

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

March 13, 2012

The Judicial Conference of the United States convened in Washington, D.C., on March 13, 2012, 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 Sandra L. Lynch
Chief Judge Mark L. Wolf,
District of Massachusetts

Second Circuit:

Chief Judge Dennis Jacobs
Judge Carol Bagley Amon,
Eastern District of New York

Third Circuit:

Chief Judge Theodore A. McKee
Chief Judge Gary L. Lancaster,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Chief Judge Deborah K. Chasanow,
District of Maryland

Fifth Circuit:

Chief Judge Edith Hollan Jones
Chief Judge Sarah S. Vance,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Alice M. Batchelder
Judge Thomas A. Varlan,
Eastern District of Tennessee

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Chief Judge Richard L. Young,
Southern District of Indiana

Eighth Circuit:

Chief Judge William Jay Riley
Judge Rodney W. Sippel,
Eastern District of Missouri

Ninth Circuit:

Chief Judge Alex Kozinski
Judge Robert S. Lasnik,
Western District of Washington

Tenth Circuit:

Chief Judge Mary Beck Briscoe
Judge Robin J. Cauthron,
Western District of Oklahoma

Eleventh Circuit:

Chief Judge Joel F. Dubina
Judge W. Louis Sands,
Middle District of Georgia

District of Columbia Circuit:

Chief Judge David Bryan Sentelle
Chief Judge Royce C. Lamberth,
District of Columbia

Federal Circuit:

Chief Judge Randall R. Rader

Court of International Trade:

Chief Judge Donald C. Pogue

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Robert A. Katzmann, Diarmuid F. O’Scannlain, John M. Rogers, Anthony J. Scirica, Jeffrey S. Sutton, and Timothy M. Tymkovich; District Judges Nancy F. Atlas, Robert Holmes Bell, Rosemary M. Collyer, Joy Flowers Conti, Claire V. Eagan, Sidney A. Fitzwater, David A. Katz, George H. King, Mark R. Kravitz, Joseph H. McKinley, Jr., J. Frederick Motz, Michael A. Ponsor, Julie A. Robinson, and Richard W. Story; and Bankruptcy Judge Eugene R. Wedoff. Attending as the magistrate judge and bankruptcy judge observers, respectively, were Magistrate Judge Thomas C. Mummert III and Bankruptcy Judge Michael E. Romero. Betsy Paret of the District of Columbia Circuit represented the circuit executives.

Judge Thomas F. Hogan, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; Robert K. Loesche, General Counsel; Laura C. Minor, Assistant Director, and Jeffrey A. Hennemuth, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Jeremy D. Fogel, Director, and John S. Cooke, Deputy Director, Federal Judicial Center, and District Judge Patti B. Saris, Chair, and Judith W. Sheon, Staff Director, United States Sentencing Commission, were in attendance, as was Jeffrey P. Minear, Counselor to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2011-2012 Supreme Court Fellows also observed the Conference proceedings.

Attorney General Eric H. Holder, Jr., addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick J. Leahy, Jeff Sessions, and Thad Cochran spoke on matters pending in Congress of interest to the Conference.

REPORTS

Judge Hogan reported to the Conference on the judicial business of the courts and on matters relating to the Administrative Office (AO). Judge Fogel spoke to the Conference about Federal Judicial Center (FJC) programs, and Judge Saris reported on United States Sentencing Commission activities. Judge Julia Smith Gibbons, Chair of the Committee on the Budget, presented a report on the budget outlook.

ELECTION

The Judicial Conference elected to membership on the Board of the Federal Judicial Center, for a term of four years, Judge Michael J. Melloy of the Court of Appeals for the Eighth Circuit and Judge Catherine C. Blake of the District Court for the District of Maryland to succeed Judge Susan H. Black of the Court of Appeals for the Eleventh Circuit and Chief Judge Loretta A. Preska of the District Court for the Southern District of New York.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by Judge John Walker, Jr., chair of the Committee on Judicial Conduct and Disability, whose term of service ended on January 26, 2012.

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

HONORABLE JOHN WALKER, JR.

Appointed as chair of the Committee on Judicial Conduct and Disability by the Chief Justice of the United States, Judge Walker has played a vital role in the administration of the federal court system. He served with distinction as leader of the Committee while, at the same time, continuing to perform his duties as a judge in the United States Court of Appeals for

the Second Circuit. Judge Walker has set a standard of skilled leadership and earned our deep respect and sincere gratitude for his innumerable contributions. We acknowledge with appreciation his commitment and dedicated service to the Judicial Conference and to the entire federal judiciary.

FISCAL YEAR 2012 FINAL FINANCIAL PLANS

On February 1, 2012, after Congress enacted full fiscal year (FY) 2012 funding for the judiciary, the Executive Committee approved final FY 2012 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts. The approved plans include funding (withheld in the interim FY 2012 financial plans) for salary progression (i.e., step increases and routine promotions) for circuit unit, court, chambers, and defender organization employees, and lift the previously imposed freeze on cash awards and bonuses for those employees. In approving the final plan for the Salaries and Expenses account, the Executive Committee also endorsed a strategy for distributing court allotments among the court programs.

FIVE-YEAR COMMITTEE SELF-EVALUATION AND JURISDICTIONAL REVIEW

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 completed and submitted to the Executive Committee for consideration at the latter's February 2012 meeting a self-evaluation questionnaire that expressed the committee's views about its continuation, mission, functions, and structure. The Executive Committee made no change to the committee structure itself, but agreed to update outmoded language in the jurisdictional statement of the Committee on Information Technology and to clarify the statement of the Space and Facilities Committee regarding that committee's role in overseeing program-related budget and cost-containment initiatives. Each change was made at the respective committee's request. Also, at the request of the Committee on Audits and Administrative Office Accountability, the Executive Committee agreed to recommend that the Chief Justice expand the membership of that committee by one member and require that one position on the committee be

reserved for a bankruptcy judge.¹ At its March 2012 meeting, the Executive Committee also made minor technical revisions to the jurisdictional statements of the Committees on Judicial Security, the Administration of the Magistrate Judges System, and Space and Facilities.

COST CONTAINMENT

After hearing a report from the Budget Committee on the status of the judiciary's ongoing cost-containment efforts, Executive Committee members expressed support for cost containment in general and for the steps already taken or in progress by Conference committees to restrain spending and improve efficiency in various programs. They also discussed ways to generate additional support in the judiciary for such efforts, and to facilitate appropriate action on further cost-containment measures, making requests to several committees to explore specific initiatives. The Committee reiterated its support for the efforts of the Court Administration and Case Management Committee, aided by the Judicial Resources and Budget Committees and others, to develop strategies for sharing administrative services among court units and programs. However, it asked that efforts to promote sharing give priority to intra-district and intra-circuit sharing in order to ensure that service sharing be undertaken with due regard for the judiciary's established administrative and governance structures. The Committee also continued its scrutiny of the judiciary's annual financial plans to determine whether certain funding items traditionally viewed as mandatory could be treated instead as discretionary and therefore subject to across-the-board reductions to meet tight budgets.

MISCELLANEOUS ACTIONS

The Executive Committee —

- On recommendation of the Committee on Space and Facilities, approved on behalf of the Judicial Conference a new *Five-Year Courthouse Project Plan for Fiscal Years 2013-2017* from which the proposed courthouse annex project in Greenbelt, Maryland, has been removed;

¹The Chief Justice subsequently approved the request.

- On recommendation of the Committee on Space and Facilities, approved on behalf of the Judicial Conference a lease-construct facility in Eureka, California, contingent on written assurance from the Ninth Circuit Judicial Council and the Northern District of California that a full-time resident magistrate judge will be housed in the new facility for the term of the lease and any lease extensions, and with the understanding that the facility's total rent may not exceed \$411,598, and no contingency or supplemental funding will be provided;
- Endorsed the Chief Justice's selection of Judge Thomas F. Hogan as the new Director of the Administrative Office;
- Determined to ask the Federal Judicial Center to conduct a survey of judges to ascertain which resources they consider most (and least) essential to performing their official duties;
- Amended the FY 2013 budget request to Congress to include funding for salary progression; and
- On recommendation of the Committee on Court Administration and Case Management and at the request of the court, agreed on behalf of the Conference to seek legislation that would make the following changes in the divisions of the Northern District of Mississippi: abolish the Delta Division; change the name of the Eastern Division to the Aberdeen Division and the name of the Western Division to the Oxford Division; realign counties among the divisions; and make Clarksdale and Cleveland, Mississippi, places of holding court in the Greenville Division.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it received briefings from two of the judiciary's independent audit firms on regularly scheduled audits, including audits of the judiciary's retirement trust funds, the Court Registry Investment System, the Central Violations Bureau, the Public Access to Court Electronic Records (PACER) system, and nationwide judiciary contracts. Each firm reported that the

judiciary had received positive “unqualified” opinions on all financial statements reviewed and that no instances of failure to comply with applicable laws, regulations, and contracts had been found. The Committee was also briefed on an audit of the judiciary’s information technology internal controls and on efforts recently completed or underway to strengthen these controls.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it reaffirmed its support for the initiative to encourage court units to voluntarily share administrative services. In addition, it approved revised Guidelines of the Director Relating to the Administration of the Bankruptcy Administrator Program, as well as publication of a revised *Case Management Manual for United States Bankruptcy Judges*. The Committee provided its views on two Next Generation of CM/ECF policy issues to the Committee on Court Administration and Case Management and continues to explore ways to more effectively use existing bankruptcy judicial resources to address severe judicial workload pressures occurring in several districts.

COMMITTEE ON THE BUDGET

BUDGET CAPS

In September 2007, the Judicial Conference adopted a 7.5 percent cap on annual growth in the Defender Services account (excluding panel attorney rate increases above annual inflation) and a 6.6 percent cap on annual growth in the Court Security account, for fiscal years 2010 through 2017 (JCUS-SEP 07, p. 10). At this session, recognizing the continuing environment of fiscal constraint, the Committee on the Budget, in consultation with the relevant committees, recommended that for fiscal years 2014 through 2018, the budget cap for the Defender Services account should be lowered to 4 percent, maintaining the exception for increases in panel attorney rates above inflation, and the cap for the Court Security account should be lowered to 5.2 percent. The Conference adopted the Committee’s recommendations.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it remains committed to the judiciary’s two-pronged approach of congressional outreach and cost containment in these difficult budget times. The Committee noted the better-than-expected funding levels received from Congress for fiscal year 2012, but stressed the need to convey to Congress the potential local impacts of resource insufficiencies that could result from significant deficit reduction legislation, such as the Budget Control Act. The Committee also developed a report to the Executive Committee on the status of the judiciary’s cost-containment efforts. The Committee expressed its appreciation for the seriousness with which the program committees are engaging in cost containment, but it also stated that given the current and expected worsening funding climate facing the judiciary, it is essential that the judiciary complete and implement, as soon as possible, as many of these initiatives as feasible.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2011, the Committee received 25 new written inquiries and issued 24 written advisory responses. During this period, the average response time for requests was 15 days. In addition, the Committee chair responded to 138 informal inquiries, individual Committee members responded to 144 informal inquiries, and Committee counsel responded to 450 informal inquiries. The Committee discussed ongoing efforts to enhance ethics education and information for judges and judiciary employees and decided which topics to address in new advisory opinions.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEES

In September 2011, the Judicial Conference adjusted for inflation many of the miscellaneous fees it prescribes for the courts. At this session, on recommendation of the Committee, the Judicial Conference adjusted two

additional miscellaneous fees for inflation (JCUS-SEP 11, pp. 14-16). It raised the exemplification fee on the District Court Miscellaneous Fee Schedule from \$18 to \$21 and it raised the record search fee on the Court of Federal Claims Miscellaneous Fee Schedule from \$26 to \$30.

RECORDS DISPOSITION SCHEDULES

Judicial Panel on Multidistrict Litigation. At the request of the Clerk of the Judicial Panel on Multidistrict Litigation (Panel), the Administrative Office conducted an appraisal of the Panel's records and information assets. Based on this appraisal, the Committee on Court Administration and Case Management recommended, and the Judicial Conference approved, a new records disposition schedule for the Panel. The new schedule lists previously unscheduled records, reduces retention periods for some records, and eliminates records which are no longer in use. The schedule will be transmitted to the National Archives and Records Administration (NARA) for acceptance.

Court of Federal Claims. On recommendation of the Committee, the Judicial Conference approved a revised records disposition schedule for the United States Court of Federal Claims. The new schedule reflects the court's expanded jurisdiction and current work processes and reduces retention times for certain files. The schedule will be transmitted to NARA for acceptance of the changes.

Criminal Case Files. On recommendation of the Committee, the Conference approved a revision of the district court records disposition schedule for criminal case files to authorize the disposal of electronic sound recordings of arraignments, pleas, and proceedings in connection with the imposition of sentence, that are filed with the clerk in lieu of a transcript, when those recordings are 20 years old. Previously, disposal was authorized 20 years after transfer to a Federal Records Center (FRC). However, some courts retain the recordings for many years before transferring them to an FRC. Paying storage costs for a full 20 years over and above the time held at the courts was considered unnecessary. The schedule will be transmitted to NARA for acceptance of the change.

Courts of Appeals. The Committee recommended revisions to the records disposition schedule for the courts of appeals to provide, among other things, that appellate records will be retained at FRCs until they have been closed for a minimum of 15 years and then will be transferred to the National

Archives in five-year blocks, when the oldest case to be transferred is 20 years old. The Conference approved the revisions and will transmit the schedule to NARA for acceptance of the changes.

DIVISIONAL BOUNDARIES

At the request of the Eastern District of Missouri, and with the approval of the Eighth Circuit Judicial Council, the Committee recommended seeking legislation to transfer Ste. Genevieve and Iron Counties from that district's Eastern Division to its Southeastern Division. The Committee noted that the geography, population, and caseload of the counties served by the new courthouse for the Southeastern Division in Cape Girardeau, Missouri, support the transfer of these counties. The Judicial Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it devoted significant time at its December 2011 meeting to examining whether and how various court units could share administrative services to achieve cost savings, while preserving effective court operations. In addition, the Committee discussed other cost-containment proposals, including suggestions to reduce court library costs and a study of pro se litigant access programs that increase court efficiency. The Committee also considered whether to take additional steps to protect cooperation information in criminal case documents, and whether to recommend issuing guidance to courts to curb juror use of social media.

COMMITTEE ON CRIMINAL LAW

LEGISLATIVE AMENDMENTS

As part of the judiciary's cost-containment efforts, the Committee on Criminal Law reviewed several statutory requirements that cause the courts to spend money, but are obsolete, redundant, ineffective, or otherwise an impediment to savings. Noting that the statutes in question could be amended without any loss in the quality of services provided, the Committee made the following recommendations.

Mandatory Electronic Monitoring Condition. Section 3142(c) of title 18, United States Code, requires a court to impose electronic monitoring as a condition of pretrial release if a defendant is charged with certain sex offenses involving a minor victim. This condition is required even if the court imposes a more restrictive condition, such as admission to a secure residential treatment program. Noting that in such cases electronic monitoring is redundant and an unnecessary expense, the Committee recommended that the Conference seek an amendment to 18 U.S.C. § 3142(c) to allow a court to waive the electronic monitoring condition if a more restrictive condition of pretrial release is imposed. The Conference adopted the Committee's recommendation.

Pretrial Services Bail Reports. Section 3154(1) of title 18, United States Code, requires a bail report on each person charged with a felony. However, a bail report would have little or no bearing in cases where the defendant has no chance of being released pending trial, e.g., he or she is serving a sentence on another charge. On recommendation of the Committee, the Judicial Conference agreed to seek legislation that would amend 18 U.S.C. § 3154(1) to allow a court to waive the preparation of the bail report in all cases where the report would have little or no bearing on the court's release decision.

Pretrial Services Annual Report. On recommendation of the Committee, the Judicial Conference agreed to seek an amendment to 18 U.S.C. § 3155 to eliminate the requirement that the chief pretrial services officer (or chief probation officer of a consolidated office) submit an annual report to the Director of the Administrative Office concerning the administration and operation of pretrial services. The Committee noted that such reports are obsolete in light of advances in information technology systems that make data from the Probation/Pretrial Services Automated Case Tracking System (PACTS) database available to the Administrative Office on a nightly basis.

Sharing Services Among Districts. The Committee recommended that the Conference seek an amendment to 18 U.S.C. § 3602 to allow a probation officer appointed in one district to perform services for another district with the consent of the appointing court. This would facilitate the sharing across district lines of officer positions requiring special knowledge, such as sex-offender specialists, cyber-crime specialists, and search team members. The Conference adopted the Committee's recommendation.

Presentence Notice to Victims. The Mandatory Victims Restitution Act of 1996, Public Law No. 104-132, requires probation officers to provide the victims of an offense with notice of the defendant's conviction, the sentence date, and the victim's opportunity to submit an impact statement, while the Crime Victims Rights Act, Public Law No. 108-405, places similar requirements on officers and employees of the Department of Justice and certain other executive branch agencies. To avoid duplication of effort and provide victims with a single source of contact, the Committee recommended that the Judicial Conference seek an amendment to 18 U.S.C. § 3664(d)(2) to waive the requirement that a probation officer provide the above-described notice if a representative of an executive branch agency has already provided such notice. The Conference adopted the Committee's recommendation.

SPLIT SENTENCE IN PETTY OFFENSE CASES

The Committee recommended that the Judicial Conference seek an amendment to 18 U.S.C. § 3561(a)(3) to clarify a judge's authority to impose a combined sentence of probation and imprisonment, also known as a split sentence, for the same or multiple charges in petty offense cases. Section 3561(a)(3) provides that probation may be imposed "unless ... the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense *that is not a petty offense*" (emphasis added). The italicized language, added to the statute in 1994, has been interpreted by at least one circuit to authorize split sentences in petty offense cases, but questions have been raised about this authority, particularly by the Bureau of Prisons. The Committee noted that split sentences provide judges with flexibility to impose probationary time, which can reduce incarceration costs, promote rehabilitation, and allow for better proportionality between crimes and their punishments, in cases where the court feels that some custodial time is also necessary. The Conference adopted the Committee's recommendation.

USE-OF-FORCE POLICY

The Judicial Conference has adopted a number of policies related to probation and pretrial services officers' safety, including guidance on the use of force by officers in threatening situations, *Guide to Judiciary Policy*, Vol. 8, Pt. H, Ch. 2, and guidance on officers' use of oleoresin capsicum (a pepper spray) as a method of self-defense (JCUS-MAR 96, p. 18; JCUS-SEP 99, pp. 60-61). At this session, the Committee recommended that these two policies be amended to apply to officer assistants, who face many of the

same safety risks as officers when performing official duties. The Committee also recommended that use of restraints be added to the list of measures officers and officer assistants may employ in response to a threatening situation, noting that use of restraints could facilitate an officer's safe retreat consistent with the principle that an officer should always retreat rather than use force when he or she can do so safely². In conjunction with these changes, the Committee recommended that the Director of the Administrative Office be authorized to develop a national curriculum of safety and defensive tactics training for probation and pretrial services officer assistants, which will incorporate training on the proper use of oleoresin capsicum products and restraints in the performance of official duties. The Conference approved the Committee's recommendations.

PRETRIAL DIVERSION

The Committee recommended that the Judicial Conference amend Monograph 111, *The Supervision of Federal Defendants*, and Monograph 112, *Pretrial Services Investigation and Report, Guide to Judiciary Policy*, Vol. 8, Pts. C and A, respectively, to include guidance to officers on pretrial diversion, covering topics ranging from background investigations to supervision as they apply to divertees. Much of this information was previously available to officers, but had not been incorporated in the monographs. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it discussed several recent developments related to federal sentencing policy, including the October 12, 2011 testimony of Judge Patti Saris, Chair of the U.S. Sentencing Commission, before the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security, and the Sentencing Commission's report to Congress: "Mandatory Minimums in the Federal Criminal Justice System." Several members of the Committee testified before the Sentencing Commission at its public hearings on federal child pornography crimes and

²The Search and Seizure Guidelines adopted by the Judicial Conference in September 2010 already authorize the use of restraints by a probation officer during the execution of a search (JCUS-SEP 10, p. 17; *Guide to Judiciary Policy*, Vol. 8, Pt. E, Ch. 4).

federal sentencing options after *United States v. Booker*. Relying on its authority to approve technical, conforming, and noncontroversial amendments to the monographs (JCUS-MAR 06, p. 15), the Committee amended the *Supervision of Federal Offenders*, Monograph 109 (*Guide to Judiciary Policy*, Vol. 8, Pt. E) to reflect changes to the procedures related to low-intensity supervision.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that, under delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved FY 2012 budgets and grants for federal defender organizations, utilizing a new case-weighting methodology. The Committee approved, subject to the availability of funds and necessary congressional approval, the establishment of an independent federal public defender organization (FPDO) for the Western District of Arkansas, which is currently served by an FPDO for both the Eastern and Western Districts, and it declined a request from the Ohio-Northern FPDO to convert an unstaffed branch office in Youngstown, Ohio, to a staffed branch office. The Committee continued its ongoing consideration of short- and long-range opportunities for containing Defender Services program costs, and it received an update on a joint effort with the Department of Justice to develop a protocol for more effective and efficient management of electronic discovery in federal criminal cases.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it received a briefing from the State Department regarding ongoing discussions of legislation to implement the Hague Convention on Choice of Court Agreements. The Committee also discussed proposed legislation regarding review of federal consent decrees involving state or local governments and a proposal from the American Law Institute for legislation to govern recognition and enforcement of foreign judgments in federal and state courts. Members were briefed on the progress of a joint effort involving the Committee, Federal Judicial Center, Judicial Panel on Multidistrict Litigation, Conference of Chief

Justices, and National Center for State Courts to develop resources that would assist federal and state judges in coordinating litigation filed in multiple jurisdictions.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported on its efforts to secure extension of the judiciary's authority to redact personal and sensitive information from financial disclosure reports, which resulted in enactment of a six-year extension until December 31, 2017. The completion of Phase I of the Financial Disclosure Online Reporting System (FiDO) enabled the Committee to receive, store, and review reports electronically, and to send and receive filer correspondence electronically, thereby significantly reducing judiciary expenses related to the printing, mailing, processing, and records management of financial disclosure reports. As of December 31, 2011, the Committee had received 4,580 financial disclosure reports and certifications for calendar year 2010, including 1,395 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 372 reports from bankruptcy judges; 608 reports from magistrate judges; and 2,205 reports from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

TELEPHONE SYSTEMS

On recommendation of the Committee on Information Technology, the Judicial Conference agreed to adopt a policy that no national funds will be provided to local court units to acquire new telephone systems other than the national internet protocol (IP) telephone system unless the local court unit first submits a detailed justification to its circuit judicial council as to why the national system would be an inadequate solution for that court unit and receives prior approval from the circuit judicial council. In recommending this policy, the Committee noted that implementation of the national telephone system has already led to a reduction in local telephone-related expenditures and enhanced performance, reliability and redundancy. In addition, cost savings and economies of scale that the judiciary realizes from the national telephone system increase as the number of participating courts increases.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed a number of proposed initiatives that could result in operational efficiencies, long-term cost savings, cost avoidances, and improved information technology (IT) capabilities for the judiciary if sufficient initial capital investments are made. These initiatives include establishment of a national videoconferencing service, consolidation of the electronic circuits used by the judiciary's wide-area communications network and public access network, reduction in the number of national data centers, centralization of the judiciary's e-mail servers, establishment of interface standards for the judiciary's national applications, and consolidation of the judiciary's data warehouse systems. The Committee also endorsed IT security policies to establish uniform procedures for granting exceptions to security policies and for managing the correction of known security vulnerabilities in operating systems, network devices, and application software.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 135 intercircuit assignments were undertaken by 102 Article III judges from July 1, 2011, to December 31, 2011, and 251 intercircuit assignments were processed by the Committee and approved by the Chief Justice for calendar year 2011. In addition, the Committee continued to disseminate information about intercircuit assignments and aid courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule of law and judicial reform programs throughout the world, highlighting activities in Africa, East Asia and the Pacific, Europe and Eurasia, Latin America and the Caribbean, and the Middle East. The Committee received briefings about international rule of law activities

involving a number of executive branch agencies, the Library of Congress's Open World Program, the Federal Judicial Center, the National Center for State Courts, the International Judges Association, federal public defenders, and U.S. court administrators. The Committee also reported on briefings at the Administrative Office for delegations of foreign jurists and judicial personnel.

COMMITTEE ON THE JUDICIAL BRANCH

TRAVEL REGULATIONS FOR JUSTICES AND JUDGES

On recommendation of the Committee on the Judicial Branch, the Judicial Conference agreed to amend section 260.10 of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policy*, Vol. 19, Ch. 2, to clarify the respective roles of the judge and the court certifying officer in the processing of a judge's claim for travel reimbursement. While a judge may approve his or her own claim for reimbursement of travel expenses, the court's certifying officer must confirm that the judge's travel was for official business, that the mathematical calculations on the voucher are correct, and that the judge's claim for reimbursement is necessary and proper to the travel involved, consistent with the travel regulations, and supported with receipts and approvals as necessary.

RELOCATION ALLOWANCES FOR UNITED STATES JUSTICES AND JUDGES

On recommendation of the Judicial Branch Committee, the Judicial Conference agreed to amend the Relocation Allowances for United States Justices and Judges, *Guide*, Vol. 19, Ch. 3, to bring them into conformity with comprehensive amendments to the General Services Administration relocation regulations (41 C.F.R. Ch. 302) that took effect in August 2011.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that, at its December 2011 meeting, it discussed initiatives by executive branch agencies to develop programs to expedite the security screening of "trusted" travelers at airports and the potential that federal judges could be incorporated into any such

programs. The Committee also reported that it developed, in cooperation with the Administrative Office, a “toolbox” that can be used by district courts and bankruptcy courts to enhance their external internet websites. In addition, in coordination with the First Amendment Center (a non-profit media organization that works to preserve First Amendment freedoms through information and education), it conducted a program to facilitate the exchange of ideas between judges and journalism school educators on issues affecting coverage of the courts.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that on December 1, 2011, it issued, and posted on www.uscourts.gov, a decision on a petition for review of a circuit judicial council order on a complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364 (“Act”). The Committee distributed to circuit and national court chief judges its new *Digest of Practical Advice on the Administration of Proceedings Under the Judicial Conduct and Disability Act* and approved a core of chapters for a *Digest of Authorities on the Judicial Conduct and Disability Act*, consisting of topically organized summaries of relevant sources of law and guidance. Also, the Committee reviewed and discussed orders entered in 2011 by chief judges and circuit judicial councils on complaints processed under the Act. The Committee and its staff have continued to address courts’ inquiries and to develop procedures and resources relating to the judicial misconduct and disability complaint process.

COMMITTEE ON JUDICIAL RESOURCES

PRINCIPAL SECRETARY TO A CHIEF CIRCUIT JUDGE

Under current Judicial Conference policy, the principal secretary to a chief circuit judge (or chief judge of the Court of International Trade) may be promoted to Judiciary Salary Plan (JSP) grade 12 after one year of service to a circuit judge and a showing of exceptional circuit-wide duties. The chief judge’s secretary can retain grade 12 permanently after two years in the position, even after the judge steps down as chief (JCUS-SEP 98, p. 80; JCUS-SEP 04, p. 24). Because the promotion was intended to compensate the

principal secretary for the additional workload associated with serving a chief judge, and continuing to pay the increased salary after the secretary is no longer exercising additional duties creates inequities among secretaries, the Committee recommended that the Judicial Conference limit the award of the JSP grade 12 to the period when the secretary is performing such additional duties. After discussion, the Judicial Conference approved the Committee's recommendation, agreeing to modify its policy on promotion to JSP grade 12 of the principal secretary to a chief circuit judge (or chief judge of the Court of International Trade) to state that the promotion is temporary and that the grade of that secretary will revert to JSP grade 11 at the expiration of the judge's tenure as chief judge or when the secretary leaves that position. Any JSP grade 12 secretary who has attained that grade as principal secretary to a chief circuit judge or a chief judge of the Court of International Trade prior to the date of this policy change (March 13, 2012) is not affected by the change.

HEALTH CARE PREMIUMS FOR PART-TIME EMPLOYEES

The judiciary currently makes the same contributions for Federal Employees Health Benefits (FEHB) premiums for most part-time court and federal public defender organization employees as it does for full-time employees. However the executive branch and the Administrative Office prorate payment for health benefit premiums to match the respective employees' tours of duty. In light of the current budgetary circumstances, the Committee recommended that for court or federal public defender organization employees on regularly scheduled bi-weekly tours of duty of less than or equal to 64 hours, the judiciary's contribution to the employee's FEHB premium be determined on a simple prorated basis, calculated as the proportion of the employee's standard tour of duty to that of a full-time, 80-hours-per-pay-period employee. The Conference adopted the Committee's recommendation, to be effective the first full pay period of January 2013. Employees with a tour of duty of more than 64 hours per pay period will continue to receive the same FEHB premium contributions from the judiciary as full-time employees.

ALTERNATIVE DISPUTE RESOLUTION

In March 1998, the Judicial Conference adopted two staffing factors for cases referred to an alternative dispute resolution (ADR) program: a "basic" staffing factor of 2.17 hours per ADR case, to be applied in most districts with qualified programs and a "robust" staffing factor consisting of 4.38 hours per

ADR case plus a constant value of 1,397.23 hours, to be applied in a limited number of courts meeting the criteria of a more extensive ADR program (JCUS-MAR 98, pp. 20-21). In response to concerns raised about the continued efficacy of these staffing factors, the Committee requested a work-measurement study of alternative dispute resolution programs. Based on that study, at this session, the Committee recommended, and the Conference approved, a formula to allocate staff for alternative dispute resolution programs in the district courts, starting in fiscal year 2013, based on 2.46 hours per ADR case and a constant value of 394.09 hours, for all alternative dispute resolution programs.

DEATH PENALTY LAW CLERKS

In March 1999, the Judicial Conference agreed to provide funding for a death penalty law clerk program on a national basis in the district courts at the rate of one law clerk for every 15 capital habeas corpus cases in a district, if requested by the circuit judicial council (JCUS-MAR 99, p. 24). The Committee reexamined this formula in 2000 and 2001, but declined to recommend changes. In June 2010, the Committee asked the AO to conduct a work measurement study to determine if the formula had become outdated. Based on this study, the AO developed several formula options for the Committee to consider that varied on, among other things, whether older cases should be given the same credit as newer cases and whether stayed cases should be counted. After considering the study and input from court personnel, the Committee recommended that the Judicial Conference approve a staffing formula to allocate death penalty law clerks in the district courts, starting in fiscal year 2013, based on a per pending case credit of 77.4 hours for cases that are not stayed as of the end of a statistical year, regardless of age, and a constant value of 691.2 hours provided to each district court meeting a three-case minimum. After discussion, the Conference approved the Committee's recommendation.

EXECUTIVE GRADING PROCESS

In September 2011, the Conference agreed to approve a new grading process for determining the target grades for district and bankruptcy clerks and chief probation and pretrial services officers. The new executive grading process consists of two steps: a) applying a formula that includes a constant factor for core competencies that accounts for 70 percent of the formula and

weighted factors that account for 30 percent of the formula³; and b) assigning target grades for these executive positions in JSP grades 16, 17, and 18, using the 2011 distribution of JSP target grades. At this session, the Committee reviewed and made the following recommendations with regard to two existing policies that appeared to conflict with the new grading process.

District Court Clerks. In September 1992, the Judicial Conference adopted a policy that allows for an increase in the grade of the district court clerk in those instances where the grade of that clerk would otherwise be lower than the grade of the bankruptcy clerk, the chief probation officer, or the chief pretrial services officer in the same district, provided that (1) the chief judge certifies that the court has assigned responsibilities to the district court clerk equal to or greater than the responsibilities of other unit heads in the district court; and (2) the district court clerk is responsible for performing certain administrative support functions for other units of the district court (JCUS-SEP 92, pp. 72-73). Noting that the new executive grading process provides equal credit for the core administrative responsibilities performed by court executives, and that matching the target grade for the district clerk of court to a higher grade of another executive in the district would require deviating from the fiscal year 2011 target grade distribution, the Committee recommended that the 1992 policy be rescinded. Following a discussion in which Conference members emphasized the importance of preserving discretion to address local circumstances, the Conference declined to rescind the 1992 policy.

Stabilization Factor. In March 2010, the Judicial Conference adopted a policy to limit grade fluctuation resulting from application of the then-current grading process. The policy imposed a grace period that was based on data collected over a three-year period and was applicable only to reductions in target grades; increases in target grades were effective immediately (JCUS-MAR 10, pp. 18-19). In lieu of the March 2010 policy, the Committee recommended a one-year stabilization period that would apply for both increases and decreases in court unit executive target grades. As a result, the target grade of an executive would change only if application of the executive grading process results in a higher or lower grade for two consecutive years. The Conference adopted the Committee's recommendation.

³ For district and bankruptcy court clerks' offices, the weighted factors include the number of authorized judgeships (15 percent), the number of authorized staff at 100 percent of formula (10 percent), and total allotments (5 percent). For probation and pretrial services offices, the weighted factors include the number of authorized staff at 100 percent of formula (15 percent) and total allotments (15 percent).

NON-FOREIGN POST DIFFERENTIAL PAYMENTS

Under 5 U.S.C. § 5941, executive branch employees stationed outside the continental United States or in Alaska have been eligible for additional compensation under two separate programs: the non-foreign area cost-of-living allowance (COLA) program if their living costs are substantially higher than in the District of Columbia and/or the non-foreign post differential program if environmental conditions are determined to be undesirable in their locale. The combined sum of the benefits from these two programs may not exceed 25 percent of basic salary. Although the statute does not apply to the judiciary, as a matter of Judicial Conference policy and practice, judiciary employees in qualifying areas receive the same allowances as those provided in the executive branch, if they meet the eligibility requirements. Between 2000 and 2010, non-foreign COLAs alone were set at 25 percent of basic salary, so post differentials were suspended. However, in October 2009, Congress passed the Non-Foreign Area Retirement Equity Assurance Act which phases out non-foreign COLAs and phases in locality-based comparability pay. As a result, in 2010, COLAs dropped below 25 percent, allowing the post differentials to reemerge. The Director of the Administrative Office approved resumption of post differential payments with the proviso that Judicial Conference guidance be sought as to whether the judiciary should continue these payments prospectively. Noting the cost implications of post differentials, the Committee recommended that the Conference discontinue non-foreign post differential payments to current and prospective eligible court employees. Federal public defender organization employees will be exempted from this change to maintain compensation parity with the United States attorneys' offices. The Conference adopted the Committee's recommendation.

OFFICIAL COURT REPORTER RETENTION

Under a Judicial Conference policy adopted in March 1997, when a district judge elects to change the method of recording proceedings from official court reporter to electronic sound recording system (ESR), funding for the court reporter position is discontinued one year from the date of the election (JCUS-MAR 97, pp. 28-29). Noting that this one-year retention period is more generous than the retention period for chambers staff in the event of a judge's unanticipated vacancy (which is 90 days with a possibility of a 120-day extension), the Committee recommended that the Judicial Conference modify the 1997 policy to treat court reporters similarly to chambers staff. The Judicial Conference adopted the Committee's recommendation, modifying the

March 1997 policy regarding over-strength court reporter positions to read as follows:

In the event a judge changes the election of the method of recording court proceedings from official court reporters to electronic sound recording systems, funding for the court reporter will be discontinued 90 days from the date of election to electronic sound recording systems. One additional period of up to 120 days beyond the original 90-day period will be allowed upon certification by the chief judge of the affected court to the circuit judicial council that additional staff resources are necessary.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it will continue the current Temporary Emergency Fund allocation formula, which provides funding for judges to hire additional chambers staff to assist with temporary work emergencies, and the permissible alternative use of the fund for tenant alterations, without any additional limitations. The Committee advised the Executive Committee that the judiciary should not seek legislative authority to raise the mandatory separation age for law enforcement officers in the judiciary. The Committee approved the schedule for delivery of staffing formula updates using work measurement techniques to include best practices, benchmarks, performance standards, incentives for efficiency, and a presumption of shared services, and it asked the AO to prepare as an option for the Committee's consideration, the inclusion of alternative dispute resolution as a discrete factor in the upcoming staffing formula update for district clerks' offices.

COMMITTEE ON JUDICIAL SECURITY

COURT SECURITY COMMITTEE MEMBERSHIP

Judicial Conference policy provides for each district to establish a court security committee to address court security matters promptly and systematically (JCUS-MAR 95, p. 31; *Guide to Judiciary Policy*, Vol. 17, § 240.20). The membership of these committees was clarified and expanded and the mission statement defined in September 2007 (JCUS-SEP 07, p. 28).

At this session, the Committee on Judicial Security recommended changes to the membership of court security committees to ensure a broad representation of the court community and to give the chair of a court security committee authority to adjust the membership as he or she deems appropriate. The Judicial Conference approved the Committee's recommendation, adopting the following description of the membership of court security committees:

A court security committee shall consist of the members set forth below. The chief judge (as chair) may designate a judge to serve as his or her designee, and may adjust the membership as deemed appropriate. The district U.S. marshal (as the principal coordinator) and other members may, with the concurrence of the chair, have a designee attend in their place.

Membership:

- (1) chair: chief district judge;
- (2) principal coordinator: district U.S. marshal;
- (3) the chief bankruptcy judge;
- (4) a magistrate judge;
- (5) a court of appeals judge when there is a court of appeals or the chambers of a circuit judge within the district;
- (6) the United States attorney;
- (7) the federal public defender;
- (8) the district clerk of court;
- (9) the bankruptcy clerk of court;
- (10) the chief probation officer;
- (11) the chief pretrial services officer;
- (12) the circuit executive, if physically located within the district;
- (13) the bankruptcy administrator or U.S. trustee;
- (14) a representative of the General Services Administration, where appropriate; and
- (15) a government-employee representative of the Federal Protective Service.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that, in its continuing discussion of cost-containment initiatives, it agreed to the Budget Committee's recommendation that the cap on annual increases in the Court

Security appropriation be reduced from its current level of 6.6 percent to 5.2 percent (*see supra*, “Budget Caps,” p. 8). In addition, the Committee was updated on the manner in which the Capital Security Program will be implemented. That program, which was appropriated \$20 million by Congress in FY 2012, is designed to assist courts at facilities that have security deficiencies but may not qualify for a new courthouse building.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

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 respective district courts, and the judicial councils of the relevant circuits, the Judicial Conference made the following changes regarding magistrate judge positions.

THIRD CIRCUIT

Middle District of Pennsylvania

Increased the salary of the part-time magistrate judge position at Williamsport from Level 5 (\$26,881 per annum) to Level 1 (\$73,932 per annum).

TENTH CIRCUIT

District of Wyoming

Effective July 1, 2012:

1. Discontinued the part-time magistrate judge position at Sheridan;
2. Decreased the salary of the part-time magistrate judge position at Casper from Level 4 (\$40,325 per annum) to Level 7 (\$6,716 per annum);
3. Decreased the salary of the part-time magistrate judge position at Jackson from Level 5 (\$26,881 per annum) to Level 6 (\$13,439 per annum); and

4. Decreased the salary of the part-time magistrate judge position at Green River from Level 6 (\$13,439 per annum) to Level 7 (\$6,716 per annum).

AUTHORITY TO ACT ON CERTAIN POST-CONVICTION MOTIONS IN MISDEMEANOR CASES

In order to enable district courts to manage their caseloads in a more efficient and economical manner, the Committee recommended that the Judicial Conference seek legislation amending 18 U.S.C. § 3401 to give magistrate judges authority to act on all post-conviction motions in misdemeanor cases where a magistrate judge has imposed a sentence. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that, at its December 2011 meeting, it approved filling two magistrate judge position vacancies. The Committee had an extensive discussion about containing costs of the magistrate judge recall program and identified specific proposals in several areas, including chambers staff for recalled magistrate judges, clerk's office staff funding related to recalled magistrate judges, and Committee review of recall requests. The Committee will consider comments on its proposals and complete its recommendations for consideration at the Judicial Conference's September 2012 session.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed technical and conforming amendment to Criminal Rule 16 (Discovery and Inspection), together with a committee note explaining the amendment's purpose and intent. The Judicial Conference approved the proposed amendment and agreed to transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Federal Rules of Bankruptcy Procedure 7054 and 7008(b). The proposed amendments seek to clarify the procedure for pursuing an award of attorney’s fees in adversary proceedings and promote uniformity with the corresponding Civil Rule 54(d)(2). The proposed rule amendments are expected to be published for public comment in August 2012.

COMMITTEE ON SPACE AND FACILITIES

U.S. COURTS DESIGN GUIDE

The Committee on Space and Facilities recommended that the Judicial Conference amend the *U.S. Courts Design Guide* to eliminate raised access flooring as a mandatory requirement for wire management in all areas of the courthouse except the courtroom well where frequent changes to wire management make it cost-effective. The Conference adopted the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it endorsed, with the concurrence of the Committee on Judicial Security, the participation in the Capital Security Program in fiscal year 2012 of courthouse facilities in the following locations to address security deficiencies in those facilities: Hato Rey, Puerto Rico; Benton, Illinois; Brunswick, Georgia; and Lexington, Kentucky. The Committee also reported on two recommendations that were forwarded to the Executive Committee for consideration on behalf of the Conference on an expedited basis: approval of a lease-construct facility in Eureka, California (*see supra*, “Miscellaneous Actions,” pp. 6-7) and an update to the *Five-Year Courthouse Project Plan for FYs 2013-2017* that removed a proposed courthouse annex in Greenbelt, Maryland from the *Plan* (*see supra*, “Miscellaneous Actions,” p. 6).

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