

Report of the Proceedings of the Judicial Conference of the United States

September 15, 1998

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The Judicial Conference of the United States convened in Washington, D.C., on September 15, 1998, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Judge Joseph A. DiClerico,
District of New Hampshire

Second Circuit:

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

Third Circuit:

Chief Judge Edward R. Becker
Chief Judge Donald E. Ziegler,
Western District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson III
Chief Judge Charles H. Haden II,
Southern District of West Virginia

Fifth Circuit:

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

Sixth Circuit:

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

Seventh Circuit:

Chief Judge Richard A. Posner
Judge Robert L. Miller, Jr.,
Northern District of Indiana

Eighth Circuit:

Chief Judge Pasco M. Bowman II
Judge James M. Rosenbaum,
District of Minnesota

Ninth Circuit:

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

Tenth Circuit:

Chief Judge Stephanie K. Seymour
Judge Ralph G. Thompson,
Western District of Oklahoma

Eleventh Circuit:

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

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

Circuit Judges Stephen H. Anderson, Emmett R. Cox, W. Eugene Davis, David R. Hansen, Paul V. Niemeyer, A. Raymond Randolph, Norman H. Stahl, and David R. Thompson and District Judges Edward B. Davis, Julia S. Gibbons, John G. Heyburn II, D. Brock Hornby, George P. Kazen, Philip M. Pro, Alicemarie H. Stotler, and William J. Zloch attended the Conference session. Collins Fitzpatrick, Circuit Executive for the Seventh Circuit, was also present.

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

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Rya W. Zobel, Director of the Federal Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice; Mary Ann Willis, Supreme Court Staff Counsel; and judicial fellows Mary Clark, Paul Fiorelli, Nancy Miller and Christie Warren.

Reports

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

Executive Committee

Law Clerk Interviews

At its September 1993 session (JCUS-SEP 93, p. 49), in an effort to improve the law clerk hiring process, the Judicial Conference agreed to recommend to all judicial officers that March 1 of the year before a clerkship begins be the benchmark starting date for law clerk interviews. The policy is not binding on judges, and it has become apparent that it is not universally followed and, therefore, is not an accurate reflection of the practice in the courts. Moreover, there is no consensus within the judiciary as to whether any alternate standardized policy could be more successful in improving the law clerk hiring process. On recommendation of the Executive Committee, the Judicial Conference rescinded its September 1993 policy recommending that March 1 of the year before a clerkship begins be the benchmark starting date for law clerk interviews.

Resolutions

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial

contributions made by Judicial Conference committee chairs who will complete their terms of service in 1998:

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

HONORABLE A. RAYMOND RANDOLPH

Committee on Codes of Conduct

HONORABLE EMMETT R. COX

Committee on Defender Services

HONORABLE STEPHEN H. ANDERSON

Committee on Federal-State Jurisdiction

HONORABLE FRANK J. MAGILL

Committee on Financial Disclosure

HONORABLE PHILIP M. PRO

Committee on the Administration of the Magistrate Judges System

HONORABLE ALICEMARIE H. STOTLER

Committee on Rules of Practice and Procedure

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

The Judicial Conference of the United States and its Committees

In February 1997, the Executive Committee undertook to update and codify numerous Conference and committee practices into a single document entitled *The Judicial Conference of the United States and its Committees*. Drafts of the document were distributed by the Committee for comment to Conference committee chairs, the Director of the Federal Judicial Center, and the Chief Justice, and the Committee addressed concerns raised. On recommendation of the Committee, the Conference approved the document, which can be used as a source reference for everyone, as well as a teaching device for new committee appointees and chairs.

United States Sentencing Commission

With the resignation of the Chairman of the United States Sentencing Commission, Judge Richard Conaboy, on October 31, 1998, all seven seats on the Commission will be vacant. In the Commission's 14-year history, its chairman has always been a federal judge. The Executive Committee strongly believes that this practice should be maintained in order to preserve the objectivity and independence of the Commission and its leadership. On recommendation of the Committee, the Judicial Conference agreed to urge the President, with the advice and consent of the Senate, to continue the longstanding tradition of appointing a federal judge to chair the United States Sentencing Commission.

Data Collection and Dissemination

Legislative proposals on bankruptcy reform pending in the 105th Congress include differing provisions on the collection, publication, and reporting of bankruptcy statistics and case data. The proposals are inconsistent as to whether certain data on consumer debtors should be collected by the Executive Office for United States Trustees or the Administrative Office of the United States Courts, and provisions dealing with the release of all public record data held by bankruptcy clerks in electronic form raise significant privacy issues. On recommendation of the Committees on Judicial Resources and the Administration of the Bankruptcy System, the Executive Committee approved, on behalf of the Conference, the adoption of the following position statements to be used in response to congressional proposals on data collection and dissemination (see also *infra*, "National Bankruptcy Review Commission," pp. 46-58 (regarding Recommendations 4.1.1-4.1.5)):

It is the position of the Judicial Conference of the United States that the federal judiciary should collect and maintain those data it requires for its own operations to fulfill its statutory responsibilities. Accordingly, the collection of financial data on consumer debtors, if desired by Congress, should be assigned to the United States trustee system, which is responsible for supervising trustees and estates and approving distributions to creditors.

It is the position of the Judicial Conference of the United States that the release of data held by the federal judiciary shall be subject to appropriate privacy concerns and safeguards.

Miscellaneous Actions

The Executive Committee:

- Approved proposed interim financial plans for fiscal year 1999 for the Salaries and Expenses, Defender Services, Fees of Jurors and Commissioners, and Court Security accounts, based on appropriations levels midway between the House and Senate allowances. The plans are to be considered final without further action upon the enactment of a judiciary appropriations bill, assuming the appropriations levels are sufficient to fund the plans.⁽¹⁾
- Approved an amended Memorandum of Understanding with the Federal Judicial Center Board and the Federal Judicial Center Foundation Board, which clarifies the roles of the three organizations in administering funds received for the Judicial Conference's benefit, establishes appropriate administrative mechanisms to maintain the separation of funds deposited for Conference use, and broadens the categories of programs for which monies may be received on the Conference's behalf.

- Provided guidance to the Director of the Administrative Office on the judiciary's response to certain provisions of the "Judicial Reform Act of 1998" (H.R. 1252, 105th Congress).
- Authorized retroactive implementation of a \$75 per hour rate for the in-court time of attorneys appointed under the Criminal Justice Act in an unusually complex and extended criminal case in the Southern District of Florida because of the unique and extraordinary circumstances of the case.
- Approved a recommendation of the Court Administration and Case Management Committee that it take no position on "The Alternative Dispute Resolution Act of 1998" (H.R. 3528, 105th Congress), provided that certain amendments were made, and determined that if the amendments were not made, the bill should be opposed.
- Agreed, on recommendation of the Committee on Judicial Resources, to revise the fiscal year 1998 Salaries and Expenses financial plan to authorize use of up to \$1 million from the reserve to provide information, counseling, and software to judiciary employees who have an opportunity to switch from the Civil Service Retirement System to the Federal Employees Retirement System.
- On recommendation of the Magistrate Judges Committee and the Ninth Circuit Judicial Council, approved an increase in the salary of the part-time magistrate judge position at Santa Barbara, California, from Level 4 (\$31,672 per annum) to Level 1 (\$58,065 per annum), and agreed to discontinue the part-time magistrate judge position at San Luis Obispo, California.
- Approved an exception to the Judicial Conference policy disallowing the use of realtime reporting systems as an official method of recording bankruptcy proceedings (JCUS-MAR 94, p. 16) for a disabled judge in the
- Southern District of California, and authorized the Director of the Administrative Office to grant similar exceptions for disabled judges in the future.
- As recommended by the Committee on International Judicial Relations, approved the use of grant funds from the United States Agency for International Development for six rule of law programs; the Judicial Conference sponsorship of, and the expenditure of up to \$5,000 for, a program for Russian judges and administrators; and the use of \$15,000 for a training needs assessment for Venezuelan judges.
- Authorized the creation of six reimbursable positions in the Administrative Office for a work measurement project, effective in fiscal year 1998, and six reimbursable positions for a benefits project, effective in fiscal year 1999.
- Expanded to the Northern District of Illinois a community affairs pilot program currently approved for two circuit executives' offices.
- As a first step in the process of reevaluating the existing policy on relocation allowances, approved a request for reimbursement of relocation expenses, using local funds, for a new settlement attorney in the First Circuit Court of Appeals, and instructed the Director of the Administrative Office to prepare a proposal allowing the payment of relocation expenses from local funds for certain high-level court personnel.

Committee on the Administrative Office

Committee Activities

The Committee on the Administrative Office was briefed on recent Administrative Office activities, including efforts to update the five major court staffing formulas; a plan to upgrade the skills and knowledge of procurement professionals in the courts and to issue certification warrants; various public affairs program initiatives, including expanded use of video and web technology and a pilot program for community affairs positions in two circuits and one district; and Defender Services program management initiatives. The Committee expressed its support for the final plan for implementing the Administrative Office's new advisory structure and noted the Administrative Office's accomplishment in developing a streamlined advisory system that will reduce the number of permanent groups and allow for timely advice on administrative policies and programs from those affected.

Committee on Automation and Technology

Committee Activities

The Committee on Automation and Technology reported on the progress of its initiative to facilitate courtroom processes through the use of technology. Based on the positive findings of the Electronic Courtroom Project, which assessed the current use and applicability of four kinds of technologies-- video evidence presentation, video conferencing, access to electronic methods of taking the record, and access to external databases--in a variety of courtroom settings, the Committee requested that the Administrative Office develop guidelines and propose a plan for the implementation of courtroom technologies over time. In addition, the Committee reviewed progress on efforts to develop and implement electronic case files systems for use throughout the judiciary and was advised that installation of the judiciary's Data Communications Network (DCN) would be completed in September 1998, approximately one year ahead of schedule and under anticipated cost.

Committee on the Administration of the Bankruptcy System

Bankruptcy Judgeships

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to assess the continuing need for all authorized bankruptcy judgeships and reports its recommendations to Congress for the elimination of any authorized position that can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death. As a result of the 1998 continuing need survey, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference recommend to Congress that no bankruptcy judgeship position be statutorily eliminated and that the Conference advise the Sixth and Eighth Circuit Judicial Councils to consider not filling vacancies in the Northern District of Ohio and the District of South Dakota that currently exist or may occur by reason of resignation, retirement, removal, or death, until there is a demonstrated need to do so. The Judicial Conference approved the Committee's recommendation.

Intercircuit Assignment of Bankruptcy Judges

To implement 28 U.S.C. § 155(a), which authorizes the temporary transfer of a bankruptcy judge to another district, the Judicial Conference, in September 1988, approved Guidelines for the Intercircuit Assignments of Bankruptcy Judges (JCUS-SEP 88, pp. 59-60). On recommendation of the Bankruptcy Committee, the Conference approved clarifying and technical amendments to the guidelines as follows (additions in italics, language omitted is lined-through):

~~Guideline 6. The "lender-borrower" rules may be relaxed in situations in which (a) a bankruptcy judge has recused himself or herself or been disqualified, of retired bankruptcy judges who have (b) the bankruptcy judge to be loaned or borrowed is on been recalled recall status to active service pursuant to 28 U.S.C.~~

§ 155(b), or (c) other situations if approved by the affected circuit councils.

~~Commentary to Guideline 6, ¶ 4. Through the recall system, retired bankruptcy judges, with their consent, are may be recalled to active service by the circuits from which they retired. either the circuit from which the bankruptcy judge retired or another circuit in need of a recalled bankruptcy judge. The recall system is governed by two sets of regulations: One for extended recall of a retired bankruptcy judge to active service (i.e., recall to active service for a period of three years) and one for recall of a retired bankruptcy judge to active service on an ad hoc basis (i.e., recall to active service for varying periods, but for no more than one year and a day).~~

Place of Holding Bankruptcy Court

The Judicial Conference is authorized to determine the official duty stations of bankruptcy judges and places of holding bankruptcy court (28 U.S.C. § 152(b)(1)). At the request of the court and with the approval of the Eighth Circuit Judicial Council, the Judicial Conference approved a Bankruptcy Committee recommendation that Independence be designated as an additional place of holding bankruptcy court in the Northern District of Iowa.

National Bankruptcy Review Commission

The Bankruptcy Reform Act of 1994 established the National Bankruptcy Review Commission as an independent commission to investigate and study issues and problems relating to the Bankruptcy Code and to prepare a report containing its findings, conclusions, and recommendations for legislative or administrative action (Public Law No. 103-394, § 603). On October 20, 1997, the *Report of the National Bankruptcy Review Commission* was submitted to the President, Congress, and the Chief Justice. The report contains over 170 specific recommendations for changes to the present bankruptcy law and system, a number of which have a potential impact on the workload and administration of the federal courts. The Bankruptcy Committee reviewed all of the Commission recommendations, but certain recommendations fall principally within the jurisdictions of other Conference committees (i.e., the Committees on Court Administration and Case Management, Judicial Resources, and Rules of Practice and Procedure) and were referred to those committees for review and recommendation.

Appellate Review. Two National Bankruptcy Review Commission recommendations, 3.1.3 and 3.1.4, were debated at the Conference session. These recommendations would fundamentally change the existing bankruptcy appeals system by providing for the direct appeal of all final--and certain interlocutory--bankruptcy court orders to the courts of appeals (by-passing the district courts and the bankruptcy appellate panels). The Bankruptcy Committee recommended that the Conference--

a. support the concept of one level of appellate review of dispositive orders of bankruptcy judges; but

b. urge that no change in the current appellate process be considered until the judiciary has an opportunity to study further the existing process and possible alternative structures and to submit a subsequent report to Congress; and

c. seek to include, in any legislation Congress moves to enact which would provide for direct appeal of bankruptcy court decisions to the courts of appeals, provisions permitting the circuits, at their option and consistent with the Constitution, to utilize bankruptcy appellate panels as adjuncts to the appellate process or, with the consent of the parties, as dispositive of appeals, under guidelines developed by the Judicial Conference.

The Conference declined to approve the first part (part a) of the Bankruptcy Committee's recommendation and determined, instead, to endorse a recommendation of the Court Administration and Case Management Committee that the Conference support the simplification of appellate review of dispositive orders of bankruptcy judges. The Conference approved part b of the Bankruptcy Committee's recommendation, which would give the judiciary an opportunity to study the current process and possible alternatives. Part c of the Bankruptcy Committee's recommendation dealing with use of bankruptcy appellate panels was not approved by the Conference; instead, the Conference, p12 ending completion of the study, opposed the appeal as of right from dispositive orders of bankruptcy judges directly to the courts of appeals.

Other Recommendations. With respect to the remaining National Bankruptcy Review Commission recommendations with potential impact on the federal judiciary, on recommendation of the relevant Conference committee,⁽²⁾

the Judicial Conference took the following positions:⁽³⁾

With regard to Commission Recommendation 1.1.1 (concerning the establishment of a national filing system), agreed that there is a value in a national filing system that would provide each case with a unique identifier, to the extent that this can be done with proper regard for safeguarding the privacy of sensitive personal information.

With regard to Commission Recommendation 1.1.2 (concerning random audits of debtors' schedules), expressed general support for measures designed to enhance the integrity of the bankruptcy system, while cautioning that new duties should not be imposed on bankruptcy trustees without providing additional resources to those trustees for the additional work.

With regard to Commission Recommendation 1.1.3 (concerning the filing of false claims by creditors), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but informed Congress that implementation of this recommendation could result in more litigation over objections to claims, which would increase the workload of judges and clerks.

With regard to Commission Recommendation 1.1.4 (concerning systems administration of consumer bankruptcies), expressed thanks for the endorsement of the 1997 amendments to Bankruptcy Rule 9011, and agreed to follow procedures set forth in the Rules Enabling Act, 28 U.S.C. §§ 2071-2077, for considering further amendments and recommending them to the Supreme Court.

With regard to Commission Recommendation 1.1.5 (concerning financial education programs for debtors), expressed general support for the principle of greater access to financial education for debtors, but stated that if the Congress authorizes such programs, it also should specify by whom they can be provided and how they are to be funded.

With regard to Commission Recommendations 1.2.1 and 1.2.2 (concerning the debtor's ability to exempt certain property), expressed general support for measures designed to treat debtors equally and to enhance the integrity of the bankruptcy system and the public's perception of integrity in the system, but took no position on these recommendations for changes in substantive bankruptcy law because they concern matters of public policy that are best addressed by Congress.

With regard to Commission Recommendations 1.2.5 (concerning the debtor's ability to exempt funds held in a trust) and 1.2.6 (concerning the debtor's ability to exempt certain property), expressed general support for the principle of affording debtors a "fresh start" after bankruptcy, but took no position on these recommendations for changes in substantive bankruptcy law because they concern matters of public policy that are best addressed by Congress.

With regard to Commission Recommendation 1.3.1 (concerning reaffirmation agreements), supported the enactment of amendments to section 524(d) of the Bankruptcy Code to require appropriate documentation of a motion to approve a reaffirmation agreement and to clarify when a court must hold a reaffirmation hearing, but took no position on the merits of amending section 524(c) to specify the standard for approval by the court of a proposed reaffirmation agreement. In addition, the Conference allowed the procedure for prescribing an official form under Federal Rule of Bankruptcy Procedure 9009 to go forward.

With regard to Commission Recommendation 1.3.4 (concerning security interests in household goods), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but agreed to advise Congress that implementation of the recommendation would likely increase the number of valuation hearings held by bankruptcy judges, and to urge Congress to specify, in any implementing legislation, the valuation standard to be applied.

With regard to Commission Recommendation 1.4.3 (concerning the dischargeability of debts for the payment of criminal restitution orders), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress.

With regard to Commission Recommendation 1.4.4 (concerning the dischargeability of family support obligations), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but expressed support for clarification of the current confusing statutory scheme governing the nondischargeability of family support obligations.

With regard to Commission Recommendation 1.4.5 (concerning the dischargeability of student loans), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but noted that the repeal of section 523(a)(8) of the Bankruptcy Code would reduce litigation.

With regard to Commission Recommendation 1.4.6 (concerning pre-bankruptcy default judgments), expressed support for a uniform standard for issue preclusion with regard to dischargeability complaints filed in the bankruptcy courts, as well as other types of adversary proceedings.

With regard to Commission Recommendation 1.4.8 (concerning the period of time for objecting to the debtor's discharge), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed

by Congress, but noted that the suggested change appears unnecessary because the Bankruptcy Code already provides creditors a one-year period after the debtor's discharge to seek revocation of the discharge, and also noted that the recommended change would create a new degree of uncertainty with respect to the finality of bankruptcy cases.

With regard to Commission Recommendation 1.4.9 (concerning proposed new requirements for dismissing objections to discharge), supported the recommendation to amend section 727 of the Bankruptcy Code on the basis that it should enhance the integrity of the bankruptcy system.

With regard to Commission Recommendation 1.5.2 (concerning the valuation of collateral), took no position on the merits of the specific valuation standards proposed by the Commission, but acknowledged the need for some uniform valuation standard.

With regard to Commission Recommendation 1.5.3 (concerning the rate of interest to be paid to secured creditors), expressed support for a uniform national standard regarding the appropriate rate of interest that will give a secured creditor the present value of its allowed secured claim, but took no position on what that standard should be.

With regard to Commission Recommendation 1.5.6 (concerning the authority of the bankruptcy court to issue *in rem* orders), urged that Congress defer action on this Commission recommendation until further study can be made of the due process concerns raised by the proposal.

With regard to Commission Recommendation 1.5.8 (concerning the reporting of bankruptcy filings by credit reporting agencies), supported amendments to the Fair Credit Reporting Act that would require credit reporting agencies to report chapter 13 filings differently from chapter 7 filings, and supported a requirement that credit reporting agencies note on credit reports the fact that debtors have completed voluntary debtor education programs.

With regard to Commission Recommendation 1.5.9 (concerning the establishment of credit rehabilitation programs by trustees), expressed general support for measures designed to assist debtors in reestablishing credit after bankruptcy, while cautioning that new duties should not be imposed on bankruptcy trustees without providing the means for accomplishing those objectives.

With regard to Commission Recommendations 2.1.1 through 2.1.5 (concerning the treatment of mass future claims in bankruptcy), agreed to inform Congress that it is currently studying the issues associated with mass tort litigation (through an ad hoc Mass Torts Working Group), and that it will defer any comment on these recommendations until that study is concluded. The Conference also noted that the proposal in Commission Recommendation 2.1.2 would create additional ancillary litigation as to the appointment or removal of a mass future claims representative and would add appreciably to the work of the bankruptcy judges and the clerks' staff.

With regard to Commission Recommendation 2.3.2 (concerning consent of former partners), voted to urge Congress, if it enacts legislation, to defer to the provisions of the Rules Enabling Act for any procedural rules that may be required to implement changes in the Bankruptcy Code.

With regard to Commission Recommendation 2.3.3 (concerning the jurisdiction of the bankruptcy court in partnership cases), expressed support, in the interest of judicial economy and efficient case administration, for centralizing the determination of the rights and liabilities of general partners to partnership creditors and to each other in the partnership bankruptcy

case. The Conference opposed specifically designating these matters as core matters under 28 U.S.C. § 157(b), noting that doing so may raise jurisdictional concerns in the context of adjudicating contribution claims among nondebtor general partners who have not filed proofs of claim or otherwise consented to the jurisdiction of the bankruptcy court.

With regard to Commission Recommendations 2.3.14 and 2.3.16 (concerning partnership cases), took no position on these recommendations for changes in substantive bankruptcy law because they concern matters of public policy that are best addressed by Congress, but expressed opposition to legislation that would amend the federal rules of procedure without following the procedures prescribed in the Rules Enabling Act, 28 U.S.C. §§ 2071-2077.

With regard to Commission Recommendations 2.3.18 and 2.3.19 (concerning partnership cases), expressed general support for improving the administration of partnership cases, and urged that the extent, form, and timing of disclosure by nondebtor general partners be left to the rulemaking process prescribed in the Rules Enabling Act, 28 U.S.C. §§ 2071-2077.

With regard to Commission Recommendation 2.3.20 (concerning partnership cases), expressed general support for a statutory clarification of the treatment of limited liability company (LLC) members and LLC managers under the Bankruptcy Code, but took no position on whether LLC members in member-managed LLCs and LLC managers in manager-managed LLCs should be treated like general partners under the Code.

With regard to Commission Recommendation 2.4.6 (concerning the need to hold a meeting of creditors in chapter 11 cases), opposed the Commission's recommendation to amend section 341 of the Bankruptcy Code to empower the bankruptcy courts to issue orders waiving meetings of creditors in "pre-packaged" chapter 11 cases due to concerns that the proposal (a) is inconsistent with existing section 341(c), which divests the bankruptcy courts of power over the section 341 meetings; (b) appears to favor corporate "pre-packaged" plan debtors over other parties in interest in bankruptcy cases; and (c) would generate more hearings on motions to waive section 341 meetings on an expedited or emergency basis, thus requiring from the courts additional judicial and clerical resources.

Reaffirmed support for the use of alternative dispute resolution, but opposed Commission Recommendation 2.4.7 (concerning local mediation programs).

With regard to Commission Recommendation 2.4.8 (concerning creditors' committees), supported the recommendation to empower the bankruptcy court to order a change in membership of creditors' committees to ensure adequate representation of creditors, even though implementation of the recommendation may generate increased litigation.

With regard to Commission Recommendation 2.4.9 (concerning employee participation in bankruptcy cases), agreed to inform Congress that the schedules that must be filed by a debtor (Official Form 6) already require disclosure of employee-related obligations and that action on the Commission's recommendation is unnecessary.

With regard to Commission Recommendation 2.4.10 (concerning enhancing the efficacy of examiners and limiting the grounds for appointment of examiners in chapter 11 cases), restated support for limiting the circumstances under which a trustee or trustee's own firm can be retained as a professional by the trustee, but took no position on this recommendation to permit examiners to retain professionals under the same standards that govern the retention of other professionals, because such a change in substantive bankruptcy law concerns a matter of public policy that is best addressed by Congress. With respect to the recommendation to consider an amendment to Bankruptcy Rule 2004, the Conference noted that the recommendation is addressed directly to the Advisory Committee on Bankruptcy Rules,

which has considered the matter and determined, for the time being, simply to monitor any case law that develops and, accordingly, urged Congress to defer to the provisions of the Rules Enabling Act, 28 U.S.C. §§ 2071-2077.

With respect to Commission Recommendation 2.5.2 (concerning flexible rules for disclosure statements and plans), expressed support for authorizing the bankruptcy courts to exercise greater flexibility in managing small business cases under chapter 11, but urged Congress, if it enacts legislation, to defer to the provisions of the Rules Enabling Act, 28 U.S.C. §§ 2071-2077, for any procedural rules or official forms that may be required to implement changes in the Bankruptcy Code.

With respect to Commission Recommendation 2.5.3 (concerning reporting requirements for small business debtors), took no position on the merits of the recommendation, but urged Congress, if it enacts legislation on the subject of small business cases under chapter 11 of the Bankruptcy Code, to defer to the provisions of the Rules Enabling Act, 28 U.S.C. §§ 2071-2077, for any procedural rules or official forms that may be required to implement changes in the Bankruptcy Code.

With regard to Commission Recommendation 2.5.7 (concerning a proposed requirement that the court conduct a scheduling conference in chapter 11 small business cases), indicated its support for scheduling conferences as a valuable case management tool, but opposed mandatory scheduling conferences on grounds that they are not necessary in every case, could use court and judicial time unnecessarily, and would infringe on the judges' discretion to manage their cases.

With regard to Commission Recommendation 2.5.9 (concerning the basis for dismissal or conversion of chapter 11 small business cases), took no position on this recommendation for a change in substantive bankruptcy law, but opposed the time deadlines that would be set forth in 11 U.S.C. § 1112(b)(3), if that section were modified in accordance with the Commission recommendation.

With regard to Commission Recommendation 2.5.10 (concerning the powers and duties of the United States trustee or bankruptcy administrator in chapter 11 small business cases), supported the recommendation for an enhanced role of the United States trustees and the bankruptcy administrators in chapter 11 small business cases, but noted that efficient procedures for administering chapter 11 cases already exist, to a large extent, in the bankruptcy administrator program.

With regard to Commission Recommendations 3.1.1 and 3.1.2 (concerning the establishment of Article III bankruptcy courts and the transition to that status), strongly opposed the Commission's recommendation that bankruptcy courts be established under Article III of the Constitution.

With regard to Commission Recommendation 3.1.5 (concerning the appropriate venue for corporate debtors), urged that Congress defer action on the recommended change in the venue statutes until there is additional published scholarship on the subject, because the data now available do not clearly support the need for any statutory change.

With regard to Commission Recommendation 3.2.2 (concerning venue for preference actions), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress.

With regard to Commission Recommendation 3.3.1 (concerning the United States trustee

program), reiterated its longstanding position that placement of the United States trustee program as an independent office in the judicial branch is essential to sound case management and effective administration of estates in bankruptcy cases, but took no position on the specific recommendations concerning the United States trustee program.

With regard to Commission Recommendation 3.3.3 (concerning the qualification of attorneys, accountants, and other professionals), took no position on the Commission recommendation regarding the qualification of professionals under 11 U.S.C. § 1107(b), but noted that enactment of the Commission recommendation could increase litigation over whether a prospective professional's interest or equity interest in the debtor is "insubstantial," thereby increasing the judicial and clerical workloads of the courts.

Opposed Commission Recommendation 3.3.4 (concerning nationwide admission to practice), and instead encouraged bankruptcy courts to review their local rules in order to streamline the process of admission for non-resident attorneys who want to appear in a particular proceeding.

With regard to Commission Recommendation 3.3.5 (concerning the appointment of fee examiners), recommended that legislative action to preclude the appointment of fee examiners in bankruptcy cases and proceedings be deferred pending further study, noting the burdensome, time-consuming nature of the requirement that bankruptcy judges conduct an independent review of bankruptcy fee applications.

With regard to Commission Recommendation 3.3.6 (concerning attorney referral programs), supported the amendment of 11 U.S.C. § 504 to permit an attorney compensated out of a bankruptcy estate to remit a percentage of such compensation to a bona fide, nonprofit, public service referral program.

With regard to Commission Recommendations 4.1.1 through 4.1.5 (concerning data compilation and dissemination), opposed as unnecessary the appointment of a third-party data collection coordinator because sufficient mechanisms exist and are being employed currently for coordination between the Administrative Office and the Executive Office for United States Trustees on bankruptcy data compilation and dissemination matters. The Conference also opposed as unnecessary the enactment of legislation requiring electronic public access to bankruptcy data because efforts are already underway in the judiciary to establish electronic access at the lowest possible cost.

With regard to Commission Recommendation 4.2.1 (concerning notice to governmental units of bankruptcy cases), expressed support for efforts to ensure that all parties to a bankruptcy case, including governmental entities, receive adequate notice of bankruptcy cases, including a requirement that clerks' offices be required to take reasonable steps to prepare and update local registries of governmental entities to which notice should be given, but recommended that the establishment of such a mechanism be left to the rulemaking process under the Rules Enabling Act, 28 U.S.C. §§ 2071-2077.

With regard to Commission Recommendation 4.2.3 (concerning taxation and the Bankruptcy Code), expressed general support for the principle of facilitating adequate and effective notice in bankruptcy cases to governmental units and noted that proposed amendments to the Federal Rules of Bankruptcy Procedure that would provide better notice to all federal and state governmental units have been published for comment.

With regard to Commission Recommendation 4.2.7 (concerning trust fund taxes), supported a requirement that small business debtors be required to create and maintain separate bank accounts for trust fund taxes and nontax deductions from employee paychecks, and supported

appropriate sanctions for violations of the segregation requirement, but recommended that the harsh sanction of removal from the trustee panel be reserved for egregious cases.

With regard to Commission Recommendation 4.2.20 (concerning chapter 11 disclosure statements), supported the establishment of standards for tax disclosures in chapter 11 disclosure statements, limited to cases in which an accountant for the debtor in possession has been appointed, on grounds that such a requirement would make it easier for bankruptcy judges to evaluate and approve disclosure statements.

With regard to Commission Recommendation 4.2.24 (concerning abusive serial filings), supported amendment of the Bankruptcy Code to give bankruptcy judges discretion to dismiss abusive serial filings with prejudice to refiling under chapter 13 or 11 for a period determined by the court, but recommended that any bar to refiling should be limited to a specific period of time (such as three years).

With regard to Commission Recommendation 4.2.35 (concerning the authority of bankruptcy courts to grant declaratory relief), took no position on this recommendation for a change in substantive bankruptcy law because it concerns a matter of public policy that is best addressed by Congress, but advised Congress that giving bankruptcy judges the power to issue declaratory judgments on prospective tax issues may require additional judicial resources to hear and resolve such matters.

With regard to Commission Recommendation 4.3.2 (concerning chapter 9 municipal bankruptcy cases), took no position on this recommendation for a change in substantive bankruptcy law, but recommended that Congress resolve the apparent conflict between sections 901 and 921(d) of the Bankruptcy Code.

With regard to Commission Recommendation 4.3.4 (concerning the appointment of the presiding judge in chapter 9 cases), opposed the recommended deletion of section 921(b) of the Bankruptcy Code and instead supported the current statutory scheme, which requires the chief judge of the court of appeals to designate a bankruptcy judge to conduct each chapter 9 case.

With regard to Commission Recommendation 4.4.1 (concerning chapter 12 family farmer cases), supported the recommended increase in the chapter 12 debt limits and the proposal to make chapter 12 a permanent part of the Bankruptcy Code.

With regard to Commission Recommendation 4.4.2 (concerning chapter 12 family farmer cases), generally supported the Commission's recommendation to provide some consistent, fair, national standard for calculating the chapter 12 trustee's statutory percentage fee, but did not take a position on what specific standard is appropriate.

Committee on the Budget

Fiscal Year 2000 Budget Request

In recognition of congressional funding constraints, the Budget Committee reduced and adjusted the program committees' proposed funding levels for the fiscal year 2000 budget request. The Judicial Conference approved the Budget Committee's lower budget request for fiscal year 2000, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Director of the Administrative Office considers necessary and appropriate.

Cost Control Monitoring System

Currently, under the Cost Control Monitoring System (CCMS), when a new work unit is authorized for a program, it is funded at the national average for all position types in that program. For settlement conference attorneys, the effect of this policy is that the national average includes the averages for attorneys as well as support staff and thus does not provide sufficient funds to hire an attorney when a new one is authorized for these small offices. In order to address the funding difficulties created by CCMS in conference attorney offices, the Judicial Conference approved a Budget Committee recommendation that the Conference revise the CCMS formula for determining funding levels for settlement conference attorney offices to provide separate national average salaries for conference attorneys and for support staff, effective in fiscal year 1999.

Certifying Officer Legislation

In May 1997, the Executive Committee of the Judicial Conference agreed on behalf of the Judicial Conference to seek an amendment to title 28 permitting the Director of the Administrative Office to designate certifying officers in the judiciary (JCUS-SEP 97, p. 50). Enactment of such legislation would fix responsibility between individuals requesting goods and services and those actually approving payment for those goods and services, and would afford the judiciary's disbursing officers the personal liability protection executive branch disbursing officers have enjoyed for many years. Concern has been expressed that this provision as endorsed by the Conference could reduce the authority of a chief judge to manage his or her court. To avoid this result, the Judicial Conference approved a Budget Committee recommendation that, in the event of enactment of certifying officer legislation, the Director of the Administrative Office should consult with the chief judge before designating additional certifying officers in a district court.

Funding for Tribal Courts

There is currently little federal funding provided to tribal court systems. The federal judiciary has a stake in ensuring that adequate funding is provided because in the event tribal court systems fail, a large number of filings could come under the federal courts' jurisdiction. On recommendation of the Committee, the Judicial Conference expressed its support for the appropriation of adequate funding for tribal courts.

Committee on Codes of Conduct

Code of Conduct for Federal Public Defender Employees

Canon 6 of the Code of Conduct for Federal Public Defender Employees does not currently allow federal public defender offices to accept the voluntary, uncompensated services of individuals on paid leaves of absence from private firms. Such volunteer arrangements are permitted in U.S. attorneys' offices. Noting that the interest of governmental parity and the lack of any overriding ethical concerns favor an exemption similar to that contained in the provisions governing the U.S. attorneys' offices, the Committee on Codes of Conduct recommended, and the Judicial Conference approved, a revision to the second paragraph of Canon 6 of the Federal Public Defender Employees Code as follows (new language is italicized):

Notwithstanding the above, a defender employee (*other than a defender employee serving without compensation*) should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the United States.

This revision is not limited to attorneys and thus would apply to investigators, paralegals, and other defender staff.

Judges' Recusal Obligations

A series of news articles published in the spring of 1998 focused the attention of the judiciary on judges' recusal obligations. The Committee on Codes of Conduct addressed issues arising from the responsibility of judges to ensure their compliance with financial conflict of interest rules. The Committee does not believe that any ethical principles require judges to make their recusal lists available to the public at their courthouses, but agreed that the Committee should focus its efforts on assisting judges in meeting their recusal responsibilities. Such efforts include increased education of judges about recusal responsibilities, including periodic reminders encouraging judges to create and update recusal lists; development of a model or standardized checklist to be distributed to all judges for use in drawing up recusal lists; and development of automated systems, including software programs, budget and staff permitting, for use in chambers or clerks' offices to compare judges' recusal lists to their court dockets.

After discussion, the Judicial Conference determined to refer for review by the Committees on Codes of Conduct and Financial Disclosure the following recommendation:

That the Judicial Conference encourage all courts to maintain in the clerk's office, to be available to the litigants upon written request, a list for each judge of the companies in which the judge, individually or as a fiduciary, or the judge's spouse, or a minor child residing in the household, has a financial interest requiring recusal.

Committee Activities

Since its last report to the Conference in March 1998, the Committee on Codes of Conduct received 40 new written inquiries and issued 37 written advisory responses. The average response time for inquiries was 20 days. The Chairman received and responded to 29 telephonic inquiries. In addition, individual Committee members responded to 98 inquiries from their colleagues.

Committee on Court Administration and Case Management

Methods Analysis Program - Jury Administration

The Methods Analysis Program (MAP) identifies "better practices" for performing the work of the courts and encourages court units to adopt these or similar practices utilized by individual courts. A MAP work group of court personnel developed a number of ideas to improve the jury administration function, some of which would require legislation or changes to the federal rules. The Committee on Court Administration and Case Management made recommendations on three of these proposals.

The first MAP proposal addressed by the Committee concerned the delegation of authority to make determinations on the qualification, disqualification, exemption and/or excuse of jurors. The Jury Selection and Service Act (Jury Act) authorizes the chief judge of the district court, or another district court judge as the court's jury plan may provide, to determine whether a person is qualified, unqualified, exempt, or excused permanently from jury service (28 U.S.C. § 1865). Satisfied that districts delegating this authority to clerks of court would continue to adhere to the principles of nondiscrimination by using the required objective criteria, the Committee recommended that the

Judicial Conference propose legislation to amend 28 U.S.C. § 1865 to permit the chief judge to authorize the clerk of court, under supervision of the court and if the court's jury plan so authorizes, to determine whether persons are qualified or unqualified for, exempt from, or to be excused from jury service. The Conference concurred in the Committee's recommendation.

The second MAP proposal dealt with elimination of the requirement set forth in the Jury Act at 28 U.S.C. §§ 1864(a) and 1866(a), that clerks shall "publicly draw at random" from the master wheel and qualified wheel the names of persons required for jury service. "Publicly draw" is defined in 28 U.S.C. § 1869(k) as a "drawing which is conducted...after reasonable public notice and which is open to the public." With advanced computer technology, more courts are moving to a purely randomized method for selecting juries, and it is unlikely that the public has any interest in attending a drawing. On recommendation of the Committee, the Judicial Conference agreed to propose legislation to amend the Jury Act to eliminate the public drawing requirements for selecting names from the master and qualified jury wheels, provided there is public notice of the process by which names are periodically drawn.

The third MAP proposal involved the automatic excuse from jury service now granted to members of the armed forces in the Jury Act (28 U.S.C. § 1863(b)(6)). Barring any individual from jury duty seems excessive, and circumstances have changed in the last decade so that military personnel have more flexibility to accommodate jury service without interfering with their official duties. Under 10 U.S.C. § 982, the Department of Defense has the authority to make a determination whether military duties require a service member to be exempt from service on a state or local jury; however, title 10 does not apply to service on federal juries. On recommendation of the Committee, the Conference agreed to propose legislation to amend the Jury Act to eliminate the automatic excuse from service now granted to members of the armed forces in active service under 28 U.S.C. § 1863(b)(6) on the ground that they are exempt, and support a related amendment to 10 U.S.C. § 982 to refer to federal jury service.

Composition of Circuit Councils

Implementation Strategy 50a(2) of the *Long Range Plan for the Federal Courts*, approved by the Judicial Conference in September 1995 (JCUS-SEP 95, p. 52), states that "each circuit judicial council should have an equal number of district and circuit judge members, including the chief circuit judge." Despite its inclusion in proposed court improvement bills, the implementation strategy has not yet been enacted by Congress. The Court Administration and Case Management Committee received a request, based on concerns for the possibility of impasse in the councils' deliberative processes, that it recommend to the Conference modification of this position. The Committee was of the view that the Conference position, as espoused in the *Long Range Plan*, remains desirable, and made no recommendation to the Conference for change. However, after debate at the session, the Conference determined that the current language of 28 U.S.C. § 332(a), which provides that a circuit judicial council shall consist of "the chief judge of the circuit, who shall preside, and an equal number of circuit judges and district judges of the circuit," should be retained.

Statistical Reporting of Social Security Appeals

Social security appeals are not currently required to be included in the statistical reporting system adopted to meet the requirements of the Civil Justice Reform Act (CJRA), except when a motion filed in the case is pending more than six months, or when a case is pending more than three years. Until recently, bankruptcy appeals were similarly excluded; however, in March 1998, the Judicial Conference adopted a recommendation requiring all bankruptcy appeals pending over six months in the district court to be included in the CJRA statistical reports (JCUS-MAR 98, p. 11). Noting that including social security appeals in public reports may encourage courts to remain attentive to their prompt disposition, the Court Administration and Case Management Committee

recommended, and the Judicial Conference agreed, that social security appeals be included in CJRA public reports in the same way as motions in civil cases, but that the pending date from which the six-month clock begins to run be set at 60 days after the filing of the transcript.

Miscellaneous Fee Schedules

Internet Fee for Electronic Access to Court Information. The miscellaneous fee schedules for the appellate, district and bankruptcy courts, the U.S. Court of Federal Claims, and the Judicial Panel on Multidistrict Litigation provide a fee for public access to court electronic records (PACER) (28 U.S.C.

§§ 1913, 1914, 1926, 1930 and 1932). The revenue from these fees is used exclusively to fund the full range of electronic public access (EPA) services. With the introduction of Internet technology to the judiciary's current public access program, the Committee on Court Administration and Case Management recommended that a new Internet PACER fee be established to maintain the current public access revenue while introducing new technologies to expand public accessibility to PACER information. On the Committee's recommendation, the Judicial Conference approved an amendment to the miscellaneous fee schedules for the appellate, district and bankruptcy courts, the U.S. Court of Federal Claims, and the Judicial Panel on Multidistrict Litigation to establish an Internet PACER fee of \$.07 per page for public users obtaining PACER information through a federal judiciary Internet site.

The Committee also addressed the issue of what types of data or information made available for electronic public access should have an associated fee and what types of data should be provided at no cost. On recommendation of the Committee, the Judicial Conference agreed to include the following language as addenda to the same miscellaneous fee schedules:

- a. The Judicial Conference has prescribed a fee for access to court data obtained electronically from the public dockets of individual case records in the court, except as provided below.
- b. Courts may provide other local court information at no cost. For example:
 - local rules,
 - court forms,
 - news items,
 - court calendars,
 - opinions designated by the court for publication, and
 - other information--such as court hours, court location, telephone listings--determined locally to benefit the public and the court.

Court of Federal Claims. In September 1997, the Judicial Conference approved an amendment to the district court and bankruptcy court miscellaneous fee schedules to increase the fee for exemplifications to twice the amount of the fee for certifications (JCUS-SEP 97, p. 59). The miscellaneous fee schedule for the United States Court of Federal Claims also contains a provision on fees for exemplifications and certifications, which was inadvertently excluded from this Conference action. At this session, the Conference approved a Committee recommendation that the Conference amend Item 3 of the United States Court of Federal Claims miscellaneous fee schedule to make the fee for certification of any document or paper, where the certification is made directly on the document or by separate instrument, \$5 ⁽⁴⁾ and the fee for exemplification of any document or paper twice the amount of the fee for certification.

The Court of Federal Claims was also omitted from action taken by the Conference in March

1993 amending the miscellaneous fee schedule for district courts to increase the fees for admission to practice and for duplicate

admission certificates and certificates of good standing (JCUS-MAR 93, p. 6). Since the miscellaneous fee schedule for the Court of Federal Claims contains similar provisions, at this session the Conference approved the Committee's recommendation that the Conference raise the attorney admission fee, prescribed in Item 4 of the United States Court of Federal Claims miscellaneous fee schedule, to \$50 and the fee for a duplicate certificate of admission or certificate of good standing to \$15, provided that legislation permitting the judiciary to retain any increase in fees collected under the miscellaneous fee schedules is enacted.

Consolidation - Southern District of West Virginia

At its March 1998 session, the Judicial Conference adopted procedures for combining functions in the district and bankruptcy courts. The procedures provide for the review of requests for the consolidation of district and bankruptcy court clerks' offices by the Judicial Conference, as required by 28 U.S.C. § 156(d) (JCUS-MAR 98, pp. 10-11). Pursuant to these procedures, the Southern District of West Virginia submitted to the Judicial Council of the Fourth Circuit a plan to consolidate the administrative and operational functions of the district court and bankruptcy court clerks' offices and the probation office. The Judicial Council unanimously approved the request, and the plan was referred to the Committee on Court Administration and Case Management to review in consultation with the Committee on the Administration of the Bankruptcy System. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved the consolidation plan submitted by the Southern District of West Virginia and agreed to refer it to Congress for approval.

Committee on Criminal Law

Committee Activities

The Committee on Criminal Law reported that it had reviewed and commented on the Methods Analysis Program study of pretrial services investigation and report-writing functions, in which 34 suggested "better practices" had been developed by a work group and assessed in the courts. The Committee also reviewed and agreed to distribute the *Directory of Cooperative and Sharing Arrangements in Districts with Separate Pretrial Services and Probation Offices* and the *Appendix to the Directory* to chief district judges and chief probation and pretrial services officers. The Committee was briefed on several additional matters, including an update on Federal Judicial Center and Administrative Office efforts to undertake a study on the viability and reliability of various case tools to assist officers with the pretrial services supervision function, and a report prepared by the Federal Bureau of Investigation to the Congress on implementing the collection of deoxyribonucleic acid (DNA) samples from federal felony offenders.

Committee on Defender Services

Panel Attorney Administration

In March 1997, the Judicial Conference approved a two-year pilot project in the Central District of California and the District of Maryland that provides funding for an attorney in each district to assist the court in Criminal Justice Act (CJA) panel administration and case cost analysis (JCUS-MAR 97, p. 24). At this session, on recommendation of the Committee on Defender Services, the Judicial Conference agreed to approve shifting the funding source for the project, beginning in fiscal year 1999, from the Defender Services appropriation to the judiciary's Salaries and Expenses account, and to extend the duration of the pilot project through March 2002,

supported by approximately \$701,500 from the Salaries and Expenses account, in order to permit adequate time for evaluation.⁽⁵⁾

Defender Organization Funding Requests

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Defender Services Committee approved \$125,800 to establish two federal public defender organizations and an increase of \$300,800 to the fiscal year 1998 budget of another federal public defender organization.

Federal Death Penalty Cases

In response to judicial and congressional concerns about the increasing cost of death penalty representation, a subcommittee of the Defender Services Committee conducted a year-long study of the costs, availability, and quality of appointed counsel in federal death penalty cases. The report of the subcommittee, entitled *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation*, identified specific steps to be taken in order to ensure that expenditures in federal death penalty cases remain within reasonable limits. On recommendation of the Defender Services Committee, the Judicial Conference approved the following recommendations identified in the report, and authorized public release of the report:

1. Qualifications for Appointment

Quality of Counsel. Courts should ensure that all attorneys appointed in federal death penalty cases are well qualified, by virtue of their prior defense experience, training and commitment, to serve as counsel in this highly specialized and demanding type of litigation. High-quality legal representation is essential to assure fair and final verdicts, as well as cost-effective case management.

b. Qualifications of Counsel. As required by statute, at the outset of every capital case, courts should appoint two counsel, at least one of whom is experienced in and knowledgeable about the defense of death penalty cases. Ordinarily, "learned counsel" should have distinguished prior experience in the trial, appeal, or post-conviction review of federal death penalty cases, or distinguished prior experience in state death penalty trials, appeals, or post-conviction review that, in combination with co-counsel, will assure high-quality representation.

c. Special Considerations in the Appointment of Counsel on Appeal. Ordinarily, the attorneys appointed to represent a death-sentenced federal appellant should include at least one attorney who did not represent the appellant at trial. In appointing appellate counsel, courts should, among other relevant factors, consider:

- i. the attorney's experience in federal criminal appeals and capital appeals;
- ii. the general qualifications identified in paragraph 1(a), above; and
- iii. the attorney's willingness, unless relieved, to serve as counsel in any post-conviction proceedings that may follow the appeal.

d. Special Considerations in the Appointment of Counsel in Post-Conviction Proceedings. In appointing post-conviction counsel in a case where the defendant is sentenced to death, courts

should consider the attorney's experience in federal post-conviction proceedings and in capital post-conviction proceedings, as well as the general qualifications set forth in paragraph 1(a).

e. Hourly Rate of Compensation for Counsel. The rate of compensation for counsel in a capital case should be maintained at a level sufficient to assure the appointment of attorneys who are appropriately qualified to undertake such representation.

2. Consultation with Federal Defender Organizations or the Administrative Office

a. Notification of Statutory Obligation to Consult. The Administrative Office of the U.S. Courts (Administrative Office) and federal defender organizations should take appropriate action to ensure that their availability to provide statutorily mandated consultation regarding the appointment of counsel in every federal death penalty case is well known to the courts. (See 18 U.S.C. § 3005.)

b. Consultation by Courts in Selecting Counsel. In each case involving an offense punishable by death, courts should, as required by 18 U.S.C.

§ 3005, consider the recommendation of the district's Federal Public Defender (FPD) (unless the defender organization has a conflict) about the lawyers to be appointed. In districts not served by a Federal Public Defender Organization, 18 U.S.C. § 3005 requires consultation with the Administrative Office. Although not required to do so by statute, courts served by a Community Defender Organization should seek the advice of that office.

c. Consultation by Federal Defender Organizations (FDOs) and the Administrative Office in Recommending Counsel. In discharging their responsibility to recommend defense counsel, FDOs and the Administrative Office should consult with Federal Death Penalty Resource Counsel in order to identify attorneys who are well qualified, by virtue of their prior defense experience, training and commitment, to serve as lead and second counsel.

3. Appointment of More Than Two Lawyers

Number of Counsel. Courts should not appoint more than two lawyers to provide representation to a defendant in a federal death penalty case unless exceptional circumstances and good cause are shown. Appointed counsel may, however, with prior court authorization, use the services of attorneys who work in association with them, provided that the employment of such additional counsel (at a reduced hourly rate) diminishes the total cost of representation or is required to meet time limits.

4. Appointment of the Federal Defender Organization

a. FDO as Lead Counsel. Courts should consider appointing the district's FDO as lead counsel in a federal death penalty case only if the following conditions are present:

i. the FDO has one or more lawyers with experience in the trial and/or appeal of capital cases who are qualified to serve as "learned counsel"; and

ii. the FDO has sufficient resources so that workload can be adjusted without unduly disrupting the operation of the office, and the lawyer(s) assigned to the death penalty case can devote adequate time to its defense, recognizing that the case may require all of their available time; and

iii. the FDO has or is likely to obtain sufficient funds to provide for the expert,

investigative and other services reasonably believed to be necessary for the defense of the death penalty case.

b. FDO as Second Counsel. Courts should consider appointing the district's FDO as second counsel in a federal death penalty case only if the following conditions are present:

i. the FDO has sufficient resources so that workload can be adjusted without unduly disrupting the operation of the office, and the lawyer(s) assigned to the death penalty case can devote adequate time to its defense, recognizing that the case may require all of their available time; and

ii. the FDO has or is likely to obtain sufficient funds to provide for the expert, investigative and other services reasonably believed to be necessary for the defense of the death penalty case.

5. The Death Penalty Authorization Process

a. Streamlining the Authorization Process. The Department of Justice (DOJ) should consider adopting a "fast track" review of cases involving death-eligible defendants where there is a high probability that the death penalty will not be sought.

b. Court Monitoring of the Authorization Process. Courts should exercise their supervisory powers to ensure that the death penalty authorization process proceeds expeditiously.

6. Federal Death Penalty Resource Counsel

a. Information from Resource Counsel. In all federal death penalty cases, defense counsel should obtain the services of Federal Death Penalty Resource Counsel in order to obtain the benefit of model pleadings and other information that will save time, conserve resources and enhance representation. The judiciary should allocate resources sufficient to permit the full value of these services to be provided in every case.

b. Technology and Information Sharing. The Administrative Office should explore the use of computer-based technology to facilitate the efficient and cost-effective sharing of information between Resource Counsel and defense counsel in federal death penalty cases.

7. Experts

a. Salaried Positions for Penalty Phase Investigators. The federal defender program should consider establishing salaried positions within FDOs for persons trained to gather and analyze information relevant to the penalty phase of a capital case. FDOs should explore the possibility that, in addition to providing services in death penalty cases to which their FDO is appointed, it might be feasible for these investigators to render assistance to panel attorneys and to other FDOs.

b. Negotiating Reduced Rates. Counsel should seek to contain costs by negotiating reduced hourly rates and/or total fees with experts and other service providers.

c. Directory of Experts. A directory of experts willing to provide the assistance most frequently needed in federal death penalty cases, and their hourly rates of billing, should be developed and made available to counsel.

8. Training

Federal Death Penalty Training Programs. The Administrative Office should continue to offer and expand training programs designed specifically for defense counsel in federal death penalty cases.

9. Case Budgeting

a. Consultation with Prosecution. Upon learning that a defendant is charged with an offense punishable by death, courts should promptly consult with the prosecution to determine the likelihood that the death penalty will be sought in the case and to find out when that decision will be made.

b. Prior to Death Penalty Authorization. Ordinarily, the court should require defense counsel to submit a litigation budget encompassing all services (counsel, expert, investigative and other) likely to be required through the time that DOJ determines whether or not to authorize seeking the death penalty.

c. After Death Penalty Authorization. As soon as practicable after the death penalty has been authorized by DOJ, defense counsel should be required to submit a further budget for services likely to be needed through the trial of the guilt and penalty phases of the case. In its discretion, the court may determine that defense counsel should prepare budgets for shorter intervals of time.

d. Advice from Administrative Office and Resource Counsel. In preparing and reviewing case budgets, defense counsel and the courts should seek advice from the Administrative Office and Federal Death Penalty Resource Counsel, as may be appropriate.

e. Confidentiality of Case Budgets. Case budgets should be submitted *ex parte* and should be filed and maintained under seal.

f. Modification of Approved Budget. An approved budget should guide counsel's use of time and resources by indicating the services for which compensation is authorized. Case budgets should be re-evaluated when justified by changed or unexpected circumstances, and should be modified by the court where good cause is shown.

g. Payment of Interim Vouchers. Courts should require counsel to submit vouchers on a monthly basis, and should promptly review, certify and process those vouchers for payment.

h. Budgets In Excess of \$250,000. If the total amount proposed by defense counsel to be budgeted for a case exceeds \$250,000, the court should, prior to approval, submit such budget for review and recommendation to the Administrative Office.

i. Death Penalty Not Authorized. As soon as practicable after DOJ declines to authorize the death penalty, the court should review the number of appointed counsel and the hourly rate of compensation needed for the duration of the proceeding pursuant to subparagraph 6.02.B(2) of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedures*.

j. Judicial Conference Guidelines. The Judicial Conference should promulgate guidelines on case budgeting for use by the courts and counsel.

k. Judicial Training for Death Penalty Cases. The Federal Judicial Center should work in cooperation with the Administrative Office to provide training for judges in the management of federal death penalty cases and, in particular, in the review of case budgets.

10. Case Management

a. Non-Lawyer Staff. Where it will be cost-effective, courts should consider authorizing payment for services to assist counsel in organizing and analyzing documents and other case materials.

b. Multi-defendant Cases

i. Early Decision Regarding Severance. Courts should consider making an early decision on severance of non-capital from capital co-defendants.

ii. Regularly Scheduled Status Hearings. Status hearings should be held frequently, and a schedule for such hearings should be agreed upon in advance by all parties and the court.

iii. "Coordinating Counsel". In a multi-defendant case (in particular a multi-defendant case in which more than one individual is eligible for the death penalty), and with the consent of co-counsel, courts should consider designating counsel for one defendant as "coordinating counsel."

iv. Shared Resources. Counsel for co-defendants should be encouraged to share resources to the extent that doing so does not impinge on confidentiality protections or pose an unnecessary risk of creating a conflict of interest.

v. Voucher Review. In large multi-defendant cases, after approving a case budget, the court should consider assigning a magistrate judge to review individual vouchers. The court should meet with defense counsel at regular intervals to review spending in light of the case budget and to identify and discuss future needs.

11. Availability of Cost Data

The Administrative Office should improve its ability to collect and analyze information about case budgets and the cost of capital cases.

Committee on Federal-State Jurisdiction

Medical Records Privacy Legislation

The Committee on Federal-State Jurisdiction considered several proposals pending in the 105th Congress concerning the privacy of medical records. In general, these proposals are intended to ensure the confidentiality of certain medical records by creating uniform standards for the disclosure of "protected" health information, that is, information that either identifies, or could be used to identify, the individual who is the subject of the information. In addition, the bills would

provide individuals with the right to obtain access to their records, amend their records, and receive notice of their rights; establish a system for disclosure of medical information; and create criminal and administrative penalties for violation of certain rights. The proposals would also create a civil cause of action in cases where an individual's rights have been "knowingly or negligently" violated; however, it is not specified whether jurisdiction over such actions lies in state or federal court. Some proposals also permit the court to award punitive damages in certain circumstances. Referencing recommendations in the *Long Range Plan for the Federal Courts* that encourage recognition of the federal courts as courts of limited jurisdiction and resources, the Committee on Federal-State Jurisdiction recommended, and the Judicial Conference agreed, that the Conference endorse the following principles pertaining to medical records privacy legislation pending in the 105th Congress:

Principle 1--Court Jurisdiction

The private cause of action for wrongful disclosure of protected health information created by the medical records privacy legislation concerns a substantive area that traditionally has been governed by state law. Consistent with general principles of federalism, both the original and removal jurisdiction of federal courts to adjudicate such private causes of action should be limited to cases where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, or some other substantial sum as determined by Congress.

Principle 2--Standard for the Award of Punitive Damages

If Congress determines to provide punitive damages as part of the remedies for a violation of the Medical Records Privacy Act, Congress should provide a statutory standard for the award of such damages to avoid wasteful litigation over the standard governing such damages.

Principle 3--Access to Medical Records for Use in Pending Litigation

To the extent that litigation arises outside of the context of the Medical Records Privacy Act (e.g., personal injury cases), but nevertheless gives rise to issues concerning access to information protected by such Act, the parties should resolve such issues exclusively before the court handling the underlying litigation and not by instituting duplicative litigation.

Multidistrict Litigation Transfer Provision

Section 1407(a) of title 28, United States Code, authorizes the Judicial Panel on Multidistrict Litigation to transfer civil actions with common questions of fact "to any district for coordinated or consolidated pretrial proceedings." It also requires the Judicial Panel to remand any such action to the district court in which the action was filed at or before the conclusion of such pretrial proceedings. Until recently, however, federal courts have approved the practice of a transferee court invoking the venue transfer provision (28 U.S.C. § 1404(a)) and transferring the case to itself for trial purposes. In *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 118 S.Ct. 956 (1998), the Supreme Court acknowledged the possible wisdom of permitting such self-transfers, but held that they were currently prohibited by 28 U.S.C. § 1407(a). The Committee on Federal-State Jurisdiction, after soliciting the views of the Judicial Panel and the Committee on Court Administration and Case Management, recommended that the Judicial Conference support legislation to amend the multidistrict litigation transfer provision, 28 U.S.C. § 1407, to provide that a district court conducting pretrial proceedings pursuant to that section could assign a transferred case for trial proceedings to itself or another district court in the interest of justice and for the convenience of parties and witnesses. The Judicial Conference approved the Committee's recommendation.

Judicial Improvement Act of 1998

The Committee on Federal-State Jurisdiction was asked to review, and make recommendations regarding, the "Judicial Improvement Act of 1998" (S. 2163, 105th Congress) in anticipation of congressional hearings. Many of the provisions contained in S. 2163 are similar to those included in the "Judicial Reform Act of 1998" (H.R. 1252, 105th Congress), upon which the Conference has previously commented (JCUS-SEP 97, pp. 64-65, 71, 81-82, and 85). On recommendation of the Committee, the Conference took the following positions on other provisions in S. 2163 that have potential implications for the federal judiciary:

- a. Opposed section 2, which would require expanded use of three-judge courts for challenges to state laws adopted by referenda *and* to Acts of Congress.
- b. Opposed in section 3(a), which concerns the termination of prospective relief in *any* civil action, the time limit established therein that would require the court to act within 60 days, which may impede the effective administration of justice.
- c. Opposed section 3(b), concerning special masters, because it could be interpreted broadly and thus bar the use of special masters in federal courts with respect to all proceedings, except for the remedial phase.
- d. Took no position on section 3(c), which would prohibit federal judges from ordering tax increases.
- e. Took no position on section 12, which would limit federal habeas review of *Miranda* claims and claims based upon a voluntarily given confession.
- f. Took no position on section 13, which would prohibit federal judges from specifically barring retrial of a successful habeas petitioner.
- g. Took no position on section 15 relating to termination of prospective relief in prison condition cases.
- h. Took no position on section 16 relating to limitations on attorney's fees in prison condition cases.
- i. Took no position on section 17, which would authorize the federal court to make findings that a prisoner's claims were filed for a malicious purpose or to harass the defendants and require the court to forward such findings to the state's department of corrections.
- j. Expressed concerns with section 18, which would deny jurisdiction to the federal courts to enter prisoner release orders, because the withdrawal of this jurisdiction (i) would sweep too broadly by reaching orders that do not in themselves direct state officials to release any prisoners; (ii) might prove counterproductive, by foreclosing relatively deferential forms of federal remedies and forcing judges to fashion alternative remedies that might more deeply affect the administration of prisons; and (iii) would operate as a bar to federal relief in even the most intractable cases, including those addressed by the Prison Litigation Reform Act enacted in 1996, which conditions relief upon specific findings that no alternative remedy will ameliorate the conditions at the prison.

Committee on Financial Disclosure

Committee Activities

The Ethics in Government Act of 1978 (5 U.S.C. app. 4 § 105), as amended, requires the release of financial disclosure reports to any member of the public who properly completes the request form. The Committee on Financial Disclosure reviewed its current procedures for implementation of this section and found that public access could be facilitated by wider publication of the procedure and the form (AO Form 10A) for obtaining access to a financial disclosure report. The Committee agreed that copies of the form and accompanying instructions for obtaining a report should be placed on the judiciary's website and made available in local courthouses.

Upon review of its administrative procedures for release of reports, the Committee recognized that certain administrative procedures could be changed to facilitate the overall request process without compromising security. The Committee determined to delete the requirement that requests for reports must contain a notarized signature, and it reduced the cost for reproduction of copies of a report from 50 cents to 20 cents per page.

The Committee reported that as of July 10, 1998, it had received 3,032 financial disclosure reports and certifications for the calendar year 1997, including 1,166 reports and certifications from Supreme Court Justices, Article III judges, and judicial officers of special courts; 324 from bankruptcy judges; 481 from magistrate judges; and 1,061 from judicial employees.

Committee on Intercircuit Assignments

Committee Activities

The Committee on Intercircuit Assignments reported that during the period from January 1, 1998 to June 30, 1998, a total of 122 intercircuit assignments, undertaken by 76 Article III judges, plus one retired Associate Justice, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance in identifying judges willing to take assignments.

Committee on International Judicial Relations

Committee Activities

The Committee on International Judicial Relations reported that it had approved a strategic plan for the Committee compatible with its jurisdictional statement, and agreed that all future committee activities would be subject to the plan. In addition, the Committee endorsed six new international rule of law programs to be funded by grants from the United States Agency for International Development and sought Executive Committee approval for them (see *supra*, "Miscellaneous Actions," pp. 41-43). The Committee also reviewed its role and participation in rule of law programs in the Americas, Russia, and China, and was briefed on a number of ongoing international judicial reform initiatives.

Committee on the Judicial Branch

Committee Activities

The Committee on the Judicial Branch reported on the prospects for a 1999 judges' Employment Cost Index salary adjustment and discussed ways to improve the current statutory process for reviewing and setting the salaries of judges, senior executive branch officials, and Members of Congress. The Committee received updates on a number of judicial benefits issues, including a flexible benefits plan, an employee-pay-all long-term care insurance program, and pending legislation to improve life insurance and health benefits.

Committee on Judicial Resources

Secretaries to Chief Circuit Judges

In September 1987, the Judicial Conference approved a change to the Judiciary Salary Plan (JSP) qualification standards for principal secretaries to chief circuit judges to permit temporary promotion to JSP-12 after serving three years as a secretary to a circuit judge and upon a showing of exceptional circuit-wide duties and responsibilities (JCUS-SEP 87, pp. 64-65). When the chief judge stepped down, however, the secretary would revert back to the grade that would have been attained had the temporary promotion not occurred. The Conference, on recommendation of the Committee on Judicial Resources, approved a change to the JSP qualification standards to allow a secretary to a chief circuit judge to be promoted from JSP-11 to JSP-12 after one year as a secretary to a circuit judge. To protect the secretaries from significant salary reductions once the chief circuit judge steps down, on the Committee's recommendation, the Conference also provided that the promotion to JSP-12 of the chief circuit judge's secretary be considered temporary for only two years, and that after the two-year period, the promotion to JSP-12 be made permanent.

Settlement Conference Attorney Offices

At its September 1994 session, the Judicial Conference approved a five-year cap on the growth of the settlement conference attorney program and provided that requests for new positions within the approved cap may be authorized by the Administrative Office while requests for positions in excess of the cap must be referred to the Committee on Judicial Resources and the Conference for approval (JCUS-SEP 94, pp. 56-57). On recommendation of the Committee, the Conference approved one attorney and one support staff position for the Eleventh Circuit settlement conference attorney's office to establish a branch office in Miami, Florida, beginning in fiscal year 2000. The Conference directed that funding be provided by the Administrative Office at the appropriate Cost Control Monitoring System national average salary level. See also *supra*, "Cost Control Monitoring System," pp. 58-59.

Bankruptcy Appellate Panel Staffing

The staff attorney position for the Second Circuit Bankruptcy Appellate Panel (BAP) was originally authorized in 1996 and was later extended through the end of fiscal year 1998. In response to a request from the Second Circuit BAP, and on the Committee's recommendation, the Judicial Conference approved a one-year extension of the bankruptcy appellate panel staff attorney for the Second Circuit until September 30, 1999.

Bankruptcy Administrators

After consulting with the Committee on the Administration of the Bankruptcy System, the Judicial Resources Committee recommended that the Conference approve requests for seven new positions for fiscal year 2000 for the bankruptcy administrators: one in the Eastern District of North Carolina, one in the Western District of North Carolina, four in the Northern District of Alabama, and one in the Southern District of Alabama. The Conference approved the Committee's recommendation.

Circuit Executive for the Federal Circuit

The Chief Judge of the United States Court of Appeals for the Federal Circuit requested that the Conference seek an amendment to 28 U.S.C. §§ 332(e) and (f) to include a provision for the establishment of a circuit executive for the Federal Circuit. Although the Federal Circuit does not have a circuit judicial council, many of the responsibilities currently performed by the clerk of court in the Federal Circuit are the same as those functions prescribed by § 332(e), which identifies duties that may be delegated to a circuit executive. On recommendation of the Judicial Resources Committee, the Judicial Conference agreed to seek an amendment to 28 U.S.C. § 332 to establish a combined circuit executive/clerk of court position for the Federal Circuit.

Committee on the Administration of the Magistrate Judges System

Selection and Appointment Regulations

Currently, sections 2.01 and 6.03(a) of the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Appointment and Reappointment of United States Magistrate Judges require that, prior to the selection of a magistrate judge, notice of the impending appointment be published in a general local newspaper or similar publication and, if practicable, in a bar journal, newsletter, or local legal periodical. Some courts, particularly in metropolitan areas, have been concerned about the high costs of publication in their local newspapers. Concluding that the courts themselves are in the best position to determine how to provide effective notice, the Committee recommended, and the Conference approved, amendments to sections 2.01 and 6.03(a) of the regulations to require that before a district court selects a magistrate judge, whether a new appointment or a reappointment, it must publish a public notice in a general local newspaper, in a widely-circulated local legal periodical, or in both.

Changes in Magistrate Judge Positions

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

First Circuit

District of New Hampshire

Made no change in the number of positions or the location of the existing magistrate judge

position in the district.

Second Circuit

District of Vermont

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

Fourth Circuit

District of South Carolina

1. Increased the salary of the part-time magistrate judge position at Aiken from Level 8 (\$3,167 per annum) to Level 6 (\$10,557 per annum); and
2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Fifth Circuit

Northern District of Mississippi

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

Northern District of Texas

1. Increased the salary of the part-time magistrate judge position at San Angelo from Level 6 (\$10,557 per annum) to Level 4 (\$31,672 per annum);
2. Decreased the salary of the part-time magistrate judge position at Abilene from Level 4 (\$31,672 per annum) to Level 5 (\$21,115 per annum); and
3. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Western District of Texas

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

Ninth Circuit

District of Alaska

Increased the salary of the part-time magistrate judge position at Juneau from Level 5 (\$21,115 per annum) to Level 1 (\$58,065 per annum) for a two-month period commencing October 1, 1998, with a reduction back to Level 5 thereafter.

District of Hawaii

1. Converted the part-time magistrate judge position at Honolulu to full-time status; and

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

District of Oregon

Increased the salary of the part-time magistrate judge position at Pendleton from Level 7 (\$5,279 per annum) to Level 6 (\$10,557 per annum).

Tenth Circuit

District of New Mexico

1. Increased the salary of the part-time magistrate judge position at Gallup from Level 8 (\$3,167 per annum) to Level 7 (\$5,279 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Eastern District of Oklahoma

1. Increased the salary of the part-time magistrate judge position at McAlester from Level 4 (\$31,672 per annum) to Level 2 (\$52,787 per annum); and

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

District of Utah

1. Increased the salary of the part-time magistrate judge position at St. George from Level 6 (\$10,557 per annum) to Level 4 (\$31,672 per annum); and
2. Made no change in the number, locations, salaries, or arrangements of the other magistrate judge positions in the district.

Eleventh Circuit

Southern District of Florida

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

Middle District of Georgia

1. Converted the part-time magistrate judge position at Columbus to full-time status; and
2. Made no change in the number, locations, or arrangements of the other magistrate judge positions in the district.

Accelerated Funding

The accelerated funding program was originally established in fiscal year 1991 to provide prompt magistrate judge assistance to judicial districts seriously affected by drug filings (JCUS-SEP 90, p. 94). It was subsequently expanded to include courts affected by the CJRA (JCUS-SEP 92, p. 79). Following the expiration of most of the provisions of the CJRA on December 1, 1997, the Committee reviewed the accelerated funding program and determined that instead of establishing specific criteria for the designation of a position for accelerated funding, it was appropriate to consider all relevant factors in its determination. On recommendation of the Committee, the Judicial Conference agreed that in lieu of the criteria for accelerated funding previously applied by the Conference, accelerated funding for magistrate judge positions would be provided to all courts with an immediate need for prompt magistrate judge assistance, as recommended by the Committee.

On recommendation of the Committee, the Judicial Conference agreed to designate the new magistrate judge positions at Honolulu, Hawaii; Miami, Florida; West Palm Beach, Florida; and Columbus, Georgia, for accelerated funding in fiscal year 1999.

Committee to Review Circuit Council Conduct and Disability Orders

Committee Activities

In May 1997, the Judicial Conference determined to oppose legislation introduced in the 105th Congress to amend the Judicial Conduct and Disability Act of 1980 (28 U.S.C. § 372(c)) regarding the transfer to another circuit of complaints of judicial misconduct (JCUS-SEP 97, pp. 81-82). The Committee to Review Circuit Council Conduct and Disability Orders reported that there had been no action on this proposal in the Senate, and that the Committee would continue to monitor any legislative developments in this area. The Committee further reported that it determined to add commentary to the Illustrative Rules Governing Complaints of Judicial Misconduct and Disability to provide guidance in dealing with the problem of mass filings of identical section 372(c) complaints by different individuals against the same judge or judges.

Committee on Rules of Practice and Procedure

Federal Rules of Bankruptcy Procedure

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1017 (Dismissal or Conversion of Case; Suspension), 1019 (Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), 2003 (Meeting of Creditors or Equity Security Holders), 3020 (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 3021 (Distribution under Plan), 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 4004 (Grant or Denial of Discharge), 4007 (Determination of Dischargeability of a Debt), 6004 (Use, Sale, or Lease of Property), 6006 (Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases), 7001 (Scope of Rules of Part VII), 7004 (Process; Service of Summons, Complaint), 7062 (Stay of Proceedings to Enforce a Judgment), 9006 (Time), and 9014 (Contested Matters). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and

transmitted to Congress in accordance with the law.

Federal Rules of Civil Procedure

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed technical amendments to Civil Rule 6(b) (Time) and Form 2 (Allegation of Jurisdiction). The proposed amendments were accompanied by Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Federal Rules of Criminal Procedure

The Committee on Rules of Practice and Procedure submitted proposed amendments to Criminal Rules 6 (The Grand Jury), 11 (Pleas), 24 (Trial Jurors), and 54 (Application and Exception) to the Judicial Conference, along with Committee Notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Committee on Security and Facilities

Child Care Centers in Courthouses

Following the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, the Committee considered whether it is advisable for federally-sponsored child day care centers to be located in federal courthouses. After reviewing the positions of the Committee on Judicial Resources, the Department of Justice, the United States Marshals Service, and an executive branch interagency working group on security issues in federal facilities, the Committee recommended amendments to the judiciary's existing policy on housing day care centers. The Conference slightly modified, and then approved, the Committee's recommendation that it--

- a. Reaffirm support for participation by the judiciary in the Federal Day Care Center Program;
- b. Amend its existing policy on participation by the courts in the Federal Day Care Center Program to preclude location of such centers in new or renovated buildings housing courts and seek relocation of centers in existing buildings housing court operations within three years. If a center has not been relocated within three years, an examination of the circumstances contributing to the inability to relocate the center(s) should be pursued;
- c. Encourage courts to pursue establishment of child day care centers outside of buildings housing courts; and
- d. Amend the *United States Courts Design Guide* to include language precluding location of a child day care center when constructing or renovating a courthouse.

Funding for Courthouse Construction

In late 1997, the Office of Management and Budget submitted to Congress an executive branch budget request for fiscal year 1999 that did not include any funds in the General Services Administration (GSA) budget for courthouse construction. In light of the serious implications of delaying the courthouse construction program further (no funds were included in GSA's budget for fiscal year 1998), the Committee on Security and Facilities proposed that funds for courthouse construction be requested as part of the judiciary's, rather than GSA's, budget beginning in fiscal year 2000. This action would be consistent with prior Conference support for the judiciary's independence from the executive branch in the area of real property administration. See JCUS-SEP 89, p. 81; *Long Range Plan for the Federal Courts*, December 1995, p. 86 (Implementation Strategy 51a). On recommendation of the Committee, the Judicial Conference agreed to seek funding for courthouse construction, including funding for planning new projects, in the judiciary's budget request beginning in fiscal year 2000, unless a further assessment of congressional reaction to such a proposal counsels against such action as determined jointly by the chairmen of the Security and Facilities Committee and Budget Committee, and the Director of the Administrative Office.

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 subject to whatever priorities the Conference might establish for the use of available resources.

Release of Conference Action

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

Chief Justice of the United States
Presiding

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1. On October 21, 1998, an omnibus appropriations bill was enacted that included appropriations for the judiciary's accounts at levels sufficient to fund the approved financial plans.
 2. The following committees were given the primary responsibility to review and make recommendations to the Judicial Conference on National Bankruptcy Review Commission recommendations, as follows: Court Administration and Case Management - Recommendations 2.4.7 and 3.3.4; Judicial Resources - Recommendations 4.1.1 through 4.1.5; Rules of Practice and Procedure - Recommendations 1.1.4, 2.3.2, 2.4.9, 2.4.10, 2.5.2, 2.5.3, and 4.2.3; and Administration of the Bankruptcy System - all remaining recommendations.
 3. The Judicial Conference took no position on Commission recommendations not addressed below.
 4. The Judicial Conference, in September 1996, approved an inflationary increase of this fee to \$7.00, provided legislation is enacted permitting the judiciary to retain the resulting increase (JCUS-SEP 96, p. 54).
 5. Funding for two similar positions, one each in the Northern District of California and the Ninth Circuit, was authorized in April 1998 on a four-year, temporary basis. These two positions will be included in the assessment of the pilot project.