

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

*SEPTEMBER 21, 2004
WASHINGTON, D.C.*

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

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September 21, 2004

The Judicial Conference of the United States convened in Washington, D.C., on September 21, 2004, 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 Michael Boudin
Chief Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Thomas I. Vanaskie,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge William W. Wilkins
Judge David C. Norton,
District of South Carolina

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Judicial Conference of the United States

Sixth Circuit:

Chief Judge Danny J. Boggs
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge J. P. Stadtmueller,
Eastern District of Wisconsin

Eighth Circuit:

Chief Judge James B. Loken
Chief Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Chief Judge David Alan Ezra,
District of Hawaii

Tenth Circuit:

Chief Judge Deanell R. Tacha
Judge David L. Russell,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge J. L. Edmondson
Judge J. Owen Forrester,
Northern District of Georgia

District of Columbia Circuit:

Chief Judge Douglas H. Ginsburg
Chief Judge Thomas F. Hogan,
District of Columbia

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs or designees attended the Conference session: Circuit Judges Marjorie O. Rendell and Jane R. Roth and District Judges W. Royal Furgeson, Jr., Nina Gershon, John G. Heyburn II, Robert B. Kugler, Sim Lake, David F. Levi, John W. Lungstrum, James Robertson, Lee H. Rosenthal, Patti B. Saris, and Frederick P. Stamp, Jr. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr. were also in attendance as observers. James A. Higgins of the Sixth Circuit represented the circuit executives.

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; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Barbara Jacobs Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Sally Rider, Administrative Assistant to the Chief Justice, and the 2004-2005 Judicial Fellows.

Senators Orrin G. Hatch, Patrick J. Leahy, Jeff Sessions and Ted Stevens and Representative John Conyers, Jr. spoke on matters pending in Congress of interest to the Judicial Conference. Attorney General John Ashcroft addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

Mr. Mecham reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge

Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Ricardo H. Hinojosa, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities. Judge Heyburn, Chair of the Committee on the Budget, briefed the members on judiciary appropriations, and Judge Carolyn Dineen King, Chair of the Executive Committee, reported on that Committee's initiative to contain costs in the judiciary.

EXECUTIVE COMMITTEE

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 2004:

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

HONORABLE WILLIAM L. OSTEEEN, SR.
Committee on Codes of Conduct

HONORABLE FREDERICK P. STAMP, JR.
Committee on Federal-State Jurisdiction

HONORABLE DENNIS G. JACOBS
Committee on Judicial Resources

HONORABLE WILLIAM J. BAUER
Committee to Review Circuit Council Conduct
and Disability Orders

HONORABLE A. THOMAS SMALL
Advisory Committee on Bankruptcy Rules

HONORABLE EDWARD E. CARNES
Advisory Committee on Criminal Rules

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.

BUDGET MATTERS

Fiscal Year 2004 Financial Plans. In March 2004, the Chief Justice charged the Executive Committee with developing an integrated strategy for controlling costs in fiscal year (FY) 2005 and beyond (JCUS-MAR 04, p. 6). As part of this effort, the Committee asked the program committees to submit specific cost-containment suggestions both for the short and long terms. In early June 2004, the Executive Committee considered “quick-hitting” suggestions from the program committees that could be implemented immediately to help alleviate the FY 2005 budget situation. Based on an aggressive review of fiscal year 2004 requirements, the program committees identified \$29.2 million that could be carried forward into the FY 2005 Salaries and Expenses account, and the Administrative Office identified \$23.6 from centrally managed accounts that could similarly be carried forward. The Defender Services, Court Security, and Fees of Jurors accounts were also reviewed and revisions proposed. The Executive Committee endorsed the program-committee and AO-recommended adjustments to the fiscal year 2004 financial plans. The Committee determined that other quick-hitting items identified by program committee chairs would be considered by the Judicial Conference in September 2004 together with longer-term suggestions as part of one package.

Fiscal Year 2005 Financial Plans. Advised of the strong possibility that the judiciary would be operating under a continuing resolution for at least some months into FY 2005, which would likely hold judiciary appropriations to a “hard freeze” at fiscal year 2004 levels, the Executive Committee, in late July 2004, considered and approved preliminary FY 2005 financial plans for the four major judiciary accounts (Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners) at a hard-freeze level. These plans incorporated a number of recommendations from Judicial Conference program committees for reducing costs. For the Salaries and Expenses account, the Executive Committee also approved an alternate

preliminary financial plan based on a four percent funding increase over the fiscal year 2004 funded level. The Committee agreed that the hard-freeze plan and the four percent plan should be used to form the high and low guideposts within which the Administrative Office would develop shadow allotments for the courts. For the Defender Services, Court Security, and Fees of Jurors and Commissioners accounts, the Executive Committee identified items that could be funded in the event of increases above the hard-freeze levels.

Cost Containment for Fiscal Year 2005 and Beyond. In response to the Executive Committee's request for assistance in the development of an integrated strategy for controlling costs for fiscal year 2005 and beyond, ten Judicial Conference program committees undertook a comprehensive review of the judiciary policies under their purviews to identify ways to contain costs in their respective program areas. Using the program committees' ideas (as well as those of the Committee on the Budget), the Executive Committee developed a cost-containment strategy for the judiciary, which was incorporated into a report entitled, "Cost-Containment Strategy for the Federal Judiciary: 2005 and Beyond."

The cost-containment strategy contains the following six broad avenues in which specific initiatives would be pursued and implemented:

- Space and Facilities Cost Control
Objective: Impose tighter restraints on future space and facilities costs.
- Workforce Efficiency
Objective: Trim future staffing needs through re-engineering work processes and reorganizing functions to increase efficiency, and by employing different staffing techniques.
- Compensation Review
Objective: Explore fair and reasonable opportunities to limit future compensation costs.
- Effective Use of Technology
Objective: Invest wisely in technologies to enhance productivity and service, while controlling operating costs by revamping the service-delivery model for national information-technology systems.
- Defender Services, Court Security, Law Enforcement, and Other Program Changes
Objective: Study and implement cost-effective modifications to programs.

- Fee Adjustments
Objective: Ensure that fees are examined regularly and adjusted as necessary to reflect economic changes.

The overall cost-containment strategy described in the report forms the roadmap for discrete action and coordinated efforts related to achieving cost-containment objectives. On recommendation of the Executive Committee, the Conference approved the report.¹ The Executive Committee will ensure that the components of the strategy that remain to be developed are both developed and implemented and will continue to monitor, coordinate, and promote progress on all cost-containment efforts.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved a request of the Committees on Judicial Resources and Court Administration and Case Management to extend the duration of a pilot project on electronic access to transcripts (*see* JCUS-MAR 04, pp. 10-11) and to defer until September 2005 the date by which those committees would report back to the Conference on the pilot;
- Approved a Judicial Resources Committee recommendation to extend the deadline for participation in the voluntary separation incentive (“buyout”) program previously approved by the Conference (JCUS-SEP 03, pp. 27-28) through January 31, 2005, with the understanding that the program would be funded with decentralized funds;

¹The report includes several items that were presented separately to the Judicial Conference at this session by the specific committees recommending their approval. Those items appear in these proceedings under their respective committee headings. (*See infra*, “Fees,” p. 11-12; “Sharing Administrative Services,” pp. 12-13; “Lawbooks,” p. 13; “Program Changes,” pp. 14-15; “Federal Defender Organization Space Requests,” pp. 15-16; “Travel Regulations for United States Justices and Judges,” pp. 19-20); “Voluntary Separation Incentive Payment Program,” pp. 21-22; “Promotion Policies,” pp. 22-23; “Magistrate Judge Position Vacancies,” p. 26; “Magistrate Judge Recall Regulations,” pp. 26-27; “Two-Year Moratorium on Courthouse Construction Projects,” pp. 34-35; “Limits on Space Growth,” pp. 35-36; and “Tenant Alterations Criteria,” p. 36.)

- Agreed, on recommendation of the Judicial Resources Committee, to expand the judiciary's telecommuting policy to include employees in federal public defender organizations, and endorsed the expeditious implementation of telework within the judiciary;
- At the suggestion of the Judicial Branch Committee, and in light of the budget situation, agreed to roll back the allowable alternative subsistence amount for judges' travel reimbursement to the 2003 level; and
- Approved transmittal to Congress of a report on issues related to juror utilization in the federal district courts that was prepared in response to a congressional directive and was due in Congress by July 21, 2004.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it discussed extensively the judiciary's unprecedented funding crisis in fiscal year 2005, the potential for long-term continuing budget shortfalls, and the steps being taken by the Administrative Office to support the Executive Committee's cost-containment initiative. The Committee also reviewed spending restrictions implemented at the Administrative Office in response to the constrained FY 2004 budget and in anticipation of a possible hard freeze in fiscal year 2005. The Committee noted the importance of various stewardship initiatives, including the recently issued *Internal Controls Handbook for the Federal Courts*, which is intended to assist court managers in reviewing and developing internal control procedures consistent with applicable policies and regulations. The Administrative Office was asked to report back in one year on whether these initiatives have resulted in better administrative management in the courts as evidenced by trends in audit findings.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to

assess the continuing need for authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference reports its recommendations to Congress for the elimination of any authorized bankruptcy judgeship position that can be eliminated when a vacancy exists by reason of resignation, retirement, removal or death. On recommendation of the Bankruptcy Committee, which relied on the results of the 2004 continuing need survey, the Judicial Conference agreed to take the following actions:

- a. Recommend to Congress that no bankruptcy judgeship be statutorily eliminated; and
- b. Advise the Eighth and Ninth Circuit Judicial Councils to consider not filling vacancies in the Districts of South Dakota and Alaska, respectively, that currently exist or may occur by reason of resignation, retirement, removal, or death, until there is a demonstrated need to do so.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it approved fiscal year 2006 funding recommendations for the areas within its oversight, and, along with other Conference committees, explored various cost-containment ideas as part of the Executive Committee's initiative to develop an integrated strategy for controlling judiciary costs in FY 2005 and beyond. It also agreed to advise the Judicial Branch Committee that it endorsed the extension to bankruptcy judges as well as magistrate judges of the "FEGLI fix" provided to Article III judges that effectively capped personal life insurance costs after age 65 (JCUS-SEP 00, pp. 54-55) and the Judicial Resources Committee that if the staffing formula for bankruptcy clerks' offices were to be adopted, the Committee should consider recommending a phase-in period. In addition the Bankruptcy Committee endorsed a resolution encouraging bankruptcy courts to support and participate in consumer education programs; agreed that certain additional data elements should be included in the Administrative Office's statistical reporting system; and considered and received reports on a wide array of topics.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2006 BUDGET REQUEST

In light of an extremely austere congressional budget environment, the Budget Committee recommended a fiscal year 2006 budget request lower than the funding levels proposed by the program committees. The request incorporates over \$106 million in savings realized from substantial cost-containment efforts undertaken by the program committees, and anticipates \$19 million in additional revenues from new and increased fees recommended by the Court Administration and Case Management Committee and endorsed by the Conference at this session (*see infra*, “Fees,” pp. 11-12). The Judicial Conference approved the budget request subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Executive Committee considers necessary and appropriate.

CONTINUING RESOLUTION EXEMPTION

Recognizing the judiciary’s need for certainty and sufficient and timely funding to avoid compromising its core mission of administering justice, the Judicial Conference adopted a resolution, recommended by the Budget Committee, strongly urging Congress and the President to exempt the judicial branch from any fiscal year 2005 continuing resolution and to provide, instead, full-year funding at least at the current services level contained in the House-passed version of the judiciary’s 2005 appropriations bill (H.R. 4754, 108th Congress). So that the resolution could be transmitted to Congress in a timely manner, the Conference approved it by mail ballot concluded on August 19, 2004.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that in addition to its work on the fiscal year 2006 budget request, it discussed and supported the cost-containment efforts of the Executive Committee and the program committees. The Committee also endorsed proposed new and increased judiciary fees to be considered by the Conference at this session (*see infra*, “Fees,” pp. 11-12) and incorporated several cost-containment initiatives into the fiscal year 2006 budget request (*see supra*, “Fiscal Year 2006 Budget Request,” p. 10).

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2004, it had received 35 new written inquiries and issued 29 written advisory responses. During this period, the average response time for these requests was 16 days. The Chair received and responded to 73 informal inquiries. In addition, individual committee members responded to 135 informal inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

FEES²

District Court Filing Fee. The district court filing fee, set forth in 28 U.S.C. § 1914(a), is currently set at \$150 and has not been adjusted for inflation or otherwise raised since 1997. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to seek an amendment to 28 U.S.C. § 1914(a) to increase the filing fee from \$150 to \$250 and an accompanying amendment to 28 U.S.C. § 1931(a) to increase from \$90 to \$190, the amount of the filing fee that the judiciary is authorized to retain in the judiciary's fee account. Contingent upon enactment of such legislation, in order to ensure that the fee increase has no impact on the fee for filing a motion to lift the automatic stay imposed under Item 20 of the Bankruptcy Court Miscellaneous Fee Schedule, the Conference also adopted a recommendation of the Committee to amend Item 20 to delete the reference to the amount required for filing a civil action and insert language establishing a \$150 fee for a motion to lift the automatic stay.³

²The fee adjustments described in this section were included in the judiciary's comprehensive cost-containment strategy adopted by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

³The amendments were subsequently incorporated in the Consolidated Appropriations Act of 2005, Public Law No. 108-447, enacted on December 8, 2004. The increased fee becomes effective 60 days after the date of enactment.

Appellate Attorney Admission Fee. The Conference adopted a recommendation of the Committee to establish an appellate attorney admission fee of \$150 to be incorporated into the Court of Appeals Miscellaneous Fee Schedule. This fee is in addition to any attorney admission fee charged and retained locally pursuant to Federal Rule of Appellate Procedure 46(a)(3). The proceeds from the new fee will be deposited into the judiciary's fee account.

Central Violations Bureau (CVB) Processing Fee. The Central Violations Bureau processes the payments of approximately 400,000 petty offense citations every year that are issued by various government agencies for violations on federal property. No fee has been charged for the considerable work the CVB does in processing these cases. On recommendation of the Committee, the Judicial Conference agreed to seek legislation establishing a processing fee of \$25 for cases processed through the CVB and allowing the proceeds to be retained by the judiciary.⁴

Public Access to Court Electronic Records (PACER) Internet Fee. Congress has specified that electronic public access (EPA) fees be used to enhance electronic public access, which is currently available through the PACER program. More recently, in the congressional conference report accompanying the judiciary's FY 2004 appropriations act, Congress expanded the permitted uses of EPA funds to include case management/electronic case files (CM/ECF) system operational costs. In order to provide sufficient revenue to fully fund currently identified case management/electronic case files system costs, the Conference adopted a recommendation of the Committee to amend Item 1 of the Electronic Public Access Fee Schedule to increase the fee for public users obtaining information through a federal judiciary Internet site from seven to eight cents per page.

SHARING ADMINISTRATIVE SERVICES

An independent study is currently being conducted on ways to deliver administrative services to the courts in a more efficient and cost-effective manner. In order to help contain costs in the short-term while the study is being completed, the Committee on Court Administration and Case Management recommended that the Judicial Conference strongly urge all

⁴The Consolidated Appropriations Act of 2005 also provided the Judicial Conference with the authority to prescribe and retain a fee for the processing of violations through the CVB.

district and bankruptcy courts to work together to examine and assess the financial benefits of sharing support units for information technology, procurement, personnel, budget and other general administrative functions. To ensure that this exercise is initiated by the courts, it further recommended that the Conference request that the chief judges of the district and bankruptcy courts, as well as the relevant court unit executives, meet and discuss sharing of services in the areas listed above, and that each district file a report with the Executive Committee, with copies to its chief circuit judge and to the chair of the Court Administration and Case Management Committee, outlining the efforts that the district has undertaken to examine sharing administrative services. The Conference adopted the Committee's recommendations, which are included in the judiciary's comprehensive cost-containment strategy adopted at this session (*see supra*, "Budget Matters," pp. 5-7).

LAWBOOKS

The *Guide to Judiciary Policies and Procedures*, Volume 1, Chapter 5, Part H, "Lawbooks Available to Judges," provides lists of lawbooks that newly appointed judges may request for a chambers collection. These lists had not been updated in many years. On recommendation of the Committee on Court Administration and Case Management, the Conference approved revisions to these lists that would reduce costs and avoid duplication. This item is contained in the judiciary's comprehensive cost-containment strategy adopted at this session (*see supra*, "Budget Matters," pp. 5-7).

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it considered and endorsed proposed revisions to the Model Grand Jury Charge approved by the Judicial Conference in 1986 and provided these revisions to the Criminal Law and Defender Services Committees for their review. Members also discussed the work of the Committee's subcommittee on the implementation of the policy on electronic access to official transcripts, which is exploring options to address loss of income to court reporters attributable to the policy. The Committee also discussed its ongoing initiative to increase access to federal court documents for persons with limited English proficiency, including the establishment of a J-Net repository of translated information and documents; requested the Rules Committee to consider amendments to the civil and bankruptcy rules that would permit courts to require mandatory electronic case filing; and adopted a new model local rule for electronic filing regarding the use of hyperlinks in

CM/ECF documents, as well as amendments to two existing rules necessitated by technical improvements to the CM/ECF software.

COMMITTEE ON CRIMINAL LAW

CONGRESSIONAL ADVISORY GROUP ON SENTENCING

The judiciary was asked by the Chairman of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies to provide input on qualifications of candidates for a temporary advisory group on sentencing issues and mandatory minimum penalties. On recommendation of the Committee on Criminal Law, the Conference agreed to suggest that current and former federal and state prosecutors, members of the defense bar, scholars, probation officers, state sentencing guideline authorities, federal and state judges, and other practitioners with significant current experience and expertise in relevant areas of the law and sentencing, along with a reporter, be considered as candidates for the group.

PRETRIAL SERVICES SUPERVISION MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved the distribution of revisions to the *Supervision of Federal Defendants*, Monograph 111. The revisions clarify certain policies in response to questions raised by pretrial services officers, correct errors, and make other technical changes.

PROGRAM CHANGES

Recognizing the seriousness of the judiciary's financial situation, the Committee recommended that the Judicial Conference endorse revisions to certain practices with respect to pretrial services investigations, pretrial services supervision, presentence investigation reports, and post-conviction supervision cases to reduce specific categories of work currently being performed but not absolutely critical to public safety and the mission of probation and pretrial services. The intent was to allow limited resources to be spent on more critical, mission-driven functions so that the probation and pretrial services system can continue to provide high-quality pretrial services and presentence investigation reports to the courts in appropriate cases and to

supervise those defendants and offenders who raise serious public safety concerns. The Conference adopted the Committee's recommendations, which were also included in the comprehensive cost-containment strategy for the judiciary adopted by the Judicial Conference at this session (*see supra*, "Budget Matters," pp. 5-7). The Committee will present to the Conference for approval at a later date, proposed revisions to the various monographs to implement the cost-containment program changes.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it recommended to the Committee on Judicial Resources that the proposed staffing formulae for probation and pretrial services offices be adopted by the Judicial Conference. The Committee also endorsed the Judicial Resources Committee's ongoing efforts to review the methodology currently used in the staffing formulae to identify, assess, and measure cost-effective procedures that may lead to higher levels of efficiency and quality in the courts. In addition, the Committee was briefed on a joint AO/FJC study on substance abuse testing and treatment services and on an independent strategic assessment of the probation and pretrial services system. Noting that both studies reported a lack of adequate data to assess the programs, the Committee endorsed a strategic approach that (a) the probation and pretrial services system be organized, staffed, and funded in ways to promote mission-critical outcomes; and (b) the capacity be developed to empirically measure the results.

COMMITTEE ON DEFENDER SERVICES

FEDERAL DEFENDER ORGANIZATION SPACE REQUESTS

In March 2004, in order to control rental costs, the Judicial Conference imposed a one-year moratorium on all space requests of less than \$2.29 million in construction costs funded from the Salaries and Expenses account, with certain specified exceptions (JCUS-MAR 04, p. 28). The Executive Committee subsequently asked the Defender Services Committee to consider a similar moratorium for federal defender organizations. At this session, on recommendation of the Committee on Defender Services, the Judicial Conference imposed a moratorium on all federal defender organization space requests of less than \$2.29 million (\$2.36 million in FY 2005) in construction

costs for one year, except requests for lease renewals, official parking, and space necessary for recovery from natural disasters or terrorist attacks. The Conference authorized the Director of the Administrative Office to make limited exceptions in consultation with the Defender Services Committee chair and the Committee member who is the liaison to the federal defender's circuit. For federal public defender organizations, the circuit judicial council will also be consulted. This item is included in the federal judiciary's comprehensive cost-containment strategy that was also approved by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it reviewed and prioritized numerous cost-containment initiatives identified by its budget subcommittee, as well as those suggested by the Executive Committee. The Committee supported seeking an expert services contract with the Vera Institute of Justice to conduct a study of Criminal Justice Act plans and practices at the appeals court level. Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee approved FY 2005 federal defender organization budgets and grants totaling \$395,392,900, as well as supplemental FY 2004 funding for four organizations totaling \$1,877,000. The Committee approved FY 2005 plans for federal defender and panel attorney training, but, in view of the austere budget climate, decided to reduce training-related expenditures by ten percent as a temporary measure.

COMMITTEE ON FEDERAL-STATE JURISDICTION

CHILD CUSTODY LEGISLATION

Three bills pending in the 108th Congress (S. 2202, H.R. 3941, and H.R. 4347) would, among other things, add a provision to the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, to provide a cause of action in the U.S. district courts to resolve conflicting child custody orders between courts of different states. On two prior occasions, the Judicial Conference has opposed similar legislation on the grounds that it would constitute "an unnecessary expansion of federal jurisdiction into areas in which federal courts have no expertise and could result in unnecessary federal-state conflicts" (JCUS-SEP 89, p. 64; JCUS-MAR 96, pp. 20-21). In view of the length of time since the Conference last addressed this issue and the renewed

congressional interest in creating federal jurisdiction in this area, the Committee recommended that the Conference reaffirm its opposition to the creation of a federal cause of action for the intended purpose of resolving conflicting child custody orders between two or more states. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it is assessing the Social Security Administration's proposed approach to revise the disability claims process and was briefed on it by Jo Anne B. Barnhart, Commissioner of Social Security, and Martin H. Gerry, Deputy Commissioner of the Office of Disability and Income Security Programs. The Committee also reviewed the "Fairness in Asbestos Injury Resolution Act of 2004," S. 2290 (108th Congress), but concluded that regarding those provisions within its jurisdiction, no action was necessary at this time. In addition, following discussion, the Committee agreed not to pursue a proposal that had been developed within its jurisdictional improvements project to authorize district courts, in their discretion, to dismiss diversity jurisdiction cases when their value drops below the threshold amount of \$75,000 during the course of proceedings. Instead, it determined to pursue a proposal to bring uniformity to the treatment of stipulations as to the amount in controversy when removal is sought.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 10, 2004, the Committee had received 3,598 financial disclosure reports and certifications for the calendar year 2003, including 1,224 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 328 from bankruptcy judges; 498 from magistrate judges; and 1,548 from judicial employees. The Committee also reported that during the last six months, it has focused on further refining the procedures for processing requests for copies of financial disclosure reports required to be released to the public under section 105 of the Ethics in Government Act of 1978, as amended. The goal is to identify ways of making the release and

redaction process more efficient while minimizing the security risks for the judiciary's filers.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it discussed a number of cost-containment measures and endorsed a vigorous program to identify and implement more cost-effective service delivery models for national information technology products. The Committee reaffirmed its support of the ongoing study of administrative services and encouraged courts to look aggressively at opportunities to share information technology resources where feasible. The Committee also considered various training opportunities for judges so that they could take more effective advantage of technology in their day-to-day work. In addition, the Committee examined security measures associated with the judiciary's data communication network.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that it reviewed the guidelines and operating procedures for intercircuit assignments of Article III judges. It recommended, and the Chief Justice approved, a change to the guideline related to the "lender/borrow rule" to give more flexibility to courts requesting intercircuit assignments, and it proposed a new guideline related to long-term assignments. As part of its cost-containment efforts, the Committee recommended that the AO collect more complete data on intercircuit assignments in order to be able to evaluate the costs and benefits of the program and asked the Committee on Judicial Resources to consider collecting data on intracircuit assignments in order to ensure that data are collected on all visiting judge assignments. The Committee also reported that during the period from January 1, 2004, to June 30, 2004, a total of 56 intercircuit assignments, undertaken by 44 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in Croatia, the Dominican Republic, Jordan, and the Russian Federation. The Committee is working with the American Bar Association on a U.S. Department of State-funded project on judicial integrity, targeting Albania, Indonesia, and Kenya. The Committee also reported on its ongoing assistance to the National Center for State Courts and the Supreme Court of Korea in arranging judicial observations in federal courts for Korean judges attending U.S. law schools as visiting scholars.

COMMITTEE ON THE JUDICIAL BRANCH

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Death While in Travel Status. Section 5742 of title 5, United States Code, authorizes the federal government to pay for the preparation and transportation of the remains of federal employees who die while in business travel status (including judges), as well as other expenses associated with the employee's death. The Administrator of General Services has promulgated regulations for the executive branch that specify those expenses that may be paid or reimbursed (41 C.F.R. chapter 303). On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges to incorporate by reference 41 C.F.R. chapter 303 and to prescribe a procedure for processing claims related to the death of a judge while in travel status.

Authorized Judicial Meetings. Judges who travel to "authorized judicial meetings" need no prior authorization in order to receive reimbursement (section B.1.b. of the Travel Regulations for United States Justices and Judges). On recommendation of the Committee, the Conference approved an amendment to section B.1.b. to provide expressly that meetings of bankruptcy appellate panels and bankruptcy courts and their committees are included within the definition of "authorized judicial meetings."

Automobile Rentals. On recommendation of the Committee, the Judicial Conference approved an amendment to section D.2.c.(1) of the judges' travel regulations to list expressly the factors that judges should consider in renting cars. Also on recommendation of the Committee, the Conference amended section D.2.c.(2) of the travel regulations to clarify that the cost of collision damage waiver or insurance is included in the cost of a government contract vehicle rental and is therefore not separately reimbursable. This proposal is included in the cost-containment strategy approved by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

First-Class Accommodations. Section D.2.a.(1) of the judges' travel regulations encouraged judges who travel by common carrier to use less than first-class accommodations, except for reasons of security, health, physical disability, unavailability of less than first-class accommodations, or any other reason deemed necessary for the expeditious conduct of official business. In view of the current constrained fiscal environment, the Conference adopted a recommendation of the Committee to amend section D.2.a.(1) to eliminate the catch-all phrase "or any other reason deemed necessary for the expeditious conduct of official business." This item is contained in the cost-containment strategy adopted by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to consider ways to maintain and enhance the independence and dignity of the federal judicial office. The Committee devoted a considerable portion of its meeting to considering steps that may be taken to secure a more equitable level of judicial compensation. Still, the Committee is deeply aware of the challenges confronting the judiciary at this time. One of these is adequate funding, which has the strong potential to eclipse other legislative priorities.

COMMITTEE ON JUDICIAL RESOURCES

STAFFING FORMULAE

At the request of the Committee on Judicial Resources, the Administrative Office reviewed and proposed revisions to the staffing

formulae for the United States district and bankruptcy clerks' offices and for probation and pretrial services offices. Nationwide, these proposed new staffing formulae reflect all the work performed in these court support offices in the aggregate; however, due to varying managerial styles, operating environments and priorities, they may not reflect work performed in each office individually. Decentralized budgeting allows local managers to assign, reassign, and prioritize work requirements as necessary. On recommendation of the Committee on Judicial Resources, in order to provide the staffing needed to perform the federal judicial support requirements and functions of the district and bankruptcy clerks' offices and the probation and pretrial services offices, the Judicial Conference approved the proposed staffing formulae for these offices for implementation in fiscal year 2005, with the understanding that the Administrative Office will continue to study certain issues raised by its District Clerks Advisory Group and other issues as needed.

RELOCATION REGULATIONS

In September 2003, the Judicial Conference adopted new relocation regulations for court and federal public defender organization employees, which eliminated reimbursement to law clerks relocating outside the conterminous United States for transportation of their vehicles (JCUS-SEP 03, p. 28). Concerns were subsequently raised by judges in affected districts about their ability to recruit competitive, highly qualified candidates, due to the additional financial costs these individuals would now have to incur. Among other things, the judges noted the lack of adequate transportation services in their districts, the difficulty and expense of buying or renting a vehicle, and the limited affordable housing near their courthouses. On recommendation of the Committee, the Judicial Conference modified its relocation regulations to allow law clerks relocating to and returning from outside the conterminous United States to be reimbursed for transportation of their privately owned vehicles if a chief judge makes a determination that such reimbursement is "in the interest of the Government," and the circuit council concurs.

VOLUNTARY SEPARATION INCENTIVE PAYMENT PROGRAM

In September 2003, the Judicial Conference adopted a voluntary separation incentive (buyout) payment program for fiscal year 2004 (JCUS-SEP 03, pp. 27-28) as a management tool to accommodate reduced budgets,

achieve workforce reshaping, and encourage staff with obsolete skills to leave or retire. In April 2004, in response to a dire budget forecast for FY 2005, the Executive Committee, on behalf of the Conference, approved a request from the Judicial Resources Committee to extend the buyout program through January 31, 2005 (*see supra*, “Miscellaneous Actions,” pp. 7-8). At this session, in order to allow the courts and federal public defender organizations maximum flexibility to deal with the difficult budget situation, the Committee recommended, and the Conference authorized, extension of the current buyout program for Court Personnel System employees, official court reporters, and federal public defender organization employees for the entire FY 2005, with the understanding that courts and federal public defender organizations should not assume that centralized funds will be available in fiscal year 2005. This recommendation was included in the federal judiciary’s cost-containment strategy adopted by the Conference at this session (*see supra* “Budget Matters,” pp. 5-7).

EMPLOYEE RECOGNITION PROGRAM

The Judicial Conference, on recommendation of the Committee on Judicial Resources, approved revisions to the judiciary’s employee recognition program, *Guide to Judiciary Policies and Procedures*, Volume 1, Chapter 10, Subchapter 1451.2. The revisions address stewardship issues, define authorization requirements and award limits, and clarify policy and audit requirements.

PROMOTION POLICIES

Six Percent Promotion Rule. The Committee on Judicial Resources recommended that the Conference modify the current promotion rule for Court Personnel System employees that increases salaries by six percent. As modified, the policy would allow court units the flexibility to establish a local promotion policy that sets the increase for a fiscal year at a uniform, unit-wide rate of not less than three percent nor more than six percent. The Conference adopted the Committee’s recommendation, which is also included in the Conference-approved cost-containment strategy (*see supra*, “Budget Matters,” pp. 5-7).

Special Salary Rates. The judiciary has established special salary rates in geographical areas where salaries being paid for specific occupations by non-federal employers are so high that the salary gap between federal and

non-federal employment significantly impairs government recruitment and retention of well-qualified employees. Unlike locality pay rates, however, special rates of pay are considered basic rates of pay. Therefore, a promotion or reassignment from a job using special rate salary tables to one using locality pay tables provides a large salary windfall to the employee. On recommendation of the Committee, the Judicial Conference agreed to modify the compensation policy so that special salary rates are treated the same as locality pay for promotions and reassignments. This item is contained in the cost-containment strategy adopted by the Conference at this session (*see supra* “Budget Matters,” pp. 5-7).

CHIEF CIRCUIT MEDIATORS

Noting the importance of chief circuit mediators to the efficient disposition of appellate cases, and the substantial legal responsibilities of their offices, the Committee recommended that the Conference raise the target grade for all chief circuit mediators from JSP-16 to JSP-17, to be implemented upon request from each circuit chief judge, subject to the availability of funds. The Conference adopted the Committee’s recommendation.

TYPE II DEPUTIES

Courts have generally been permitted to have only one Type II deputy position per unit at a JSP-16 level unless the Conference finds unique characteristics justifying an additional Type II deputy based on individual justification provided by the court. The Committee was asked to consider criteria to allow large and complex district and bankruptcy courts to have second Type II deputy positions. On recommendation of the Committee, the Judicial Conference authorized any unit in a district or bankruptcy court with ten or more authorized judgeships to establish a second JSP-16 Type II deputy position upon notification to the Administrative Office, to be funded with the court’s decentralized funds.

In addition, the Committee, citing extraordinary circumstances in the Middle District of Florida, recommended a second JSP-16 Type II chief deputy clerk position for the district clerk’s office in the Middle District of Florida, using existing decentralized funding available to the court. The Judicial Conference approved the recommendation.

**SECRETARY TO THE CHIEF JUDGE
OF THE COURT OF INTERNATIONAL TRADE**

All secretaries to federal judges have a target grade of JSP-11, except secretaries to chief circuit judges, who, if assigned exceptional circuit-wide duties, can be raised to a target grade of JSP-12, which becomes permanent after two years (JCUS-SEP 87, pp. 64-65; JCUS-SEP 98, p. 80). The chief judge of the Court of International Trade requested an increase in the target grade of her secretary from JSP-11 to JSP-12, citing the complexities of the position and the substantial similarity between the duties and responsibilities of her secretary and those of secretaries to circuit chief judges. On recommendation of the Committee, the Conference increased the target grade of the secretary to the chief judge of the Court of International Trade from JSP-11 to JSP-12.

COURT INTERPRETERS

Four additional Spanish/English official court interpreter positions were requested for FY 2006: two for the District of Arizona, one for the Northern District of Georgia, and one for the District of New Jersey. Based on established criteria, the Committee on Judicial Resources recommended, and the Judicial Conference approved, one additional court interpreter position for FY 2006 for the Northern District of Georgia, subject to the availability of funds.

SELECTION OF CHIEF PRETRIAL SERVICES OFFICERS

Pursuant to 18 U.S.C. § 3152(c), chief pretrial services officers are appointed by panels made up of the chief judge of the circuit, the chief judge of the district, and a magistrate judge of the district, or their designees. Expressing the view that this system is too cumbersome, particularly in circuits with several pretrial services offices, the Committee on Criminal Law requested that the Committee on Judicial Resources consider recommending that legislation be sought to conform the selection process for chief pretrial services officers to that for chief probation officers, who are appointed “by the [district] court” pursuant to 18 U.S.C. § 3602(c). After considering the views of the Committees on Criminal Law and the Administration of the Magistrate Judges System, the latter of which opposed eliminating the requirement that a magistrate judge participate in the selection process, the Judicial Resources

Committee recommended that the Judicial Conference seek legislation that would amend 18 U.S.C. § 3152(c) to make the selection process for chief pretrial services officers the same as that for chief probation officers, thereby eliminating the requirement for a chief circuit judge and a magistrate judge to participate in the selection. The Conference adopted the Committee's recommendation.

HUMAN RESOURCES MANAGEMENT INFORMATION SYSTEM

Noting that the current and anticipated constrained fiscal environment calls for a rapid deployment of technological solutions that will yield work and cost savings for the courts, the Committee recommended that the Judicial Conference support full funding for the planned Human Resources Management Information System technology-related efforts. The Conference approved the Committee's recommendation.

STREAMLINED TIMELY ACCESS TO STATISTICS

The Committee recommended that the Judicial Conference affirm its support for the new Streamlined Timely Access to Statistics (NewSTATS) system for gathering and reporting statistics. The NewSTATS system is a multi-year project consisting of two major components: 1) development of a single, integrated enterprise database to replace the Administrative Office's 13 existing stand-alone databases; and 2) development of a controlled customer-access web capability that would allow users in the courts, the Administrative Office, and the Federal Judicial Center access to reports in the database and the ability to conduct queries of the data from their desktops. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that in response to a request from the Executive Committee, it provided a number of cost-containment measures for the Executive Committee's consideration in developing short- and long-term strategies for dealing with budget shortfalls anticipated in FY 2005 and the foreseeable future. In furtherance of its cost-containment efforts, the Committee on Judicial Resources asked the Administrative Office to prepare a project plan for a study of employee

compensation policies, and to report back to the Committee at its December 2004 meeting. The Committee also asked the Administrative Office to work with its appropriate advisory groups to develop and implement a process redesign approach to work measurement that will enhance the effectiveness and quality of court unit functions, while defining measurable procedures to be included in the staffing formulae. These initiatives are included in the comprehensive cost-containment strategy that the Conference adopted (*see supra*, “Budget Matters,” pp. 5-7).

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

MAGISTRATE JUDGE POSITION VACANCIES

Before a vacancy in a magistrate judge position can be filled, the Director of the Administrative Office as well as the judicial council of the relevant circuit must recommend that the position be filled (JCUS-OCT 70, p. 72). In making such a determination, the Director seeks input from the circuit representative on the Magistrate Judges Committee. In the current budget climate, the Committee was of the view that further scrutiny is required. The Committee recommended, and the Judicial Conference resolved, that all magistrate judge position vacancies be subject to review by the full Magistrate Judges Committee unless the Committee chair decides, based on a recent survey of the relevant district, that the vacancy may be filled without full Committee involvement. This cost-containment measure is part of the comprehensive cost-containment strategy approved by the Judicial Conference at this session (*see supra*, “Budget Matters,” pp. 5-7).

MAGISTRATE JUDGE RECALL REGULATIONS

Salaries and benefits of recalled judges’ staffs comprise the most costly component of the magistrate judge recall program. To ensure a comprehensive review of the need for staff for recalled magistrate judges, on recommendation of the Committee, the Judicial Conference agreed to amend section 7 of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges (the ad hoc recall regulations) and the Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges (the extended service recall regulations) to read substantially as follows:

Subject to the approval of the judicial council of the circuit, a recalled magistrate judge may be provided with secretarial, law clerk, and courtroom deputy clerk services on a part-time or full-time basis, up to the same extent that those services are provided to a full-time magistrate judge in active service in the district of recall. The judicial council shall certify, initially and annually, that the recalled judge will perform or is performing “substantial service” and that the staff approved by the council is appropriate for the recalled judge’s workload. The judicial council also should consider whether existing staff of the court can provide support services.

The Conference-approved cost-containment strategy included this item (*see supra*, “Budget Matters,” pp. 5-7).

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System 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 the number, salaries, locations, 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.

THIRD CIRCUIT

District of Delaware

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

FOURTH CIRCUIT

Northern District of West Virginia

1. Increased the salary of the part-time magistrate judge position at Martinsburg from Level 3 (\$48,856 per annum) to Level 1 (\$67,178 per annum); and
2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Eastern District of North Carolina

Redesignated as Greenville the full-time magistrate judge position currently designated as Wilmington, and redesignated as Wilmington the part-time magistrate judge position currently designated as Greenville.

FIFTH CIRCUIT

Southern District of Mississippi

1. Authorized an additional full-time magistrate judge position at Hattiesburg or Gulfport;
2. Redesignated as Gulfport the full-time magistrate judge position currently designated as Biloxi or Gulfport;
3. Redesignated as Jackson or Gulfport the full-time magistrate judge position currently designated as Jackson or Biloxi or Gulfport;
4. Redesignated as Gulfport or Hattiesburg the full-time magistrate judge position currently designated as Gulfport or Biloxi or Hattiesburg; and
5. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

SIXTH CIRCUIT

Eastern District of Kentucky

1. Authorized the full-time magistrate judge position at Covington, Kentucky, to serve in the adjoining Southern District of Ohio and the two full-time magistrate judge positions at Cincinnati, Ohio, to serve in the adjoining Eastern District of Kentucky in accordance with 28 U.S.C. § 631(a); and
2. Made no other change in the number, locations, or arrangements of the magistrate judge positions in the district.

Southern District of Ohio

Authorized the full-time magistrate judge position at Covington, Kentucky, to serve in the adjoining Southern District of Ohio and the two full-time magistrate judge positions at Cincinnati, Ohio, to serve

in the adjoining Eastern District of Kentucky in accordance with 28 U.S.C. § 631(a).

Western District of Kentucky

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

Northern District of Ohio

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

SEVENTH CIRCUIT

Central District of Illinois

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

Northern District of Indiana

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

Eastern District of Wisconsin

Increased the salary of the part-time magistrate judge position at Green Bay from Level 6 (\$12,213 per annum) to Level 4 (\$36,642 per annum).

EIGHTH CIRCUIT

Eastern District of Arkansas

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

Southern District of Iowa

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

District of South Dakota

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

NINTH CIRCUIT

Central District of California

1. Authorized an additional full-time magistrate judge position at Los Angeles;
2. Authorized an additional full-time magistrate judge position at Riverside;
3. Discontinued the part-time magistrate judge position at Barstow upon the expiration of the incumbent's term on January 11, 2006 or upon the appointment of the new full-time magistrate judge at Riverside, whichever is later; and
4. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

TENTH CIRCUIT

District of Colorado

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

District of New Mexico

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

District of Utah

1. Authorized an additional full-time magistrate judge position at Salt Lake City;

2. Discontinued the part-time magistrate judge positions at Monticello and Vernal upon the appointment of the new full-time magistrate judge at Salt Lake City; and
3. Made no other change in the number, locations, salaries, or arrangements of the magistrate judge positions in the district.

ACCELERATED FUNDING

On recommendation of the Committee, the Judicial Conference agreed to designate the new full-time magistrate judge position at Las Cruces, New Mexico, for accelerated funding in fiscal year 2005.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it voted unanimously to recommend to the Judicial Branch Committee that it recommend that the Judicial Conference support pending legislation to extend the “FEGLI fix” to magistrate judges and bankruptcy judges. The Magistrate Judges Committee also considered updated diversity statistics from *The Judiciary Fair Employment Practices Annual Report* published for the period October 1, 2002 to September 30, 2003, and noted that magistrate judges were a more diverse population in 2003 than in 2002.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders approved a study to examine the operation of the existing procedures under the Judicial Conduct and Disability Act (28 U.S.C. § 351 *et seq.*), proposed by the Judicial Conduct and Disability Act Study Committee appointed by Chief Justice Rehnquist and chaired by Justice Stephen Breyer. The Committee communicated its approval to Justice Breyer by letter dated August 16, 2004. Pursuant to Rule 16(h) of the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability (which has been adopted by most of the circuits), the Committee’s approval permits the circuit councils to authorize access to confidential materials for purposes of this research project.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Appellate Rules 4 (Appeal as of Right – When Taken), 26 (Computing and Extending Time), 27 (Motions), 28 (Briefs), 32 (Form of Briefs, Appendices, and Other Papers), 34 (Oral Argument), 35 (En Banc Determination), and 45 (Clerk’s Duties) and proposed new Rule 28.1 (Cross-Appeals), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1007 (Lists, Schedules, and Statements; Time Limits), 3004 (Filing of Claims by Debtor or Trustee), 3005 (Filing of Claim, Acceptance, or Rejection by Guarantor, Surety, Indorser, or Other Codebtor), 4008 (Discharge and Reaffirmation Hearing), 7004 (Process; Service of Summons, Complaint), and 9006 (Time), together with 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 a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law. In addition, the Committee recommended, and the Conference approved, amendments to Official Forms 16D (Caption for Use in Adversary Proceeding Other Than for a Complaint Filed by a Debtor) and 17 (Notice of Appeal Under 28 U.S.C. § 158(a) or (b) From a Judgment, Order, or Decree of a Bankruptcy Judge) to take effect on December 1, 2004, and to Schedule G of Official Form 6 (Executory Contracts and Unexpired Leases) to take effect on December 1, 2005.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 6 (Time), 27 (Depositions Before Action or Pending Appeal), and 45 (Subpoena), and Supplemental Rules for Certain Admiralty and Maritime Claims B (In Personam Actions: Attachment and Garnishment) and C (In Rem Actions: Special Provisions), together with 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 a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 12.2 (Notice of an Insanity Defense; Mental Examination), 29 (Motion for a Judgment of Acquittal), 32 (Sentencing and Judgment),⁵ 32.1 (Revoking or Modifying Probation or Supervised Release), 33 (New Trial), 34 (Arresting Judgment), and 45 (Computing and Extending Time), and proposed new Rule 59 (Matters Before a Magistrate Judge), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

⁵Subsequent to this session, Congress passed the Justice for All Act of 2004 (Public Law No. 108-405) which provides for broader rights of crime victims to be heard at public proceedings than the proposed amendment to Criminal Rule 32. To avoid conflict and confusion, at the request of the Rules Committee, the Executive Committee, on behalf of the Conference, by mail ballot concluded on October 26, 2004, withdrew the proposed amendment to Rule 32 prior to its transmittal to the Supreme Court.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure approved for publication proposed amendments to Federal Rules of Bankruptcy Procedure 1009, 2002, 4002, 5005, 7004, 9001, 9036, and Schedule I of Official Form 6; Federal Rules of Civil Procedure 16, 26, 33, 34, 37, 45, 50, and Form 35; Supplemental Rules for Certain Admiralty and Maritime Claims A, C, and E, and new Rule G; Federal Rules of Criminal Procedure 5, 32.1, 40, 41, and 58; and Federal Rules of Evidence 404, 408, 606, and 609. The Committee also approved publishing for public comment, at a later date, proposed style revisions to Civil Rules 38-63 (except Rule 45, which was approved earlier) and noncontroversial style/substantive amendments to Civil Rules 4, 9, 11, 14, 16, 26, 30, 31, 36, and 40 as part of a larger package of revisions to other rules currently under review.

COMMITTEE ON SECURITY AND FACILITIES

COURTHOUSE CONSTRUCTION FUNDING

Because of the critical fiscal situation facing the judiciary, the Committee on Security and Facilities recommended that the Judicial Conference seek full funding for FY 2005 only for the four courthouse projects designated by the Conference in September 2003 as judicial space emergency projects, rather than for the entire FY 2005 list of courthouse projects approved at that time (JCUS-SEP 03, pp. 37-38). In order to provide this information to Congress at the earliest possible time, the Judicial Conference approved the Committee's recommendation by mail ballot concluded on March 25, 2004. The four projects for which funding will be sought are Los Angeles, California; El Paso, Texas; San Diego, California; and Las Cruces, New Mexico.

TWO-YEAR MORATORIUM ON COURTHOUSE CONSTRUCTION PROJECTS

To control rental costs, which now constitute approximately 22 percent of the judiciary's total budget, the Committee on Security and Facilities recommended that the Judicial Conference take the following actions:

- a. Impose a moratorium for 24 months on the planning, authorizing, and budgeting for courthouse construction projects and new prospectus-level repair and alteration projects (except for those projects dedicated solely to building system upgrades) to enable a reevaluation of the long-range facilities planning process. The reevaluation shall include an assessment of the underlying assumptions used to project space needs and how courts can satisfy those needs with minimal costs in short- and long-term constrained budgetary environments;
- b. Apply the moratorium to those courthouse projects on the Five-Year Courthouse Project Plan for FYs 2005-2009 as follows:
 - (1) the 35 courthouse projects not yet in design; and
 - (2) the seven projects with congressional appropriations and authorizations that are ready to start design;
- c. Authorize the Administrative Office Director, in consultation with the appropriate circuit judicial council and the circuit representative to the Committee on Security and Facilities, to determine if an emergency warrants an exemption from the moratorium; and
- d. Request that the General Services Administration cease the preparation of all new feasibility studies, except those involving only building systems, until the re-evaluation of the long-range facilities planning process is completed.

The Judicial Conference adopted the Committee's recommendations, which are also included in the cost-containment strategy for the judiciary approved by the Conference at this session (*see supra* "Budget Matters," pp. 5-7).

LIMITS ON SPACE GROWTH

Recognizing that there were no real limits on the amount of space circuit judicial councils could approve, the Committee considered whether national limits should be established to control rental costs of new courthouses and major repair and alteration projects and whether an annual square footage

allocation for non-prospectus projects⁶ should be provided to each circuit judicial council. Because such limits require examination of each circuit's space inventory, as well as growth factors, budget estimates, and more, the Committee recommended that the Judicial Conference endorse the following:

- a. A request to all chief circuit judges to cancel pending space requests wherever possible;
- b. As an interim measure, a budget check process to be performed together by the Administrative Office and circuit judicial council staff and instituted immediately to ensure that all pending space requests before the circuit councils reflect consideration of alternative space, future rent implications, and affordability by the judiciary; and
- c. If funding is not available for the request, but a circuit judicial council nevertheless determines that the space is "necessary" pursuant to its statutory authority, the council must then seek an exception from the Judicial Conference through this Committee in coordination with the Budget Committee.

The Conference adopted the Committee's recommendation, which is also contained in the cost-containment strategy approved by the Conference at this session (*see supra*, "Budget Matters," pp. 5-7).

TENANT ALTERATIONS CRITERIA

Noting the lack of a nationwide model for assessing the cost effectiveness and value of non-prospectus tenant alteration projects, the Security and Facilities Committee had previously requested the Administrative Office to conduct a tenant alteration criteria study. Based on this study, the Committee recommended, and the Judicial Conference endorsed, criteria for scoring and prioritizing non-prospectus tenant alterations projects and a cost model for determining project estimates. These criteria will be particularly helpful during times of budgetary shortfalls, but are not intended to substitute for decision-making at the local level by courts and/or circuit judicial councils. This item is part of the Conference-approved cost-containment strategy (*see supra*, "Budget Matters," pp. 5-7).

⁶ A non-prospectus project is one that would cost less than \$2.36 million dollars in FY 2005 and does not require line-item approval by Congress.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it voted to accelerate its comprehensive review of the *U.S. Courts Design Guide* for consideration by the Judicial Conference. This review will emphasize (1) controlling costs; (2) examining existing space standards; (3) meeting functional space needs of the courts; and (4) sharing space. The Committee discussed the March 2004 Department of Justice Inspector General Report on the U.S. Marshals Service Judicial Security Process, which made six recommendations to improve the protection afforded the federal judiciary. The Committee was also briefed on the status of two U.S. Marshals Service studies required by the FY 2003 Omnibus Appropriations Act, Public Law No. 108-7, and the multiple pending lawsuits regarding the judiciary's court security officer medical standards.

MEMORIAL RESOLUTIONS

The Judicial Conference approved the following resolutions noting the deaths of the Honorable Charles H. Haden II of the United States District Court for the Southern District of West Virginia; the Honorable Judith N. Keep of the United States District Court for the Southern District of California; and the Honorable Morey L. Sear of the United States District Court for the Eastern District of Louisiana:

The Judicial Conference of the United States notes with sadness the death of the Honorable Charles H. Haden II of the United States District Court for the Southern District of West Virginia, on March 20, 2004, at his home in Charleston, West Virginia.

Judge Haden served with distinction on the federal bench for twenty-nine years. He was Chief Judge of the District Court from 1982 to 2002. Judge Haden was appointed to the Committee on the Administration of the Probation System by Chief Justice Warren E. Burger in 1979, and served until 1986. In June 1997, he was elected as the Fourth Circuit District Judge Representative to the Judicial Conference of the United States, and in October 1999, Chief Justice William H. Rehnquist named him to the Executive Committee of the

Judicial Conference and later appointed him Chairman of that committee where he served from 2000 to 2002. His service as Chairman was outstanding, and the committee flourished under his leadership. Judge Haden was also among a select number of West Virginians who had served in all three branches of West Virginia government, first, in the legislative branch as a Member of the House of Delegates, then in the executive branch as State Tax Commissioner, and finally in the judicial branch as a Justice and then Chief Justice of the Supreme Court of Appeals of West Virginia. Judge Haden always said that he would like to be remembered as a public servant. He was a kind, thoughtful, and wise man, who will be missed by all who knew him.

The members of the Judicial Conference convey their deepest sympathies to Judge Haden's widow, Priscilla, and to his family.

* * *

The Judicial Conference of the United States acknowledges with sorrow the death of the Honorable Judith N. Keep of the United States District Court for the Southern District of California, on September 14, 2004, in San Diego, California.

Judge Keep served with distinction on the federal bench for 24 years. She was Chief Judge of the District Court from 1991 to 1998. She was the District Court's first female judge and its first female Chief Judge. Judge Keep was appointed to the Committee on Defender Services by Chief Justice William H. Rehnquist in 1998, and served until 2004. In October 1999, she was elected as the Ninth Circuit District Judge Representative to the Judicial Conference of the United States. She served as a valued member of the Judicial Conference through September 2002. Judge Keep also made a significant contribution to court governance as an eight-year member of the Judicial Council of the Ninth Circuit, where she served as a representative of the Chief District Judges of the Circuit and the District Judges Association, and as a member of the Judicial Conference. Her service to the Ninth Circuit also included chairing the Task Force on Judicial Disability, which

September 21, 2004

helped pave the way for new initiatives that promoted health and well being among judges.

Judge Keep was known for her sharp intellect, infectious laugh and ability to bring people together for the common good. She will be deeply missed and fondly remembered by her many colleagues and friends throughout the judiciary.

The members of the Judicial Conference convey their deepest sympathies to Judge Keep's husband, Russell L. Block, and to her family.

* * *

The Judicial Conference of the United States notes with sadness the death of the Honorable Morey L. Sear of the United States District Court for the Eastern District of Louisiana, on September 6, 2004, in New Orleans, Louisiana.

Judge Sear was appointed in 1971 as one of the first magistrate judges in the Eastern District of Louisiana. He was appointed a United States District Judge by President Gerald R. Ford on May 7, 1976. He served as Chief Judge of the Eastern District of Louisiana from 1992 to 1999, and assumed senior status in 2000.

Judge Sear made significant contributions to court governance not only in his own district but also at the national level. He served as chairman of the Judicial Conference's Advisory Committee on Bankruptcy Rules from 1984 to 1986, and as chairman of the Committee on the Administration of the Bankruptcy System from 1986 to 1990. In 1992, Judge Sear was elected as the Fifth Circuit's District Judge Representative to the Judicial Conference. While serving on the Judicial Conference, Chief Justice William H. Rehnquist appointed Judge Sear to the Executive Committee, where he served from 1993 until 1995. In 1993, Judge Sear was instrumental in instituting the first standing meeting of the District Judge Representatives to the Judicial Conference, where issues of common concern to the district courts and their judges could be

vetted. These have become vital meetings that continue to be held today following each Judicial Conference session.

Judge Sear was a courageous, hard-working jurist, and a statesman of the first order. We will miss his dry sense of humor and his collegial manner. The members of the Judicial Conference convey their deepest sympathies to Judge Sear's wife, Lee, and to his family.

FUNDING

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

Chief Justice of the United States
Presiding

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