997, the Conference concluded a ballot endorsing transmittal to Congress of a letter from the Chair of the Criminal Law Committee expressing the Conference's preference for a statutory approach, as opposed to a constitutional amendment, on victims' rights (see *supra*, "Victims' Rights Legislation," pp. 66-67).

September 23, 1997

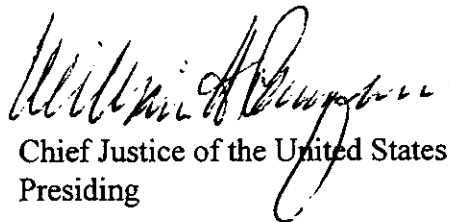
By mail ballot concluded on May 9, 1997, the Conference considered three sections (2, 4, and 5) of a proposed Judicial Reform Act of 1997 (H.R. 1252, 105<sup>th</sup> Congress). The Conference voted to adhere to its 1995 position in opposition to three-judge panels generally and to oppose section 2, which would require that three-judge panels consider challenges to state laws adopted by referenda (see *supra*, "Judicial Reform Act of 1997," p. 71). In the same ballot, Conference members voted to oppose section 4, which would amend the Judicial Conduct and Disability Act to provide that complaints under the Act be referred to another circuit for proceedings (see *supra*, "Judicial Reform Act of 1997," pp. 81-82), and also to oppose section 5, which would limit court-imposed taxation. See also *supra*, "Judicial Reform Act of 1997," pp. 64-65.

## FUNDING

All of the foregoing recommendations which require the expenditure of funds for implementation were approved by the Judicial Conference subject to the availability of funds, and subject to whatever priorities the Conference might establish for the use of available resources.

## RELEASE OF CONFERENCE ACTION

Except as otherwise specified, the Conference authorized the immediate release of matters considered by this session where necessary for legislative or administrative action.

  
Chief Justice of the United States  
Presiding





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