

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

March 16, 1999

Contents

[Call of the Conference](#)

[Reports](#)

[Elections](#)

[Executive Committee](#)

[Federal Employees' Group Life Insurance](#)

[Budgetary Matters](#)

[Federal Courts Improvement Legislation](#)

[Miscellaneous Actions](#)

[Committee on the Administrative Office](#)

[Committee Activities](#)

[Committee on Automation and Technology](#)

[Courtroom Technologies](#)

[Long Range Plan for Information Technology](#)

[Access to Internet Sites](#)

[Committee on the Administration of the Bankruptcy System](#)

[Bankruptcy Judgeships](#)

[Bankruptcy Estate Administration](#)

[Committee on the Budget](#)

[Committee Activities](#)

[Committee on Codes of Conduct](#)

[Committee Activities](#)

[Committee on Court Administration and Case Management](#)

[Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases](#)

[Bankruptcy Noticing Guidelines](#)

[Commission on Structural Alternatives for the Federal Courts of Appeals](#)

[Committee on Criminal Law](#)

[Home Confinement Program Monograph](#)

[Pretrial Services Investigation and Report Monograph](#)

[Operation Drug TEST](#)

[Committee on Defender Services](#)

[Disclosure of Criminal Justice Act Payments](#)

[Defender Organization Funding Requests](#)

[Committee on Federal-State Jurisdiction](#)

[Year 2000 Legislation](#)

[Committee on Financial Disclosure](#)

[Judges' Recusal Obligations](#)

[Committee Activities](#)

[Committee on Intercircuit Assignments](#)

[Committee Activities](#)

[Committee on International Judicial Relations](#)

[Committee Activities](#)

[Committee on the Judicial Branch](#)

[Judicial Compensation](#)

[Travel Regulations for United States Justices and Judges](#)

[Relocation Regulations for United States Justices and Judges](#)
[Committee on Judicial Resources](#)
[Article III Judgeship Needs](#)
[Judicial Emergencies](#)
[Secretaries to Federal Judges](#)
[Death Penalty Law Clerks](#)
[Court Reporter Compensation](#)
[Transcript Rates](#)
[Courtroom Support for District Judges](#)
[Law Clerks for Magistrate Judges](#)
[Bankruptcy Administrators](#)
[Recruitment and Retention Bonuses](#)
[Alternative Dispute Resolution Staffing](#)
[Telecommuting Policy](#)
[Judiciary Benefits Initiative](#)
[Committee on the Administration of the Magistrate Judges System](#)
[Selection and Appointment Regulations](#)
[Changes in Magistrate Judge Positions](#)
[Committee to Review Circuit Council Conduct and Disability Orders](#)
[Committee Activities](#)
[Committee on Rules of Practice and Procedure](#)
[Federal Rules of Criminal Procedure](#)
[Committee on Security and Facilities](#)
[After-Hours Courthouse Security](#)
[Public Buildings Reform Legislation](#)
[Five-Year Courthouse Project Plan](#)
[Role of the Committee](#)
[Parking Policy](#)
[Resolution](#)
[Funding](#)

The Judicial Conference of the United States convened in Washington, D.C., on March 16, 1999, 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.
Chief Judge Charles P. Sifton,
Eastern District of New York

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 Carolyn Dineen King
Judge Hayden W. Head, Jr.,
Southern District of Texas

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 W. Eugene Davis, David R. Hansen, Jane R. Roth, Anthony J. Scirica, David R. Thompson, and Walter K. Stapleton, and District Judges Carol Bagley Amon, Robin J. Cauthron, Julia S. Gibbons, John G. Heyburn II, D. Brock Hornby, George P. Kazen, David Levi, Edward W. Nottingham, Harvey E. Schlesinger, and William J. Zloch attended the Conference session. Collins Fitzpatrick, Circuit Executive for the Seventh Circuit, was also present.

Senators Orrin Hatch and Patrick Leahy, and Representatives Howard Berman, Howard Coble, and John Conyers, Jr., spoke on matters pending in Congress of interest to the Conference. Attorney General Janet Reno addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat; and David Sellers, Deputy Assistant Director, Public Affairs. Judge Rya W. Zobel and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did James Duff, Administrative Assistant to the Chief Justice, 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, and Judge Zobel spoke to the Conference about Federal Judicial Center programs.

Elections

The Judicial Conference elected to membership on the Board of the Federal Judicial Center Circuit Judge Robert M. Parker of the Fifth Circuit to replace Circuit Judge Bruce Selya and District Judge William H. Yohn, Jr., Eastern District of Pennsylvania, to replace District Judge Richard Matsch.

Executive Committee

Federal Employees' Group Life Insurance

The Federal Employees' Group Life Insurance program consists of "basic" life insurance coverage and three categories of "optional" coverage. The Federal Employees' Life Insurance Improvement Act, Public Law No. 105-311, extends to all federal employees the ability, previously enjoyed by Article III judges alone, to carry Option B life insurance at full face value into retirement by continuing to pay premiums. To implement this

legislation, the Office of Personnel Management proposed rate changes that would substantially increase payments for judges 65 and over. On recommendation of the Executive Committee, taken up as new business at the Conference session, the Judicial Conference approved the following resolution:

The United States Office of Personnel Management's (OPM) recent administrative action to effectively double the Federal Employees' Group Life Insurance (FEGLI) premiums of hundreds of Article III judges raises serious systemic questions. The action by OPM also poses a serious threat to the financial security of the families of hundreds of sitting judges, and to the future stability of the judiciary, as many judges have reasonably relied on FEGLI as the keystone of their financial and estate planning. OPM's present action now leaves these judges without viable alternatives because of prohibitive costs or intervening uninsurability.

Therefore, the Judicial Conference of the United States resolves that the Director of OPM and the President and, if necessary, the Congress of the United States, should immediately take the necessary action to preserve the existing relationship between judges and the FEGLI program.

Budgetary Matters

Proposed Federal Courts Budget Protection Act. In September 1998, the Judicial Conference agreed to seek funding for courthouse construction in the judiciary's budget requests beginning in fiscal year 2000 (unless a further assessment of congressional reaction to such a proposal counseled against such action), thus bypassing the Office of Management and Budget (JCUS-SEP 98, p. 89). At a March 1999 meeting, the Executive Committee endorsed a legislative proposal implementing this action. The legislative proposal also provides that the judiciary's entire budget will be submitted directly to Congress. This provision would bolster, in the face of White House efforts to impose "negative allowances" against the judiciary's budget requests, the statutory requirement (31 U.S.C. § 1105(b)) that the President must submit the judiciary's budget "without change."

Supplemental Appropriations for Court Security. In fiscal year 1998, Congress approved an emergency supplemental appropriation for enhanced security at embassies and other executive and legislative branch facilities housing high-risk agencies, but no such funding was included for courthouses. On recommendation of the chairmen of the Budget and Security and Facilities Committees, the Executive Committee approved the filing with Congress of a fiscal year 1999 emergency court security supplemental appropriations request for approximately \$30 million. The supplemental request (and a resulting amendment to the judiciary's fiscal year 2000 appropriations request) would fund enhancements necessary to ensure that the level of perimeter security provided at federal court facilities is comparable to other facilities housing similar high-risk government agencies (*see infra* "Committee Activities" (Committee on the Budget), p. 11).

Federal Courts Improvement Legislation

In August 1997, the Executive Committee established a mechanism whereby each Judicial Conference committee is required to review periodically items within its jurisdiction that had been included in the most recent judiciary-proposed federal courts improvement bill. The committees are to inform the Executive Committee whether any provision should be deleted from the next such proposed bill (JCUS-SEP 97, p. 51). After reviewing the Conference committees' positions on items included in the federal courts improvement bill proposed by the judiciary for consideration in the 105th Congress, the Executive Committee asked the Security and Facilities Committee to reconsider its decision not to pursue, at this time, a provision to authorize federal judges to carry firearms for purposes of personal security and to establish a firearms training program. The Security and Facilities Committee subsequently agreed to include the item in the courts improvement bill transmitted to the 106th Congress. With regard to items that fall within the original jurisdiction of the Executive Committee, the Committee agreed to seek comments from the Federal Judicial Center Board before pursuing the creation of a Judicial Conference Foundation to receive and expend private contributions in support of official programs, including international education initiatives (*see* JCUS-MAR 95, p. 6). The Committee also agreed to include a provision in the next judiciary-proposed courts improvement bill permitting the Directors of the Federal Judicial Center and the Administrative Office, and the Administrative Assistant to the Chief Justice, to receive retirement credit for certain prior government service in the legislative branch.

Miscellaneous Actions

The Executive Committee:

- authorized courts to pay relocation allowances, using local funds, for transferees or new appointees to positions as court unit executives and their "type II deputies" who perform as full alter egos, if both the chief judge and the circuit judicial council conclude that the relocation of the affected employee and payment of such expenses is "in the interest of the Government";
- agreed by mail ballot in October 1998, that the judiciary should vigorously seek to have a provision requiring reporting of judges' travel expenses deleted from S. 2516 (105th Congress) or, if unsuccessful, oppose the legislation in its entirety (*but see infra* "Travel Regulations for United States Justices and Judges," p. 20);
- determined that the judiciary's long-range planning process would be enhanced if it involved the chairs of appropriate Conference committees rather than designated liaisons from the committees, particularly in light of increased emphasis on long-range planning and budgeting; and
- made a number of referrals to Conference committees, for example, to the Criminal Law Committee suggesting that it ensure oversight of the home confinement program and to the Defender Services Committee asking it to monitor certain appearances in state court by federal defenders.

Committee on the Administrative Office

Committee Activities

The Committee was briefed on a number of Administrative Office activities including initiatives to control the volume of correspondence and surveys sent to judges and court officials, efforts to enhance and integrate long-range planning and budgeting, continuing efforts to obtain adequate resources from Congress, and several major human resources initiatives. In addition, the Committee, reviewing positions that had previously been included in federal courts improvement legislation, noted that a provision transferring from the Administrative Office to the Department of Justice responsibility for filing an annual wiretap report with Congress has been strongly opposed by the Department of Justice. The Committee determined to postpone further legislative efforts in this regard pending consideration of alternative strategies for changing the reporting requirement. The Committee also recognized the 60th anniversary of the creation of the Administrative Office and commended its six directors and their staffs for exemplary service to the federal judiciary.

Committee on Automation and Technology

Courtroom Technologies

Believing that courtroom technologies constitute a significant enhancement to the fact-finding mission of the federal courts, the Committee on Automation and Technology recommended that the Judicial Conference endorse the use of such technologies in the courtroom, including video evidence presentation systems, videoconferencing systems, and electronic methods of taking the record. The Committee further recommended that the Conference, subject to the availability of funds and priorities set by the Committee, urge that (a) courtroom technologies be considered as necessary and integral parts of courtrooms undergoing construction or major renovation; and (b) the same courtroom technologies be retrofitted into existing courtrooms or those undergoing tenant alterations as appropriate. The Conference approved the Committee's recommendations.

Long Range Plan for Information Technology

Pursuant to 28 U.S.C. § 612, on recommendation of the Committee on Automation and Technology, the Judicial Conference approved the 1999 update to the *Long Range Plan for Information Technology in the Federal Judiciary*.

Access to Internet Sites

In accordance with Judicial Conference policy (JCUS-SEP 97, pp. 52-53), access to the Internet for any computer connected to the judiciary's data communications network is provided only through national gateway connections approved by the Administrative Office. The national gateways are equipped with software that is capable of blocking access to certain Internet sites. The Committee on Automation and Technology

recommended that the Conference authorize the national gateway connections to block access to adult-oriented, pornographic Web sites on the Internet, with access to these sites for individual court employees being provided for official business upon request of any judicial officer. Viewing this as a local matter, the Judicial Conference declined to approve the Committee's recommendation.

Committee on the Administration of the Bankruptcy System

Bankruptcy Judgeships

The Judicial Conference is required by 28 U.S.C. § 152(b)(2) to submit recommendations for new bankruptcy judgeships to Congress, which establishes the number of such judgeships for each judicial district. In March 1991, the Conference adopted a policy that provides for a national survey of judgeship needs every two years and establishes criteria for evaluating requests for additional bankruptcy judgeships (JCUS-MAR 91, pp. 12-13).⁽¹⁾ Based on the 1998 biennial survey of judgeship needs, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference transmit to Congress proposed legislation to create 24 additional bankruptcy judgeships (either permanent or temporary, using the most recent per judgeship weighted filing statistics available at the time proposed legislation for the judgeships is sent to Congress). The Judicial Conference approved the recommendation for judgeships in the following districts:

- District of Puerto Rico (1)⁽²⁾
- Northern District of New York (1)
- Eastern District of New York (1)
- Southern District of New York (1)
- District of Delaware (1)
- District of New Jersey (1)
- Eastern District of Pennsylvania (1)
- Middle District of Pennsylvania (1)
- District of Maryland (3)
- Eastern District of North Carolina (1)
- Eastern District of Virginia (1)
- Southern District of Mississippi (1)
- Eastern District of Michigan (1)
- Western District of Tennessee (1)
- Eastern District of California (1)
- Central District of California (4)
- Southern District of Georgia (1)
- Southern District of Florida (2)

The Conference also agreed to recommend that the judgeship in the Southern District of Georgia currently shared with the Middle District of Georgia be converted to a full-time position for the Middle District of Georgia and that the proposed judgeship in the Southern District of Mississippi provide assistance to the Northern District of Mississippi. In addition, the Conference approved and agreed to transmit to Congress a request to make the existing temporary bankruptcy judgeship in the District

of Delaware permanent, in lieu of a previous determination to recommend that it be extended to the first vacancy occurring due to death, retirement, resignation, or removal in the district that occurs 10 years or more after the date on which the temporary judgeship was originally filled (*see* JCUS-SEP 97, pp. 53-54).

Bankruptcy Estate Administration

In September 1991, the Judicial Conference approved a memorandum of understanding (MOU) between the Executive Office for United States Trustees (EOUST) and the Administrative Office describing the respective duties of the United States trustee, the court, and the clerk in the case closing process and post-confirmation monitoring of chapter 11 cases (JCUS-SEP 91, p. 53). At its March 1996 session, the Judicial Conference, on recommendation of the Bankruptcy Committee, approved an amended MOU (JCUS-MAR 96, pp. 9-10). The amendments, among other things, specified the responsibility of the United States trustee in verifying the reliability of case trustee certification procedures and the accuracy of trustee reports so that bankruptcy judges can be assured that each case has been fully administered and may be ordered closed. Although the Director of the EOUST had verbally approved the amended MOU prior to its approval by the Conference, he did not sign the agreement. After further modifications addressing concerns of both parties, the EOUST Director signed a revised agreement, and, on recommendation of the Committee, the Judicial Conference approved the revised

Amended Memorandum of Understanding Between the Executive Office for United States Trustees and the Administrative Office of the United States Courts Regarding Case Closing and Post Confirmation Chapter 11 Monitoring.

Committee on the Budget

Committee Activities

The Committee on the Budget reviewed adjustments to the fiscal year 2000 budget request and was updated on developments related to the June 15, 1999 cutoff of obligation authority for judiciary appropriations contained in the judiciary's fiscal year 1999 appropriations act (Public Law No. 105-277). The Committee was briefed on a number of additional issues, including the Administrative Office's efforts to obtain funds from Congress to continue courthouse construction and its initiative to improve the judiciary's financial management program. The Committee endorsed in principle a recommendation of the Committee on Security and Facilities that a fiscal year 1999 supplemental appropriations request and a fiscal year 2000 budget request amendment for additional court security officers and for court security upgrades be submitted to Congress.⁽³⁾ The Committee also discussed efforts to enhance long-range planning and budgeting in the judiciary.

Committee on Codes of Conduct

Committee Activities

Judges' Recusal Obligations. The Committee on Codes of Conduct reported on the efforts of several Judicial Conference committees to assist judges in meeting their recusal obligations. These initiatives include enhanced education and training to ensure that judges are aware of their recusal responsibilities; dissemination of information directly to judges about their recusal responsibilities; development of model checklists for judges to use in drawing up recusal lists; examination of automated systems to compare judges' recusal lists to their court dockets; consideration of amendments to the federal rules to require parties to disclose corporate affiliates that may necessitate judges' recusal; and examination of a requirement that a recusal check be done before any order is entered in a case. At the request of the Judicial Conference (JCUS-SEP 98, p. 61), the Committee also reconsidered a resolution, before the Conference in September 1998, concerning disclosure to litigants of recusal lists. The Committee concluded that its original position, that such disclosure was not required by the Code of Conduct for United States Judges, was sound and that policy considerations counseled against a blanket rule regarding judges maintaining recusal lists in clerks' offices. *See also infra* "Judges' Recusal Obligations," pp 17-18.

Advisory Opinions. The Committee reviewed and approved an advisory opinion summarizing the factors about which judges should be sensitive when engaging in settlement discussions and an opinion summarizing the Committee's advice pertaining to judges serving as trustees. Both opinions will be published in Volume II of the *Guide to Judiciary Policies and Procedures*. The Committee also agreed to republish the entire contents of Volume II of the *Guide*.

Inquiries. Since its last report to the Conference in September 1998, the Committee on Codes of Conduct received 38 new written inquiries and issued 34 written advisory responses. The average response time for inquiries was 24 days. The Chairman received and responded to 16 telephonic inquiries. In addition, individual Committee members responded to 77 inquiries from their colleagues.

Committee on Court Administration and Case Management

Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases

The Program for Prompt Disposition of Protracted, Difficult, or Widely Publicized Cases (commonly referred to as the "Bar Harbor Resolution") was approved by the Judicial Conference in 1971 (JCUS-OCT 71, pp. 71-74) and reaffirmed in September 1997 (JCUS-SEP 97, p. 64). The program was originally intended to ensure the orderly and prompt disposition of complex cases by allowing a chief judge to assign them to specific judges. Addressing concerns raised (*e.g.*, a greater potential for "judge shopping" and specialization), the Committee on Court Administration and Case Management concluded that the program was inconsistent with the concept of judicial autonomy. After seeking input from district court chief judges, the Committee recommended that the Judicial

Conference rescind the 1971 Bar Harbor Resolution and its September 1997 reaffirmation of the program, as not compatible with the random assignment of cases. The Conference approved the recommendation. In addition, to offset the sometimes unequal workloads resulting from random selection, which can threaten a court's ability to manage its caseload, on recommendation of the Committee, the Conference agreed to--

a. recommend that districts with multi-category case assignment systems, at their discretion, consider establishing one or more categories for protracted or complex cases to ensure that these cases are assigned randomly and evenly to all judges; and

b. recommend that districts, at their discretion, consider establishing a procedure that would allow for the voluntary transfer of an already-assigned case back to the random assignment system. Such a procedure should incorporate the need for agreement between the chief judge and the judge to whom the case was originally assigned.

Bankruptcy Noticing Guidelines

In March 1986, the Judicial Conference approved guidelines that provide for the preparation and mailing of notices in bankruptcy cases by persons other than bankruptcy clerks (JCUS-MAR 86, p. 21). Since that time, there have been changes to the bankruptcy rules and procedures that necessitate procedural, non-substantive revisions to the guidelines. With the concurrence of the Committee on the Administration of the Bankruptcy System, the Committee on Court Administration and Case Management recommended, and the Conference approved, proposed procedural revisions to the bankruptcy noticing guidelines. On recommendation of the Committee, the Conference also agreed to delegate authority to the Committee on Court Administration and Case Management, in consultation with the Bankruptcy Committee, to approve all future procedural revisions to the bankruptcy noticing guidelines.

Commission on Structural Alternatives for the Federal Courts of Appeals

The Commission on Structural Alternatives for the Federal Courts of Appeals, appointed by the Chief Justice pursuant to Public Law No. 105-119, issued its final report in December 1998. The report contained, among other things, a recommendation that circuit judicial councils be authorized to establish district court appellate panels (DCAPs), which would provide the first level of review for designated categories of cases that involve error correction, with discretionary review in the courts of appeals. Concerned that DCAPs would slow down the resolution of appeals by adding another tier of review, would be difficult to administer, and would likely undermine uniformity of the federal system and collegiality among judges within a circuit (requiring more *en banc* rehearings to resolve conflicts among panels and requiring district court judges to sit in review of their colleagues' decisions), the Committee recommended that the Judicial Conference oppose the proposal of the Commission on Structural Alternatives for the Federal Courts regarding the establishment of district court appellate panels.

After discussion and consideration of further input from the Commission, the Conference adopted the Committee's recommendation.

Committee on Criminal Law

Home Confinement Program Monograph

On recommendation of the Committee on Criminal Law, the Judicial Conference endorsed *The Federal Home Confinement Program for Defendants and Offenders*, Monograph 113, and authorized its distribution to the courts. The purpose of the monograph is to provide uniformity in the operation and administration of the home confinement program among districts by providing national standards for probation and pretrial services officers to use in administering the program.

Pretrial Services Investigation and Report Monograph

On recommendation of the Committee on Criminal Law, the Judicial Conference endorsed *The Pretrial Services Investigation and Report*, Monograph 112, and authorized its distribution to the courts. The monograph establishes standards and provides information for officers who perform pretrial services functions. It is intended to complement the standards established by *Pretrial Services Supervision*, Publication 111, and the *Guide to Judiciary Policies and Procedures*, Volume XII, Pretrial Services Manual.

Operation Drug TEST

In June 1996, the Executive Committee agreed to the judiciary's participation in Operation Drug TEST (Testing, Effective Sanctions, and Treatment), the Attorney General's program of increased pretrial drug testing of criminal defendants, so long as participation by individual districts was voluntary and the Department of Justice paid the cost of the program (JCUS-SEP 96, p. 46). In September 1996, the Administrative Office and the Department of Justice signed a memorandum of understanding to implement the program. The MOU has since been extended through September 30, 1999. The Department of Justice has requested that the program, operating in 53 sites across 24 federal districts, be expanded to approximately 10 additional districts. On the Committee's recommendation, the Judicial Conference agreed to endorse the expansion of Operation Drug TEST to approximately 10 additional courts, authorize the Administrative Office to modify the existing MOU accordingly, and delegate authority to the Committee chair to invite courts to participate and to select the additional courts.

Committee on Defender Services

Disclosure of Criminal Justice Act Payments

The judiciary's fiscal year 1998 appropriations act, Public Law No. 105-119, amended 18 U.S.C. § 3006A(d)(4) to require that amounts paid to

attorneys appointed under the Criminal Justice Act (CJA) be made publicly available and set forth rules for doing so. The new law is not inconsistent with other policies or provisions of law requiring disclosure, but imposes specific direction as to when and how much information should be released. This amendment applies to cases filed on or after January 25, 1998, and has a two-year "sunset" provision. On recommendation of the Committee on Defender Services, the Conference approved a conforming amendment to paragraph 5.01B of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, Volume VII, *Guide to Judiciary Policies and Procedure*, to implement the new law. The revised guidelines set forth the procedures for disclosing payment information. They authorize courts to use the current versions of the vouchers submitted by CJA panel attorneys as the sole means to release payment information and provide that documentation submitted by CJA panel attorneys in support of their claims for payment, plus other attachments to the voucher forms, are not covered by the law and need not be released at any time.

Defender Organization Funding Requests

Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee on Defender Services approved budgets and grant requests for federal defender organizations in the amount of \$218,078,500 for fiscal year 1999.

Committee on Federal-State Jurisdiction

Year 2000 Legislation

Several bills have been introduced in the 106th Congress that are intended to address a potential flood of state and federal court litigation related to year 2000 (Y2K) issues. Although they would not create a new federal cause of action, the bills would, among other things, provide original jurisdiction over Y2K class actions based on minimal diversity of citizenship with no minimum amount in controversy required. Coupled with provisions permitting removal of such actions to federal court by a single defendant or a single member of the plaintiff class, these provisions have the potential for shifting virtually all Y2K class actions from state to federal court.

The Committee on Federal-State Jurisdiction noted that federalization of Y2K class actions would deprive the judicial system of the contributions that state courts would otherwise make in resolving such litigation and holds the potential for heavily burdening the federal courts and causing substantial costs and delays for the litigants. While minimal diversity may be appropriate to facilitate the resolution of certain mass tort-type cases (*see, e.g.,* JCUS MAR-88, pp. 21-23), the proposed expansion of federal jurisdiction over Y2K class actions in the manner provided in the pending bills is inconsistent with the objective of preserving the federal courts as tribunals of limited jurisdiction. The Federal-State Jurisdiction Committee therefore recommended, and the Judicial Conference after discussion agreed, that the Conference should oppose the provisions expanding federal court jurisdiction over Y2K class actions in bills (S. 96, S. 461, and H.R. 775) under consideration by the 106th Congress.

Committee on Financial Disclosure

Judges' Recusal Obligations

At its September 1998 session (JCUS-SEP 98, pp. 60-61), 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.

In recommending against such disclosure, the Committee on Financial Disclosure noted that section 455 of title 28 imposes a personal obligation on each judge to decide whether to recuse himself or herself from a case and that this responsibility cannot be shifted to staff or litigants. The Committee also expressed concern about security risks related to the release of individual financial information without statutory safeguards such as those found in section 105 of the Ethics in Government Act of 1978 (5 U.S.C. app. 4 § 105). The Committee recommended that, in lieu of encouraging all courts to maintain in the clerk's office a recusal list for each judge that would be available to litigants upon written request, the Judicial Conference continue to support the efforts of the Committees on Codes of Conduct and Financial Disclosure to educate and inform judges of their responsibilities under 28 U.S.C. § 455, the Code of Conduct for United States Judges, and the financial disclosure provisions of the Ethics in Government Act of 1978. After discussion, the Judicial Conference adopted the Committee's recommendation. *See also supra* "Committee Activities" (Committee on Codes of Conduct), pp. 11-12.

Committee Activities

The Committee on Financial Disclosure reported that as of December 31, 1998, the Committee had received 3,206 financial disclosure reports and certifications for the calendar year 1997, including 1,231 reports and certifications from Supreme Court Justices, Article III judges, and judicial officers of special courts; 342 from bankruptcy judges; 505 from magistrate judges; and 1,128 from judicial employees.

Committee on Intercircuit Assignments

Committee Activities

The Committee on Intercircuit Assignments reported that during the period from July 1, 1998 to December 31, 1998, a total of 96 intercircuit assignments, undertaken by 61 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance in identifying judges willing to take assignments.

Committee on International Judicial Relations

Committee Activities

The Committee on International Judicial Relations reported that it will make available to the public its strategic plan, which defines the judiciary's unique and limited role in international judicial relations. The plan will serve to inform organizations and contractors involved in international rule of law and judicial reform initiatives of the standards used by the Committee to determine whether to become involved in such initiatives. The Committee also reported on developments in a number of ongoing or contemplated rule of law programs throughout the world.

Committee on the Judicial Branch

Judicial Compensation

The adequacy of judicial compensation continues to be a major concern. *See, e.g.*, JCUS-MAR 97, p. 26. Judges and other high-level government officials have received only one cost-of-living increase in six years, and there is currently no functioning mechanism to review the adequacy of the salaries of these officials. Moreover, the President's salary, which has remained unchanged for 30 years, has effectively capped the salaries of top officials and caused pay compression to set in. Believing that the judiciary should encourage and support the efforts of congressional leaders to effect meaningful salary relief for officials in all three branches of government, and that this cannot be achieved without a substantial raise in the President's salary, the Committee on the Judicial Branch recommended that the Judicial Conference resolve to seek vigorously a pay adjustment for federal judges, members of Congress, and top officials in the executive branch for 2000 and that it seek to ease pay compression for officials in all three branches of government by supporting an increase in the presidential salary. The Conference approved the Committee's recommendation.

Travel Regulations for United States Justices and Judges

After a comprehensive review of the Travel Regulations for United States Justices and Judges, the Committee on the Judicial Branch recommended extensive revisions to streamline the regulations and make them easier to use, to eliminate inconsistencies, to delete language concerning issues that rarely arise, and to continue the judiciary's commitment to prudent fiscal policies. The Conference approved the revised regulations, which are both substantively and structurally different from the existing regulations. The regulations will be published in the *Guide to Judiciary Policies and Procedures*.

The Conference also discussed legislative proposals to require a judge to report annually to his or her chief judge on travel undertaken for reasons not directly related to any case assigned to the judge. In March 1998, the Judicial Conference had strongly opposed a legislative proposal to require bankruptcy judges to obtain pre-and post-travel approval of non-case related professional (non-personal) travel. At the same time, the Conference had

also opposed a Judicial Branch Committee proposal to amend the travel regulations to require all judges to report non-case related official travel to the appropriate chief judge (JCUS-MAR 98, pp. 18-19). Despite the Conference's position, members of the 105th Congress continued to pursue legislation requiring the reporting of non-case related official travel of judges.⁽⁴⁾ At this session, the Judicial Conference revisited its position on amending the travel regulations and voted to direct the Committee on the Judicial Branch to prepare a proposed amendment to the travel regulations that would substantially incorporate, for the purpose of reporting all non-case related professional travel undertaken by a judge of the United States, the travel reporting requirements for members of the United States Senate. Such requirements will specifically include the reporting of the purpose for which the non-case related travel is undertaken and the source and amount of all reimbursement received by a judge for any such travel not paid for with appropriated funds, subject to the reporting exceptions contained in the Ethics in Government Act of 1978.

Relocation Regulations for United States Justices and Judges

For several years, an interim policy on relocation reimbursement for judges has been in effect, which sharply limits the payment of relocation expenses. In an effort to give each judicial circuit and court of national jurisdiction the discretion to authorize and fix a transferred or newly appointed judge's relocation allowance (to the greatest extent permitted), to clarify the nature and scope of each potential allowance, and to make the regulations easier to use, the Committee on the Judicial Branch drafted and recommended adoption of new Relocation Regulations for United States Justices and Judges. The Judicial Conference approved the revised regulations, which will be published in Volume III of the *Guide to Judiciary Policies and Procedures*.

Committee on Judicial Resources

Article III Judgeship Needs

Additional Judgeships. On recommendation of the Committee on Judicial Resources, which reviewed requests and justifications for additional judgeships in the courts of appeals and the district courts utilizing criteria and standards previously approved by the Judicial Conference (*see* JCUS-SEP 96, pp. 60-61; JCUS-MAR 97, pp. 26-27), the Conference approved transmittal to Congress of a request for an additional seven permanent and four temporary judgeships in the courts of appeals, and for 33 permanent and 25 temporary district judgeships, and the conversion of 10 existing temporary judgeships to permanent in the district courts. This request is in lieu of previous Conference recommendations. Judgeships were recommended at the following locations ("P" denotes permanent; "T" denotes temporary):

Courts of Appeals

First Circuit	1P
Second Circuit	2P

Sixth Circuit	2P, 1T
Ninth Circuit	2P, 3T
<u>District Courts</u>	
Northern District of New York	1T, Convert 1T to P
Eastern District of New York	3P
Western District of New York	1T
District of Maryland	1P
Western District of North Carolina	1P, 1T
	1P
District of South Carolina	2P, Convert 1T to P
Eastern District of Virginia	1P
Northern District of Texas	1T
Eastern District of Texas	2P
Southern District of Texas	2P
Western District of Texas	1T
Eastern District of Kentucky	Convert 1T to P
Northern District of Ohio	1T
Southern District of Ohio	1T
Eastern District of Tennessee	Convert 1T to P
Central District of Illinois	Convert 1T to P
Southern District of Illinois	1T
Southern District of Indiana	1T
Eastern District of Arkansas	1T
District of Minnesota	Convert 1T to P
Eastern District of Missouri	1T
Western District of Missouri	Convert 1T to P
District of Nebraska	3P, 3T
District of Arizona	1T
Northern District of California	1P, 1T, Convert 1T to P
Eastern District of California	3P, 1T
Southern District of California	1T, Convert 1T to P
District of Hawaii	2P, 1T
District of Nevada	1T
District of Oregon	1T
Western District of Washington	1P, 1T
District of Colorado	Convert 1T to P
District of Kansas	1P, 1T
District of New Mexico	1P, 1T
Northern District of Alabama	1P
Middle District of Alabama	1T
Southern District of Alabama	5P
Middle District of Florida	2P
Southern District of Florida	

Courts with Low-Weighted Caseloads. In March 1996, the Judicial Conference approved a recommendation of the Judicial Resources Committee to include in biennial district judgeship surveys a review of courts where it may be appropriate to recommend eliminating judgeships or leaving a vacant judgeship unfilled (JCUS-MAR 96, p. 24). A process for such a review in the district courts was approved by the Conference in March 1997 (JCUS-MAR 97, p. 27), and a similar mechanism was approved for the courts of appeals in March 1998 (JCUS-MAR 98, p. 19). The 1999 biennial survey of judgeship needs included these new processes. Based on the findings of this survey, and after opportunity for additional input from

affected courts and judicial councils, the Committee recommended that the Judicial Conference advise the President and the Senate that any single existing or future vacancy not be filled in the following courts: District of Delaware; District Court of the District of Columbia; District of Wyoming; and Southern District of West Virginia. The Judicial Conference approved the Committee's recommendation regarding the District of Delaware, the District of Wyoming, and the Southern District of West Virginia by acclamation. After discussion and consideration of the objections raised by the District Court of the District of Columbia, it approved the recommendation of the Committee with regard to that court as well.

Judicial Emergencies

In March 1988, the Judicial Conference defined all vacancies in Article III judgeship positions as "judicial emergencies" (JCUS-MAR 88, p. 31). In practice, the term "judicial emergency" has come to be defined as all vacancies of more than 18 months. With the current Judicial Conference policy to identify courts with low-weighted caseloads and potentially recommend that vacancies in those courts not be filled (JCUS-MAR 96, p. 24), a situation now exists where a vacancy could be designated as an emergency at the same time the Judicial Conference recommends to Congress that it not be filled. On recommendation of the Committee on Judicial Resources, the Judicial Conference revised the definition of a "judicial emergency" vacancy as follows:

- a. Any vacancy in a district court where weighted filings are in excess of 600 per judgeship, or any vacancy in existence more than 18 months where weighted filings are between 430 and 600 per judgeship; and
- b. Any vacancy in a court of appeals where adjusted filings per panel are in excess of 700, or any vacancy in existence more than 18 months where adjusted filings are between 500 and 700 per panel.

Secretaries to Federal Judges

Official Titles. In order to give judges the option of selecting appropriate titles for their secretaries, the Judicial Conference, slightly modifying a recommendation of its Judicial Resources Committee, voted to allow judges officially to title their primary secretaries whatever they deem appropriate.

Secretaries to Former Chief Circuit Judges. In September 1998, the Judicial Conference approved a change to the Judiciary Salary Plan (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. In addition, to protect the secretaries from significant salary reductions once the chief circuit judge stepped down, the Conference 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 (JCUS-SEP 98, p. 80), making the secretary eligible for "saved grade/saved pay" when the chief

circuit judge stepped down. At this session, the Judicial Conference agreed to apply the 1998 policy change regarding the promotion to JSP-12 to certain individual former chief circuit judges' secretaries who had been promoted to the JSP-12 level and had held that grade for at least two years before their chief circuit judge stepped down.

Death Penalty Law Clerks

Death penalty law clerk programs in the Ninth and Tenth Circuits provide funding for law clerks with expertise in capital cases. In June 1998, the Committee on Court Administration and Case Management voted unanimously to strongly endorse permanent funding of a death penalty law clerk program on a national basis in both district and appellate courts and conveyed its vote to the Committee on Judicial Resources for consideration. On recommendation of the Judicial Resources Committee, modified at the Conference session to clearly limit the program to the district courts, the Judicial Conference agreed to provide funding for a death penalty law clerk program on a national basis in the district courts at the rate of one law clerk for each 15 capital habeas corpus cases in a district, if requested by the circuit judicial council.

Court Reporter Compensation

A recent study conducted at the request of the Committee on Judicial Resources and completed in November 1998, concluded that the salaries of court reporters are competitive in both the public and private sectors and that the federal judiciary is not experiencing difficulty in recruiting and retaining court reporters. Nonetheless, in order to provide another means to recognize court reporters' service to the judiciary and another measure of parity with other court employees, the Judicial Conference approved a recommendation of the Committee that the employee recognition program (*see Guide to Judiciary Policies and Procedures*, Volume IC, Ch. 10, Subch. 1451.2) be modified to extend longevity bonus awards to court reporters who have 20 years of federal service.

Transcript Rates

Current rules allow court reporters who have realtime certification to sell realtime unedited transcripts for \$1.00 per page, with no credit towards the purchase of a certified transcript, nor with a requirement that a certified transcript be purchased (JCUS-SEP 97, p. 77). To address court reporter concerns about the unprofitability of the \$1.00 per page rate and about circulating unedited transcripts that are not backed up by certified transcripts, the Judicial Resources Committee recommended that the transcript fee rates for realtime unedited transcripts be modified to:

- a. Establish the maximum page rate authorized for the provision of realtime services, including the production and distribution of realtime unedited transcripts, at \$2.50 per page. A litigant who orders realtime services will be required to purchase an original certified transcript of the same pages of realtime unedited transcript at the regular rates (ordinary, expedited, daily, or hourly); and

b. Establish the maximum page rate for copies of realtime unedited transcripts at \$1.00 per page. A litigant who orders a copy of a realtime unedited transcript will be required to purchase a certified copy of the same pages of realtime unedited copies at the regular copy rate (ordinary, expedited, daily, or hourly).

The Judicial Conference approved the Committee's recommendation.

(5)

Courtroom Support for District Judges

In March 1998, the Judicial Conference approved a recommendation of the Committee on Judicial Resources to provide courtroom deputy clerk staffing credit and associated funding based on judicial vacancies when an active district judge leaves the court without taking senior status (JCUS-MAR 98, p. 21). The Judicial Resources Committee subsequently determined that it made practical sense to maintain consistent support for court reporter positions as well. On recommendation of the Committee, the Judicial Conference authorized the Administrative Office, when the court requests, to provide court reporter staffing credit and associated funding based on judicial vacancies when an active district judge leaves the court without taking senior status. The additional credit may be withdrawn if other vacant judgeships are filled before the specific vacancy for which the court reporter credit was given.

Law Clerks for Magistrate Judges

In September 1991, the Judicial Conference authorized circuit and district judges to hire an additional law clerk in lieu of a secretary, or vice versa (JCUS-SEP 91, p. 66). In March 1993, the Judicial Conference agreed to allow such an option for bankruptcy and magistrate judges as well, but for magistrate judges conditioned it on the consent of the chief judge of the district court (JCUS-MAR 93, p. 16). Since magistrate judges make all other staffing decisions concerning their personal staffs without the consent of the chief judge, the Committee on Judicial Resources, with the concurrence of the Committee on the Administration of the Magistrate Judges System, recommended, and the Judicial Conference agreed, that the Conference should modify the 1993 policy to allow a magistrate judge to hire an additional law clerk in lieu of a secretary, or vice versa, without the need to obtain the consent of the chief judge of the district court.

Bankruptcy Administrators

The bankruptcy administrator program was established in the six judicial districts in North Carolina and Alabama under section 302(d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law No. 99-554). The responsibilities of the bankruptcy administrators have grown considerably (*e.g.*, they now appear in court, they have case closing responsibilities formerly handled by bankruptcy clerks, and they oversee the process for the collection and disbursement of more estate assets). On recommendation of the Judicial Resources Committee, the Judicial Conference approved increases in the salary caps of the bankruptcy

administrators to JSP-17 for the bankruptcy administrator position in the Northern District of Alabama and to JSP-16 for the positions in the other five bankruptcy administrator districts, effective immediately.

Recruitment and Retention Bonuses

The Judicial Resources Committee considered the concerns of many court unit executives that they are experiencing difficulty in attracting and retaining key employees in automation positions and that the lack of appropriate compensation tools for automation positions is beginning to distort the Court Personnel System classification system. The Committee noted that recruitment and retention bonuses, authorized in the executive branch since 1990 to attract and retain highly-skilled employees, might serve as effective compensation enhancements for high-caliber employees performing automation functions. On recommendation of the Committee, the Judicial Conference agreed to authorize recruitment and retention bonuses for key employees in automation positions on a two-year pilot basis, funded from a court unit's existing financial resources, and to require court units to supply data to the Administrative Office on bonus use so that the effectiveness of the program can be evaluated. The Conference also agreed to encourage court units to adopt criteria for recruitment and retention bonuses that apply to court units within the same district or to court units at the circuit level within the same circuit, as applicable.

Alternative Dispute Resolution Staffing

In order to address the need for alternative dispute resolution (ADR) staffing resources in the district courts, the Judicial Conference at its March 1998 session approved a "basic" staffing factor of 2.17 hours for each case that participates in an ADR program for most district courts and a "robust" staffing factor of approximately 4/5 of a work unit plus a factor of 4.38 hours per case to be applied only to six specific courts with extensive ADR programs (JCUS-MAR 98, pp. 20-21). Three additional courts asked the Judicial Resources Committee to apply the "robust," rather than "basic," staffing factor to them. Based on the number of cases participating in the ADR programs in these districts and the number of hours to process those cases for the twelve-month reporting period ending June 1998, the Committee concluded that no change was warranted for one of these courts. On recommendation of the Committee, the Judicial Conference authorized the application of the "robust" staffing factor to the Western District of Michigan and the District of Rhode Island for clerk's office positions performing duties related to alternative dispute resolution.

Telecommuting Policy

The Judicial Conference agreed, on recommendation of the Judicial Resources Committee, to approve a telecommuting policy for the courts. The policy, which will be published in the *Guide to Judiciary Policies and Procedures*, includes a requirement that if a court, chambers or court unit desires to allow its employees to telecommute, it must have a written policy that contains certain minimal provisions. The national policy allows for local flexibility in designing telecommuting programs.

Judiciary Benefits Initiative

On recommendation of the Judicial Resources Committee, the Judicial Conference approved the following judiciary benefits philosophy statement:

A goal of the judiciary is to be a model employer so it may attract and retain well-qualified employees. The judiciary's employee benefits program is an important tool in attracting and retaining these employees. Therefore, the judiciary's benefits program will be one that is responsive to the reasonable needs of employees, is competitive in the market place, and is fiscally responsible.

Committee on the Administration of the Magistrate Judges System

Selection and Appointment Regulations

Section 6.02 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 requires a court to determine whether it wishes to consider the reappointment of an incumbent magistrate judge prior to the expiration of his or her term of office. If the court decides that it wishes to consider the reappointment of the incumbent, it is directed to follow procedures set forth in chapter 6 of the regulations for the reappointment of magistrate judges. If the court decides not to reappoint the incumbent, then it is directed to follow procedures set forth in chapters 2, 3, 4, and 5 of the regulations for new appointments of magistrate judges.

Although the intent of the regulations was to prohibit combining these procedures, the language of section 6.02 does not clearly prevent a court from seeking comments on an incumbent while also seeking new applicants, or prevent an incumbent, who has been notified by the court that he or she will not be reappointed, from applying for the position once it is advertised. On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference agreed to amend section 6.02 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 to prevent the use of this "hybrid" selection procedure for magistrate judges and make it clear that a court may not seek comments on an incumbent while also seeking new applicants for a magistrate judge position.

Changes in Magistrate Judge Positions

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

Second Circuit

Eastern District of New York

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

Fourth Circuit

Eastern District of North Carolina

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

Eastern District of Virginia

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

Fifth Circuit

Western District of Louisiana

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

Southern District of Texas

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

Seventh Circuit

Eastern District of Wisconsin

Increased the salary of the part-time magistrate judge position at Green Bay from Level 8 (\$3,167 per annum) to Level 6 (\$10,557 per annum).

Eighth Circuit

District of Minnesota

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

district.

Ninth Circuit

Southern District of California

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

District of Montana

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

Tenth Circuit

Northern District of Oklahoma

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

Eleventh Circuit

Southern District of Alabama

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

Northern District of Florida

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

Middle District of Florida

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

Committee to Review Circuit Council Conduct and Disability Orders

Committee Activities

The Committee to Review Circuit Council Conduct and Disability Orders reported that the 105th Congress adjourned without enactment of any proposal to amend the Judicial Conduct and Disability Act, 28 U.S.C. § 372 (c). A measure passed in the House of Representatives in April 1998 would have amended the Act to provide that any complaint of judicial misconduct or disability filed under the Act that was not dismissed at the outset by the chief judge of the circuit in which the complained-against judge serves would be transferred to another circuit for further complaint proceedings. In April 1997, the Judicial Conference approved a resolution expressing opposition to a similar version of this legislation (JCUS-SEP 97, pp. 81-82). The Committee will continue to monitor legislative developments in this area in the 106th Congress.

Committee on Rules of Practice and Procedure

Federal Rules of Criminal Procedure

Forfeiture Procedures. A proposed new Criminal Rule 32.2 would establish a comprehensive set of forfeiture procedures, consolidating several procedural rules (Rules 7, 31, 32, and 38) currently governing the forfeiture of assets in a criminal case. Under the proposed amendments, the nexus between the property to be forfeited and the offense committed by the defendant would be established during the first stage of the proceedings as part of the sentencing. In the second stage, procedures governing ancillary proceedings are prescribed to determine the claims of any third party asserting an interest in the property. After considering public comments, and making revisions in light of those comments, the Advisory Committee on Criminal Rules recommended, and the Standing Rules Committee concurred, that the Judicial Conference approve proposed new Criminal Rule 32.2 and amendments to Criminal Rules 7, 31, 32, and 38 and transmit them after the Conference's September 1999 session 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. After failure of a motion to recommit the proposed rule to the Committee for further review, the Judicial Conference approved the Committee's recommendation.

Counsel for Witnesses Appearing Before the Grand Jury. H.R. Conference Report No. 105-825 at 1071 (1998), which accompanied the judiciary's fiscal year 1999 appropriations act (Public Law No. 105-277), directs the Judicial Conference to report to the Committees on Appropriations, not later than April 15, 1999, its findings on whether Rule 6 (d) of the Federal Rules of Criminal Procedure should be amended to allow a witness appearing before a grand jury to have counsel present. After reviewing extensive historical and current information on this issue, the Advisory Committee on Criminal Rules prepared a report recommending that no action be taken at this time to amend Rule 6(d). The Committee on Rules of Practice and Procedure endorsed the report and recommended its adoption by the Judicial Conference. The Conference adopted and agreed to transmit to Congress the report containing findings and a recommendation that Rule 6(d) of the Federal Rules of Criminal Procedure not be amended at this time to allow a witness appearing before a grand jury to have counsel present.

Committee on Security and Facilities

After-Hours Courthouse Security

Noting that sufficient justification exists to provide any court facility that desires with additional resources for some level of after-hours security coverage, and that the current process for requesting after-hours security is unduly burdensome, the Committee on Security and Facilities recommended that an after-hours security presence at locations housing full-time judicial officers be provided upon request, as a matter of policy, subject to the availability of funds. The Judicial Conference approved the Committee's recommendation with a slight modification to clarify that eligible locations would be those where judges and employees routinely remain in the building after normal business hours and on weekends or in exigent circumstances.

Public Buildings Reform Legislation

In March 1996, the Judicial Conference determined that it would take no position on the Public Buildings Reform Act of 1995, S. 1005 (104th Congress), a bill which dealt with the roles of the General Services Administration and the judiciary in courthouse construction (JCUS-MAR 96, p. 35). At the same time, the Security and Facilities Committee was delegated the authority to work with the Director of the Administrative Office and the Executive Committee to see that the judiciary's concerns were addressed if further congressional action occurred. After the bill passed the Senate without opportunity for input from the judicial branch, the Security and Facilities Committee recommended, and by mail ballot concluded on July 2, 1996, the Judicial Conference agreed, that the Conference should seek certain amendments to the bill (JCUS-SEP 96, p. 45).

The same bill was introduced in the 105th Congress (S. 2481) and could be reintroduced in the 106th Congress. Because the enactment of any such bill would clearly affect the judiciary's ability to determine space standards necessary for the functioning of a modern-day court, at this session the Judicial Conference approved the recommendation of the Committee that, in lieu of the Conference's current position on public buildings reform legislation, it oppose those provisions of any future legislation that would adversely affect the judiciary.

Five-Year Courthouse Project Plan

After consultation with circuit judicial councils, the Committee on Security and Facilities proposed a five-year plan of courthouse construction projects for the fiscal years 2000-2004. The Conference approved the plan, except that the inclusion of the Savannah, Georgia project was made contingent upon a decision of the Eleventh Circuit Judicial Council not to withdraw its support for the project.⁽⁶⁾

Role of the Committee

The authority and responsibility for a circuit's space management program, including the authority to approve exceptions to the *United States Courts Design Guide* and to identify funding sources for exceptions, lies with the circuit judicial councils (28 U.S.C. § 462(b)). The Committee on Security and Facilities explored what advisory role to the councils it might play when councils consider space policy matters, requests from courts for new space, and requests from courts to deviate from space standards and planning assumptions approved by the Conference. The Committee anticipates that an upcoming comprehensive study of the judiciary's space and facilities program will address these issues. In the interim, the Judicial Conference approved a Committee recommendation that the Conference strongly encourage the circuit judicial councils to--

a. consult with the circuit's representative to the Security and Facilities Committee prior to consideration of a request for approval of an exception to the space standards or planning assumptions published in the *United States Courts Design Guide*, with this policy to be published in the next revision to the *Design Guide*; and

b. consider designating the Committee's circuit representative an *ex officio* member of a council's space committee, if one exists.

Parking Policy

Balancing concerns about the number of parking spaces assigned against financial constraints, the Committee on Security and Facilities recommended that the judiciary's current parking policy be revised to (a) provide a court moving into a new facility the same number of parking spaces as were paid for by the Administrative Office prior to the move; (b) state specifically that the chief judge or designee will assign all parking spaces according to the priority established by the parking policy as spaces become vacant; (c) include the provision of a parking space for a judge when visiting a non-resident location; and (d) offer guidance on providing spaces for temporarily disabled employees. The Judicial Conference approved the Committee's recommendation, and the new policy will be published in the *Guide to Judiciary Policies and Procedures*.

Resolution

The Judicial Conference approved the following resolution honoring Judge Rya W. Zobel for her service as Director of the Federal Judicial Center:

The Judicial Conference of the United States recognizes with appreciation, admiration and respect the Honorable

RYA W. ZOBEL

Director of the Federal Judicial Center, 1995-1999.

Her rich experience as a United States District Judge for the District

of Massachusetts and her leadership role as Chair of the Judicial Conference Committee on Automation and Technology, and her earlier membership on the Committee on the Operation of the Jury System as well as the Committee on Judicial Improvements, earned Judge Zobel the distinction of being selected in 1995 by the Chief Justice and the Board of Directors of the Federal Judicial Center as the Center's Director, a position of the highest responsibility in the federal courts. Under her leadership the Center has maintained the tradition of excellence established by her predecessors as reflected in the high quality of the Center's educational programs for federal judges and court staff, research and planning projects, publications, and seminars for foreign judges and legal officers from around the world.

The Judicial Conference is pleased to express its gratitude to Judge Zobel for her dedication to the administration of the federal courts in her service as Director of the Federal Judicial Center, and wishes her well as she returns to her career in Massachusetts.

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.

Chief Justice of the United States
Presiding

1. Congress has not acted on the Conference's requests for additional bankruptcy judgeships based on three biennial surveys conducted between 1993 and 1997.
2. This is in addition to a September 1997 Judicial Conference determination to pursue legislation to make permanent an existing temporary judgeship in the District of Puerto Rico (JCUS-SEP 97, pp. 53-54).
3. The Executive Committee subsequently approved the recommendation on behalf of the Conference (see supra "Budgetary Matters," pp. 5-6).
4. In response to one proposal, S. 2516, the Executive Committee determined that the judiciary should seek to have the reporting requirement deleted from the bill, or, if unsuccessful, oppose the bill in its entirety (see supra "Miscellaneous Actions," p. 7).
5. In the event that implementation of the new transcript rate appears to have a substantial impact on the Defender Services budget, the matter may be revisited.
6. On March 30, 1999, the Eleventh Circuit Judicial Council voted to continue its support for the Savannah, Georgia project.