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

## March 13, 2007

The Judicial Conference of the United States convened in Washington, D.C., on March 13, 2007, 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
Judge Ernest C. Torres,
District of Rhode Island

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge Kimba M. Wood,
Southern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Garrett E. Brown, Jr.,
District of New Jersey

Fourth Circuit:

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

Fifth Circuit:

Chief Judge Edith Hollan Jones
Chief Judge Glen H. Davidson,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge Charles R. Simpson III,
Western District of Kentucky

Seventh Circuit:

Chief Judge Frank H. Easterbrook
Judge Wayne R. Andersen,
Northern District of Illinois

Eighth Circuit:

Chief Judge James B. Loken
Judge Lawrence L. Piersol,
District of South Dakota

Ninth Circuit:

Chief Judge Mary M. Schroeder
Judge Charles R. Breyer,
Northern District of California

Tenth Circuit:

Chief Judge Deanell Reece Tacha
Judge Alan B. Johnson,
District of Wyoming

Eleventh Circuit:

Chief Judge J. L. Edmondson
Chief Judge Robert L. Hinkle,
Northern District of Florida

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Julia Smith Gibbons, Roger L. Gregory, Marjorie O. Rendell, and David Bryan Sentelle; and District Judges Joseph F. Bataillon, Susan C. Bucklew, Paul G. Cassell, Dennis M. Cavanaugh, W. Royal Furgeson, Jr., John Gleeson, D. Brock Hornby, Howard D. McKibben, Lee H. Rosenthal, John R. Tunheim, and Thomas I. Vanaskie. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. Gregory A. Nussel of the Fifth Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Jill C. Sayenga, Deputy Director; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Wendy Jennis and Jeffrey A. Hennemuth, Deputy Assistant Directors, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David A. Sellers, Assistant Director, Public Affairs. District Judge Barbara Jacobs Rothstein and John S. Cooke, Director and Deputy Director of the Federal Judicial Center, and District Judge Ricardo H. Hinojosa and Judith W. Sheon, Chair and Staff Director of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Jeffrey P. Minear, Administrative Assistant to the Chief Justice. The 2006-2007 Supreme Court Fellows also observed the Conference proceedings.

Attorney General Alberto R. Gonzales addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick J. Leahy, Arlen Specter, and Jeff Sessions and Representatives John Conyers, Jr., Lamar S. Smith, and Howard Coble spoke on matters pending in Congress of interest to the Conference.

## REPORTS

Mr. Duff 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 Hinojosa reported on Sentencing Commission activities. Judge Gibbons, Chair of the Committee on the Budget, Judge Furgeson, Chair of the Committee on Judicial Resources, and Judge Bataillon, Chair of the Committee on Space and Facilities, gave a joint report on the judiciary's ongoing cost-containment efforts, and Judge Hornby, Chair of the Committee on the Judicial Branch, reported on the current judicial pay restoration initiative.

## ELECTIONS

The Judicial Conference elected to the Board of the Federal Judicial Center, each for a term of four years, Judge David O. Carter of the District Court for the Central District of California to succeed Judge James A. Parker of the District Court for the District of New Mexico, and Judge Philip M. Pro of the District Court for the District of Nevada to succeed Judge Sarah S. Vance of the District Court for the Eastern District of Louisiana.

## EXECUTIVE COMMITTEE

### JUDICIAL COMPENSATION

In order to address a crisis in judges' compensation, highlighted in Chief Justice Roberts' *2006 Year-End Report on the Federal Judiciary*, the Committee on the Judicial Branch recommended that the Judicial Conference endorse "an immediate and substantial increase in judicial salaries." Because of the current interest in Congress in considering judicial pay legislation, the Executive Committee approved the recommendation on behalf of the Conference on an expedited basis. This revised policy statement supersedes the Conference's more specific endorsement of a 16.5 percent increase in judicial salaries (*see* JCUS-SEP 03, p. 27). The new formulation takes into account the continuing decline in real judicial compensation, affords the judiciary flexibility to pursue a pay raise that more fully meets its needs, and accommodates the interests of the other two branches of government.

## FIVE-YEAR 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 2007 meeting a self-evaluation questionnaire, which expressed the committee's views about its continuation, mission, functions, and structure. The Executive Committee made no changes to the committee structure itself, but tentatively agreed to make revisions to the jurisdictional statements of the following committees (largely based on suggestions of the committees themselves): Committee on Codes of Conduct, Committee on Defender Services, Committee on Judicial Security, Committee to Review Circuit Council Conduct and Disability Orders, and Committee on Space and Facilities. The changes were either technical or clarifying or made explicit a responsibility for subject areas that the committee already handled. In addition, at the request of the Committee to Review Circuit Council Conduct and Disability Orders, the Executive Committee agreed to change the name of that committee and determined that it be called the "Committee on Judicial Conduct and Disability." Chairs were provided an additional opportunity for comment, and revisions were made final in March 2007.

## CONFERENCE-APPROVED LEGISLATIVE PROPOSALS

Every two years, at the beginning of a new Congress, each Conference committee considers Conference-endorsed legislative proposals within its jurisdiction that have not yet been enacted to determine whether the judiciary should pursue those proposals in the new Congress. At its February 2007 meeting, the Executive Committee reviewed the determinations of other committees as to which legislative proposals should be pursued in the 110th Congress. In addition, the Committee reviewed the one proposal within its own jurisdiction—establishment of a Judicial Conference Foundation to receive and expend private contributions in support of official programs (JCUS-MAR 95, p. 6)—and determined not to pursue the proposal in the present Congress.

## MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved final fiscal year (FY) 2007 financial plans for the four major judiciary appropriations accounts—Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners;

- Endorsed an inflation-based increase in the alternative maximum daily subsistence allowance for judges on official travel, and asked the Judicial Branch Committee to review existing policies on reimbursement of travel subsistence expenses;

- Acted on behalf of the Judicial Conference to approve requests under the budget check process (*see* JCUS-SEP 04, pp. 35-36; JCUS-MAR 06, p. 27) for courthouse and other judiciary space in Salt Lake City, Utah; Raleigh, North Carolina; Spartanburg, South Carolina; Philadelphia, Pennsylvania; and Brunswick, Georgia, with the understanding that any additional rent accruing from the projects will be charged against the respective circuit's share of the space rental budget cap approved by the Judicial Conference for FYs 2009 through 2016 (*see* JCUS-SEP 06, p. 10);

- Declined to approve a space request under the budget check process from the District Court of the Northern Mariana Islands in Saipan, and asked the Judicial Council of the Ninth Circuit to consider alternatives to that request;

- On behalf of the Judicial Conference, authorized a technical correction to proposed restyled Civil Rule 6(d) before the restyling package approved by the Conference in September 2006 was transmitted to the Supreme Court;

- On behalf of the Judicial Conference and on recommendation of the Committee on Codes of Conduct, designated the United States Supreme Court and the Codes of Conduct Committee as the entities authorized to issue certificates of divestiture to justices of the Supreme Court and other judicial officers, respectively, when appropriate under section 1043 of the Internal Revenue Code as amended by section 418 of the Tax Relief and Health Care Act of 2006 (Pub. L. No. 109-432, div. A); and

- Made referrals to Conference committees as follows: (a) asked the Committee on Court Administration and Case Management to consider the adequacy of juror attendance fees and to explore measures with regard to the summoning of potential jurors that could make jury service less burdensome and more cost-effective; (b) asked the Judicial Resources Committee to consider issues related to court reporters; (c) asked the Committee on Codes of Conduct to develop illustrative standards, criteria, or examples to guide judges in making recusal decisions related to attendance at privately funded educational seminars; (d) asked the Committee on Financial Disclosure to consider consolidation, simplification, or clarification of the multiple, overlapping reporting requirements imposed on judges who attend such seminars; and (e) asked the Committee on Judicial Conduct and Disability to address implementation of the report of the Chief Justice's Judicial Conduct and Disability Act Study Committee (*see infra*, "Judicial Conduct and Disability Act Study Committee Report," pp. 19-20).

## COMMITTEE ON THE ADMINISTRATIVE OFFICE

### WIRETAP REPORTS

The Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2519, requires the Administrative Office to report to Congress annually the number, nature, and disposition of federal and state applications for orders approving the interception of wire, oral, or electronic communications (wiretap orders), based on reports submitted to it by federal and state judges and the Department of Justice. The Department of Justice is seeking legislation to extend its statutory deadline for reporting data on wiretap orders to the Administrative Office, stating that the current deadline leaves it insufficient time to provide accurate data. On recommendation of the Committee, the Conference agreed to support the Department of Justice in securing such an extension provided that the legislation include a commensurate extension of the judiciary's deadline for submitting the annual wiretap report to Congress.

### COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it discussed the results of a survey the AO conducted in 2006 of Judicial Conference members, committee chairs, chief judges, court unit executives, and federal defenders, which was intended to assist the AO in focusing on the judiciary's most important issues and requirements. The Committee will participate in an internal review Director Duff is conducting of the AO's structure and services. The Committee discussed at length its key role in the judiciary's system for oversight and review, including its oversight of the AO's audit, review, and investigation services.

## COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

### ADDITIONAL JUDGESHIPS

Pursuant to 28 U.S.C. § 152(b), the Judicial Conference submits periodic recommendations for new bankruptcy judgeships to Congress. In March 1991, the Conference adopted a policy that provides for a national survey of judgeship needs every two years and establishes criteria for evaluating requests for additional bankruptcy judgeships (JCUS-MAR 91, pp. 12-13). Based on the 2006 biennial survey of judgeship needs, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference authorize the Administrative Office to transmit to Congress proposed legislation to create three additional bankruptcy judgeships for the Eastern District of Michigan and one for the Northern District of Mississippi, and to convert one existing temporary position to permanent in each of the following districts: Eastern District of Michigan, Southern District of Georgia, Southern District of Illinois, and Western District of Tennessee. The Conference adopted the Committee's recommendations. Because the long-term impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8) on bankruptcy filings is not yet known, the Committee will monitor filing levels and initiate a new survey at the end of 2007, if warranted.

### CHAPTER 7 TRUSTEE COMPENSATION

In September 1991, the Judicial Conference agreed to seek legislation to ensure that trustees who serve in cases converted to chapter 7 of the Bankruptcy Code receive compensation equivalent to that received by trustees serving in cases originally filed under chapter 7 (JCUS-SEP 91, p. 53). Subsequently, the Judicial Conference amended the Bankruptcy Court Miscellaneous Fee Schedule to provide for full compensation to chapter 7 trustees in cases converted from other chapters of the Code (JCUS-SEP 06, p. 14). Since the goal of the 1991 position has been achieved, on recommendation of the Committee, the Conference agreed to rescind its 1991 position to seek legislation.

### COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it decided to study further a request by the Director of the Executive Office for United States Trustees for Judicial Conference approval of the mandatory use of data-enabled forms. It also decided, as a long-range planning matter, to monitor the current Administrative Services Methods Analysis Program effort to identify and share information on best practices among the courts in performing various functions. In addition, the Committee discussed the involvement of bankruptcy judges on Judicial Conference committees and at Conference sessions, and received status reports on various topics, including recent activities of its Subcommittee on Fees and Revenue Enhancement, the Advisory Committee on Bankruptcy Rules, the Administrative Office's Bankruptcy Judges Advisory Group, and the Federal Judicial Center.

## COMMITTEE ON THE BUDGET

### CHAPTER 7 TRUSTEE PAYMENTS

In March 2004, the Judicial Conference agreed to seek legislation to simplify the accounting procedures associated with chapter 7 trustee payments (JCUS-MAR 04, p. 8). Subsequently, it was determined that the desired modifications could be achieved without legislation. Therefore, on recommendation of the Budget Committee, the Conference rescinded its March 2004 position.

### SALARIES AND EXPENSES ACCOUNT BUDGET CAP

In March 2006, the Judicial Conference approved, in concept, the establishment of an annual budget cap on growth in space rental costs, and in September 2006, set that cap at an average annual growth rate of 4.9 percent for fiscal years 2009 through 2016 (JCUS-MAR 06, pp. 10-11; JCUS-SEP 06, p. 10). At this session, the Conference adopted a recommendation of the Budget Committee to set an overall cap on annual increases in the Salaries and Expenses account for fiscal years 2009 through 2017 at an average of 8.2 percent over prior year appropriations. This cap will allow funding of expenses classified as mandatory and hold rent to the 4.9 percent space cap; discretionary elements in the account will have to be reduced accordingly to bring requirements within the levels of the overall budget cap.

### COMMITTEE ACTIVITIES

The Committee on the Budget reported that it continues to be concerned about the long-term financial health of the judiciary and spent considerable time discussing internal and external actions that will impact future budgets. The Committee continues to view the judiciary's two-pronged approach—congressional outreach and cost containment—as critical to protecting the independence of the judiciary and securing adequate funding from the Congress. To that end, the Committee remains steadfast in its desire to implement budget caps for all of the judiciary’s major accounts including Defender Services and Court Security.

## 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 2006, the Committee received 43 new written inquiries and issued 43 written advisory responses. During this period, the average response time for requests was 18 days. In addition, the Committee chair received and responded to 43 informal inquiries from colleagues, and individual Committee members responded to 192 such inquiries.

# COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

## COURTROOMS FOR SENIOR JUDGES

In July 2006, the House Transportation and Infrastructure Committee passed a resolution as part of its authorization of a courthouse construction project, directing the Judicial Conference to, among other things, revise the *U.S. Courts Design Guide* within one year to provide for one courtroom for every two senior judges in new construction projects. The Court Administration and Case Management Committee, in conjunction with the Space and Facilities Committee, recommended that the Conference take no action at this time on this portion of the resolution, with the understanding that the two Conference committees and the Administrative Office will continue to work with the House committee to address this issue in conjunction with an ongoing study of courtroom usage, and that the Space and Facilities Committee will be mindful of the resolution in reviewing proposed courthouse construction projects. The Conference adopted the Court Administration and Case Management Committee's recommendation.

## PLACES OF HOLDING COURT

Southern District of Iowa. The Southern District of Iowa recently relinquished its courtroom space in Council Bluffs, Iowa, and moved into a significantly smaller space as a cost-containment measure. The new space is sufficient for hearings and bench trials, but not for occasional civil jury trials. The District of Nebraska courthouse in Omaha is located five miles from Council Bluffs, and is convenient to the Southern District of Iowa jury pool and bar, and the District of Nebraska has agreed to allow the Southern District of Iowa to hold these civil trials in its Omaha courthouse. At the request of the Southern District of Iowa and on recommendation of the Committee, the Conference agreed to seek legislation to allow that district occasionally to hold civil trials upon party consent in Omaha, Nebraska, with the understanding that this legislative proposal will be narrowly tailored to fit the unique circumstances of the request.

Western District of Texas. On recommendation of the Committee, the Conference rescinded its September 2003 endorsement of legislation to amend 28 U.S.C. § 124(d) to move Hudspeth County from the Pecos Division to the El Paso Division of the Western District of Texas (*see* JCUS-SEP 03, p. 8) .

The Western District of Texas had advised the Committee that the change is no longer necessary.

## ELECTRONIC ACCESS TO DIGITAL AUDIO RECORDINGS

The Conference adopted a recommendation of the Committee to endorse a pilot project in selected districts, for 6 to 12 months, to allow digital audio recordings to be accessible through the Case Management/Electronic Case Files (CM/ECF) system and to make them available to the public through the judiciary's Public Access to Court Electronic Records (PACER) program. Such recordings are already available for purchase at clerks' offices.

## SEALED CASES AND DOCUMENTS

Noting that the CM/ECF system has a proven record of security and success in managing sealed court records, the Committee recommended that the Conference endorse the sealing functionality of the CM/ECF system and encourage courts to use that functionality. The Committee also recommended that the Conference strongly urge courts to ensure that, in response to queries about sealed cases, the CM/ECF message reads "case under seal" rather than "case does not exist." The Conference adopted the Committee's recommendations.

## ELECTRONIC TRANSCRIPTS POLICY

In September 2005, the Conference asked the Court Administration and Case Management Committee to work with the Defender Services Committee to evaluate the impact on the defender services program of the judiciary's policy concerning public access to electronic transcripts, and to determine whether to recommend changes to the policy (JCUS-SEP 05, p. 16). At this session, the Court Administration and Case Management Committee, in consultation with the Defender Services Committee, recommended revisions to that policy to clarify (a) the scope of an attorney's responsibility with regard to redacting personal identifying data from electronic transcripts, (b) the role of standby counsel to pro se defendants in the redaction process, (c) the scope of the "hold harmless" provision for failure to redact or for redaction errors, to make clear that it includes attorneys, and (d) issues relating to CJA panel attorney appointment,

compensation, and reimbursement for performing duties required under the policy. The Conference approved the recommendation.

### COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it discussed the ongoing courtroom usage study, which is being conducted for the Committee by the FJC, and the Committee's efforts to keep Congress fully informed on the study's progress; its extensive work with the Space and Facilities Committee regarding the implementation of the Conference's criteria for recommending the closure of non-resident facilities (JCUS-MAR 06, p. 28); and its responsibilities relating to management of the judiciary's records. With regard to the last item, the Committee strongly supported the Administrative Office's new initiative to create records disposition schedules for the courts' electronic case files and the ongoing initiative to provide courts with the flexibility to destroy or retain all presently existing paper case files after they have been scanned into the courts' electronic dockets.

## COMMITTEE ON CRIMINAL LAW

### RE-ENTRY SERVICES

The Director of the Administrative Office has explicit authority under 18 U.S.C. § 3672 to contract for re-entry services for those federal offenders under post-conviction supervision who are dependent on alcohol and/or drugs or who suffer from a psychiatric disorder. In September 2005, the Judicial Conference agreed to seek legislation to expand that authorization to allow the Director to contract for services (e.g., medical, educational, emergency housing, and vocational training) and other re-entry interventions for post-conviction offenders generally (JCUS-SEP 05, p. 19). At this session, the Criminal Law Committee recommended that such legislation be expanded to cover individuals under pretrial supervision and also to include authority for the Director to expend funds for emergency re-entry services. Such authority would enhance probation and pretrial services officers' ability to work with defendants and offenders re-entering the community. The Conference adopted the Committee's recommendation.

## SEPARATION OF JUDGMENT AND STATEMENT OF REASONS

The judgment forms for criminal cases include an attached statement of reasons, which sets forth the reasons a sentence was imposed. Because it may include sensitive information about whether a defendant's substantial assistance served as a basis for the sentence, the statement of reasons is not disclosed to the public (*see* JCUS-MAR 01, p. 17). The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, amended 18 U.S.C. § 3553(c) to require that courts describe with specificity in the written judgment the reasons relied on when departing from sentencing guidelines and amended 28 U.S.C. § 994(w) to require that a statement of reasons for the sentence (including reasons for any departure) be submitted to the U.S. Sentencing Commission. The USA PATRIOT Improvement and Reauthorization Act of 2005, Pub. L. No. 109-177, further amended 28 U.S.C. § 994(w) to require that the statement of reasons be submitted to the Sentencing Commission on forms issued by the Judicial Conference and approved by the Sentencing Commission. The consequence of these provisions is that the statement of reasons form, which is neither available to the public nor locally modifiable, would appear to be a required part of the judgment form, which is generally available to the public and may be modified locally. To alleviate problems this creates for clerks' offices, on recommendation of the Committee, the Conference agreed to seek legislation that would authorize the recording of the statement of reasons in a document separate from the judgment form.

## PROVISIONAL HIRING OF PROBATION AND PRETRIAL SERVICES OFFICERS

Under a policy initiated in 1973, probation and pretrial services officers could not be placed on the payroll prior to completion of a pre-employment background investigation unless the AO Director determined that an emergency situation required immediate appointment. In September 2002, the Conference adopted a policy requiring background investigations and checks in the courts for positions not already covered by previously approved policies. As part of that policy, court unit executives and federal public defenders were given authority to hire staff provisionally prior to completion of the background check (JCUS-SEP 02, pp. 52-53). In order to alleviate workload demands on district and AO staff without compromising the officer

selection process, the Criminal Law Committee recommended that the Judicial Conference delegate to the chief judge of each district court authority similar to that now available to court unit executives and public defenders, to (a) waive the requirement that the initial background investigation of probation and pretrial services officers and officer assistants be completed prior to commencing employment; and (b) provisionally appoint probation officers and officer assistants and approve pretrial services officers and officer assistants, without prior approval of the Director of the Administrative Office, pending completion of the required background investigation. The Conference adopted the Committee's recommendation.

### COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that in November 2006, Judge Reggie Walton, a committee member, testified on behalf of the Conference before the United States Sentencing Commission about the impact on the administration of justice of the disparity between crack-cocaine and powder-cocaine sentences. He cited the Conference policy supporting the reduction of the disparity (*see* JCUS-SEP 06, p. 18), emphasizing the importance of ensuring both that justice is served and that the public appearance of justice is preserved. The Committee reviewed the existing Conference policy on searches and seizures conducted by probation officers, and is considering the implications of updating the policy. At the request of the Committee, staff in the Administrative Office convened a meeting of representatives of the AO, the Sentencing Commission, the Bureau of Prisons, the Federal Bureau of Investigation, and the Bureau of Immigration and Customs Enforcement to discuss the viability of automating the transmission of sentencing documents.

## COMMITTEE ON DEFENDER SERVICES

### COMMITTEE ACTIVITIES

The Committee on Defender Services, in collaboration with the Committee on Court Administration and Case Management, endorsed changes to the Judicial Conference policy on electronic access to official transcripts (*see supra*, "Electronic Transcripts Policy," pp. 12-13). At the request of the Executive Committee, the Committee on Defender Services made recommendations as to which outstanding Judicial Conference-approved

legislative proposals relating to defender services should be pursued in the next Congress. The Committee also received status reports on defender services program cost-containment initiatives, including recent progress on two of them: (a) establishing a source to provide objective case-budgeting assistance to judges, and (b) requesting that the Department of Justice use an expedited process for determining whether to eliminate the death penalty as an option in certain cases.

## COMMITTEE ON FEDERAL-STATE JURISDICTION

### COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it received an update from a representative of the Social Security Administration (SSA) on the implementation of a new disability claims process in that agency's Boston Region, which began on August 1, 2006. The Committee also continued its discussion of proposed legislation, not yet introduced in Congress, that would affect the jurisdiction of the Court of International Trade, shifting to that court some categories of cases currently heard in the federal district courts. The Committee was also briefed on the capital habeas corpus study being undertaken by the Administrative Office and the Federal Judicial Center. The Committee discussed with a representative of the Advisory Committee on Evidence Rules the federalism implications of proposed Federal Rule of Evidence 502, which would govern the consequences of disclosing privileged or protected matters.

## COMMITTEE ON FINANCIAL DISCLOSURE

### COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it assisted the Judicial Conference in pursuing legislation to restore the judiciary's authority to redact judicial officers' financial disclosure reports for security reasons, and to make the financial disclosure obligations of judicial officers more consistent with the role of the judiciary and judges' recusal obligations under 28 U.S.C. § 455. At the request of the Executive Committee (*see supra*, "Miscellaneous Actions," pp. 6-7), the Committee began a comprehensive review of judicial branch ethics policies relating to judicial attendance at expense-paid private seminars, and the correlation of the various reporting

requirements triggered by judicial attendance at such events. The Committee also reported that as of December 31, 2006, it had received 4,260 financial disclosure reports and certifications for calendar year 2005, including 1,358 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 378 reports from bankruptcy judges; 566 reports from magistrate judges; and 1,958 reports from judicial employees.

## COMMITTEE ON INFORMATION TECHNOLOGY

### COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it reviewed the *Judiciary Information Technology Fund Annual Report*, which describes sources of funds, obligations, and unobligated balances. The Committee focused on the significant accumulation of unobligated balances, which in large measure reflects the cumulative results of cost-containment initiatives and the success of the CM/ECF system in the district and bankruptcy courts. It adopted a multi-part strategy to reduce future unobligated balances, including expanding the use of Electronic Public Access funds. The Committee also supported proposed changes to the advanced information technology training program for judges, including moving from a national to a local delivery model. The Committee also endorsed the creation of an "IT Associates" exchange program that would allow both court and Administrative Office managers to identify and utilize, on a temporary basis, the expertise and skills of information technology employees from the Administrative Office or courts, respectively, to accomplish specific tasks or projects.

## COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

### COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that, during calendar year 2006, 132 intercircuit assignments were undertaken by 80 Article III judges and one retired associate justice. The Committee continued to disseminate information about intercircuit assignments to increase awareness and facilitate the use of visiting judges, and it aided 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 activities throughout the world, highlighting those in Asia, Latin America, Eastern Europe, and the Russian Federation. The Committee further reported on its continued participation in the rule of law component of the Library of Congress's Open World Program for Russian and Ukrainian jurists visiting the United States. In addition, the Committee reported on foreign delegations of jurists and judicial personnel receiving briefings at the Administrative Office, and on the Korean judge observation program and other rule of law programs taking place in the United States.

## COMMITTEE ON THE JUDICIAL BRANCH

### JUDGES' TRAVEL

In order to maintain compliance with income tax laws, the Committee on the Judicial Branch recommended, and the Judicial Conference adopted, a revision to section F.1 of the Travel Regulations for United States Justices and Judges (*Guide to Judiciary Policies and Procedures*, vol. 3, ch. C-5, ex. A) to require judicial travelers to submit receipts or other documentary evidence to substantiate their claims for reimbursement of certain official travel expenses.

### FEDERAL EMPLOYEES' GROUP LIFE INSURANCE

In March 2002, the Conference agreed to seek legislation to require the federal government to pay all the costs associated with active and senior Article III judges' and congressional members' Federal Employees' Group Life Insurance (FEGLI) premiums (JCUS-MAR 02, p. 20). Citing significant executive branch opposition to and little congressional support for an employer-pay-all FEGLI benefit for a narrow category of federal employees, the Committee recommended that the Conference rescind its March 2002 position, and the Conference agreed.

### COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it has devoted its priority attention to securing an immediate and substantial increase in judicial salaries, consistent with the Chief Justice's *2006 Year-End Report on the Federal Judiciary* (*see also supra*, "Judicial Compensation," p. 4). In other efforts to promote judicial independence, the Committee continues to take affirmative steps to enhance interbranch communications, as well as to maintain communications with the bar and the media. It also continues to give substantial attention to judicial benefits matters.

## COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY[1]

### JUDICIAL CONDUCT AND DISABILITY ACT STUDY COMMITTEE REPORT

In 2004, Chief Justice William H. Rehnquist appointed a committee, chaired by Associate Justice Stephen G. Breyer, to study the implementation of the Judicial Conduct and Disability Act of 1980. The Judicial Conduct and Disability Act Study Committee (the Breyer Committee) issued its report in September 2006, and the Executive Committee subsequently asked the Committee on Judicial Conduct and Disability to review and make recommendations to the Conference on any actions that should be taken concerning the report (*see supra*, "Miscellaneous Actions," pp. 6-7).

Conference Authority to Review Committee Decisions. The Breyer Committee recommended that the Conference consider clarifying the scope of the Conference's authority to review Judicial Conduct and Disability Committee decisions. Noting that its own authority is entirely derivative of the Conference's authority and that, therefore, any Committee decision is reviewable by the Conference, the Judicial Conduct and Disability Committee recommended that the Conference direct it to prepare for Conference consideration a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that clarifies the authority of the Judicial Conference to review on its own initiative any Judicial Conduct and Disability Committee decision, including orders

[1]Prior to March 12, 2007, this Committee was known as the Committee to Review Circuit Council Conduct and Disability Orders (*see supra*, "Five-Year Self-Evaluation and Jurisdictional Review," p. 5).

granting or denying petitions for review in misconduct proceedings. The rule would also make clear that no complainant or judge who is the subject of a complaint would have any right to invoke such review. The Conference adopted the Committee's recommendation.

Other Breyer Committee Recommendations. In order to achieve the goals set forth by the Breyer Committee and fulfill its own mission, the Judicial Conduct and Disability Committee recommended that the Conference authorize and direct the Committee to develop, and present to the Conference for approval, comprehensive guidelines, and, as necessary, additional rules pursuant to 28 U.S.C. §§ 331 and 358(a), to implement the Judicial Conduct and Disability Act in a consistent manner throughout the federal court system. The Committee indicated that chief judges, circuit judicial councils, and circuit staff should be provided specific binding guidance on an array of difficult, substantive, procedural, and administrative issues identified in the Breyer Committee report. In addition, clerks' offices and circuit judicial councils should be required to transmit specified material to the Committee so that it has a sufficient basis for monitoring implementation. The Conference adopted the Committee's recommendation.

## JURISDICTION TO CONSIDER PETITIONS FOR REVIEW

In its April 28, 2006 opinion, *In re Opinion of Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders*, 449 F.3d 106 (U.S. Jud. Conf. 2006), the Judicial Conduct and Disability Committee expressed the view that it does not have jurisdiction to review a circuit judicial council's affirmance of a chief judge's dismissal of a conduct and disability complaint where a special investigating committee under 28 U.S.C. § 353 had not been appointed. Believing, upon reconsideration, that such authority does exist, the Committee recommended that the Judicial Conference direct it to prepare for Conference consideration a rule, pursuant to 28 U.S.C. §§ 331 and 358(a), that explicitly authorizes the Committee on Judicial Conduct and Disability to examine whether a misconduct complaint requires the appointment of a special committee, upon dismissal of the complaint by the chief judge under 28 U.S.C. § 352(b), or upon the denial of a petition for review of the complaint by the circuit judicial council under 28 U.S.C. § 352(c). The Conference adopted the Committee's recommendation.

### COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it continues to carry out its responsibilities with regard to considering petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges.

## COMMITTEE ON JUDICIAL RESOURCES

### ARTICLE III JUDGESHIP NEEDS

Additional Judgeships. The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2007 biennial judgeship survey process. Based on its review, and after considering the views of the courts and the circuit councils, the Committee recommended that the Judicial Conference authorize transmittal to Congress of a request for the addition of 13 permanent and 2 temporary judgeships in the courts of appeals, and for the addition of 38 permanent and 14 temporary judgeships, the conversion to permanent status of 5 existing temporary judgeships, and the extension of 1 existing temporary judgeship for an additional 5 years in the district courts. The Conference adopted the Committee's recommendations, agreeing to transmit the following request to Congress in lieu of any previously submitted Article III judgeship requests ("P" denotes permanent; "T" denotes temporary; "T/P" denotes conversion of temporary to permanent; "T/E" denotes extension of temporary):

**COURTS OF APPEALS**

| | |
|---|---|
| First Circuit | 1P |
| Second Circuit | 2P |
| Third Circuit | 2P |
| Sixth Circuit | 1P |
| Eighth Circuit | 2P |
| Ninth Circuit | 5P, 2T |

**DISTRICT COURTS**

| | |
|---|---|
| New York (Eastern) | 3P |
| New York (Western) | 1P |
| New Jersey | 1T |
| South Carolina | 1P |
| Virginia (Eastern) | 1P |
| Texas (Eastern) | 1P |
| Texas (Southern) | 2P |
| Texas (Western) | 1P |
| Ohio (Northern) | 1T/E |
| Indiana (Southern) | 1P |
| Iowa (Northern) | 1T |
| Minnesota | 1P |
| Missouri (Eastern) | 1T/P |
| Missouri (Western) | 1P |
| Nebraska | 1P |
| Arizona | 4P, 1T, 1T/P |
| California (Northern) | 2P, 1T |
| California (Eastern) | 4P |
| California (Central) | 4P, 1T |
| Hawaii* | 1T/P |
| Idaho | 1T |
| Nevada | 1T |
| Oregon | 1P, 1T |
| Washington (Western) | 1P |
| Colorado | 1P, 1T |
| Kansas* | 1T/P |
| New Mexico | 1P, 1T, 1T/P |
| Utah | 1T |
| Alabama (Middle) | 1T |
| Florida (Middle) | 4P, 1T |
| Florida (Southern) | 2P, 1T |

* If the temporary judgeship lapses before it is converted, Congress would be asked for one additional permanent judgeship.

Judgeship Vacancies. As part of the biennial survey of judgeship needs, workloads in district and appellate courts with low weighted caseloads are reviewed for the purpose of determining whether to recommend to the President and Senate that an existing or future judgeship vacancy not be filled.

The Conference adopted a Committee recommendation that Congress be advised that the existing vacancy in the District of Wyoming and the next judgeship vacancy occurring in the Eastern District of Louisiana should not be filled, based on the consistently low weighted caseloads in these districts.

## ACCESS TO JUDGES' PERSONAL DATA

The Human Resources Management Information System (HRMIS) is the judiciary's automated personnel and payroll system, housing, among other things, personal benefits and retirement data for judges and judiciary employees. Currently court staff (primarily human resources managers and specialists) have "view-only" access to standard personal data (e.g., benefits and retirement information) for judiciary employees. They have not had access of any kind to judges' data because of security concerns. After determining that HRMIS has passed comprehensive independent and self-administered security testing, and in order to provide judges with the same level of personnel service as that received by judiciary employees, the Judicial Resources Committee recommended that the Conference authorize the Administrative Office to provide certain court staff with view-only access to judges' personal data in the judiciary's automated personnel and payroll system, subject to the following conditions:

a. the chief judge of each participating court, or his or her designee, makes a determination that access be provided with respect to data for all the judges in a particular court;

b. each participating court designates which staff is to be provided access; and

c. each participating court establishes procedures to ensure the security of the judges' data.

The Conference adopted the Committee's recommendation.

## LAW CLERK QUALIFICATIONS

Since 2003, the Judicial Conference has expanded the qualifications standards for chambers law clerks, for purposes of establishing grade eligibility, to include experience as a pro se law clerk (JCUS-SEP 03, p. 28), a staff attorney (JCUS-MAR 04, p. 20), and a bankruptcy appellate panel law

clerk (JCUS-SEP 06, p. 27). Because there is no reason to distinguish death penalty law clerk experience for this purpose from that gained while employed in these other positions, the Committee recommended, and the Conference approved, an expansion of the qualifications standards for chambers law clerks to credit death penalty law clerk experience in establishing grade eligibility.

## PRO SE LAW CLERKS

In March 2002, the Judicial Conference adopted a stabilization policy for allocating pro se law clerk positions, which provides that the number of such positions in a court will be reduced only if the number of prisoner filings does not support the court's allocated positions under the staffing formula for two consecutive years (JCUS-MAR 02, p. 22). Due to a greater than usual increase in prisoner petition filings for the 12-month period ending in June 2005 (likely a result of the Supreme Court's decisions in *Blakely v. Washington* and *United States v. Booker/United States v. Fanfan*), followed by a return to "normal" levels for the period ending June 2006, many districts are currently over strength and, under the existing stabilization policy, would be required to reduce their on-board staffing levels by December 2007. Noting that a new staffing formula for pro se law clerks is in development and may require courts that downsize to rehire immediately, the Judicial Resources Committee recommended, and the Conference approved, a temporary modification to the stabilization factor for the pro se law clerk allocation for courts with over-strength positions in fiscal year 2007. Starting with fiscal year 2008, the number of allocated positions will only be reduced if the number of prisoner filings does not support the allocated positions under the pro se law clerk staffing formula for three consecutive years. The two-year requirement will resume once a new pro se law clerk staffing formula is in place. As with the two-year stabilization policy, if an over-strength position is vacated, the court will not be allowed to refill that vacancy.

## ELECTRONIC COURT REPORTER OPERATOR

Individual requests for additional staffing resources for the Court of Federal Claims are made to the Conference, through the Judicial Resources Committee, whenever the court determines a need. Noting that an increasing number of the court's judges are using electronic sound recording in lieu of contract court reporters to take the official court record, the chief judge of the Court of Federal Claims requested one additional full-time deputy clerk

position to be used for an electronic court recorder operator. On recommendation of the Committee, the Conference approved the request for a period of three years, with the understanding that any extension of the position or authorization of any other clerk's office position in this court would occur only in accordance with an authorized staffing formula based on a work measurement study by the Administrative Office.

## INFORMAL RECOGNITION AWARDS

Non-monetary "informal recognition" awards are given to employees for performance that may not merit a larger award but is recognized by supervisors or peers as contributing significantly to the mission of the court by improving internal or external customer service or increasing efficiency. The cost of an informal recognition award has generally not been permitted to exceed $50 per court employee, per year. *Guide to Judiciary Policies and Procedures*, vol. 1, ch. 10, subch. 1451.2.F.4.c(1). In response to concerns from the courts that this limit does not provide enough flexibility for courts to acknowledge outstanding individual and team performance, service, and acts, the Committee recommended, and the Conference agreed, that the non-monetary informal recognition award cap should be raised from $50 to $100, per court employee, per year.

## COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that the portion of its report to the September 2007 Judicial Conference dealing with the court compensation study will be made available for court comment before it is submitted to the Conference. In addition, the Committee endorsed a change in the work measurement methodology employed to develop staffing formulas to (a) use a combination of "core modeling" and other measurement techniques to reflect better the courts' full staffing requirements; and (b) use court-reported data that are validated through simultaneous measurement by the Administrative Office. The Committee voiced strong support for the background checks and investigations program for courts and federal public defender organizations.

# COMMITTEE ON JUDICIAL SECURITY

## FEDERAL PROTECTIVE SERVICE

The Committee on Judicial Security cited serious concerns about the ability of the Federal Protective Service (FPS) to provide the judiciary with adequate services, working equipment, detailed billing records, justification for current costs, and projections for future costs that would allow for proper budgeting. The Committee therefore recommended that the Conference support the efforts of the United States Marshals Service, through administrative and/or legislative remedies, to assume the security functions currently performed by the FPS in courthouses, as appropriate, and the associated funding. The Conference approved the Committee's recommendation.

## HOMELAND SECURITY PRESIDENTIAL DIRECTIVE-12

Homeland Security Presidential Directive-12 (HSPD-12), signed by President Bush in August 2004, establishes a mandatory standard for a secure and reliable form of identification, known as the Personal Identity Verification (PIV) card, to be issued by the federal government to its employees and contractors (including contractor employees). These cards will be used initially only for visual identification purposes, but eventually could be used with electronic card readers to provide access to government facilities and computer networks. HSPD-12 applies only to executive branch personnel but, as a practical matter, the judiciary is affected by the directive because it is housed in facilities owned or leased by the General Services Administration and is protected by the Marshals Service, and both of these agencies must comply with HSPD-12. Without PIV cards, judges, clerks, and other court personnel might not have after-hours access to their buildings and, during regular business hours, may be required to enter the building on the same terms as members of the general public, which could affect the judiciary's service to the public. On recommendation of the Committee, the Conference endorsed judiciary participation in the HSPD-12 program.

### COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it discussed continuing progress on updating the court security officer (CSO) formula, transferring responsibility for court security officer medical standards to the Marshals Service, and completing a memorandum of understanding with the Marshals Service regarding the settlement of court security officer lawsuits related to the CSO medical standards. In addition, the Committee was briefed on the status of the home intrusion detection systems program and other pending issues by the Director of the Marshals Service.

## 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 circuits, the Judicial Conference approved the following changes in positions, 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.

#### FIRST CIRCUIT

District of Rhode Island

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

#### SECOND CIRCUIT

Northern District of New York

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

**FOURTH CIRCUIT**

Western District of North Carolina

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

District of South Carolina

1. Increased the salary of the part-time magistrate judge position at Aiken from Level 6 ($12,755 per annum) to Level 4 ($38,271 per annum); and

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

**FIFTH CIRCUIT**

Northern District of Texas

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

**SIXTH CIRCUIT**

Eastern District of Michigan

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

Western District of Michigan

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

Middle District of Tennessee

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

**EIGHTH CIRCUIT**

Eastern District of Missouri

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

**NINTH CIRCUIT**

Western District of Washington

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

**TENTH CIRCUIT**

District of Kansas

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

District of Wyoming

Increased the salary of the full-time magistrate judge position at Yellowstone National Park from 55 percent of the maximum salary of a full-time magistrate judge ($83,591 per annum) to 80 percent ($121,587 per annum).

**ELEVENTH CIRCUIT**

Northern District of Florida

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

## COMMITTEE ACTIVITIES

The Magistrate Judges Committee reported that pursuant to the September 2004 Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), the Committee chair approved filling existing or upcoming vacancies in six courts during the

period between the Committee's June 2006 and December 2006 meetings, and at its December 2006 meeting the full Committee determined that one magistrate judge position vacancy should be filled. The Committee discussed, from a long-range planning perspective, the involvement of magistrate judges in court governance and reaffirmed its existing long-range goal for voting membership of magistrate judges at all levels of the court governance structure. The Committee communicated with the Judicial Panel on Multidistrict Litigation to urge the Panel to invite magistrate judges to its yearly conference for active transferee district judges.

## COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

### FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a technical amendment to subdivision (6)(a) of Rule C (In Rem Actions: Special Provisions) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, together with a Committee Note explaining its purpose and intent. The Judicial Conference approved the proposed amendment and authorized its transmittal 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 approved for publication proposed amendments to Civil Rules 13(f), 15(a), and 48. The Committee also approved in principle the recommendation of the Advisory Committee on Bankruptcy Rules to publish for public comment proposed amendments to Bankruptcy Rules 7052 and 9021 and proposed new Bankruptcy Rule 7058. The Advisory Committees on Bankruptcy, Criminal, and Evidence Rules are reviewing comments from the public submitted on amendments proposed in August 2006 to their respective sets of rules. The proposals include amendments implementing the Crime Victims' Rights Act, 18 U.S.C. § 3771, and amendments implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-08), which are based substantially on the interim bankruptcy rules.

# COMMITTEE ON SPACE AND FACILITIES

## FIVE-YEAR COURTHOUSE PROJECT PLAN

In order to address a growing backlog of construction projects on the judiciary's annual Five-Year Courthouse Project Plan, in September 2003, the Judicial Conference froze the plan as adopted in that year until not more than $500 million of courthouse projects remained on the first-year list (JCUS-SEP 03, pp. 37-38). Since that time, courthouse project requests have been submitted to the Conference for approval one year at a time. At this session, in response to strong support expressed in Congress for resumption of Five-Year Courthouse Project Plans, the Committee proposed, and the Conference endorsed (subject to revisions related to project costs, funding phases, or congressional action), a Five-Year Courthouse Project Plan for FYs 2008-2012. No projects without congressional authorizations and/or appropriations are included in the plan. Moreover, it is anticipated that the projected rent for all the projects in the plan will fit within the rent budget cap of 4.9 percent annual growth approved by the Judicial Conference (JCUS-SEP 06, pp. 10).

## BUDGET CHECK PROCESS

Since September 2004, the Judicial Conference has maintained an interim budget check process for all pending space requests to ensure that alternative space, future rent implications, and affordability by the judiciary are considered prior to project approval (*see* JCUS-SEP 04, pp. 35-36; JCUS-MAR 06, p. 27). Pursuant to that process, and on recommendation of the Committee, in consultation with the Budget Committee, the Conference approved 10 space requests. The annual rent that will be generated by these requests will be charged against, and is anticipated to fit within, the 4.9 percent annual budget cap on space rental growth. (*See also supra*, "Miscellaneous Actions," pp. 6-7).

## *U.S. COURTS DESIGN GUIDE*

As noted above, in July 2006 the House Committee on Transportation and Infrastructure passed a resolution that requires courtroom sharing for senior judges (*see supra*, "Courtrooms for Senior Judges," p. 11). This resolution also directs the Judicial Conference to approve specifically each departure (also referred to as an exception) from the *U.S. Courts Design*

*Guide* relating to a courthouse construction project that would result in additional costs. It also requires that justification for the departure, with a cost estimate, be provided to GSA, which would then recommend whether the relevant House and Senate committees should approve the departure. In order to curtail costly departures from the *Design Guide*, and to comply with the House Committee resolution, the Space and Facilities Committee recommended that, for prospectus-level courthouse projects, Conference approval be required, after review by the Space and Facilities Committee, for any departure from the *Design Guide* approved by a circuit judicial council that would result in additional estimated costs (including additional rent payment obligations). In addition, so that Congress fully understands why departures are being sought for individual projects, the Committee recommended that if a departure is approved by the Conference, the chair of the circuit's space and facilities committee or the chief judge or project judge requesting construction that exceeds *Design Guide* criteria must be willing, if requested by the Committee on Space and Facilities, to appear before Congress concerning funding for such construction. After discussion, the Conference adopted the Committee's recommendations.

## NAMING COURTHOUSES

In order to establish consistency in naming conventions for federal courthouses, the Committee recommended and the Conference approved the following conventions:

a. For a facility occupied solely by a federal court, the title "United States Courthouse" should be used;

b. For a multi-tenant facility that includes at least one courtroom, the title "United States Courthouse and Federal Building" or "United States Courthouse and Post Office" should be used; and

c. When naming a building after a judge, the title "Honorable" or "Judge" should not be used.

### COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that with regard to criteria for the closure of non-resident facilities, it reconsidered and agreed to include additional data elements to calculate the effectiveness score for the facilities. In addition, the Committee agreed to change the relative weight given to the operating cost score as compared to the effectiveness score when calculating an overall closure score. The Committee also considered changes to its jurisdictional statement, reviewed Conference-approved legislative proposals dealing with space issues, updated and endorsed its long-range strategic plan, and was briefed on the rent budget cap and rent validation initiatives.

## 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