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

September 20, 2005

The Judicial Conference of the United States convened in Washington, D.C., on September 20, 2005, pursuant to the call of the late Chief Justice of the United States, William H. Rehnquist, issued under 28 U.S.C. § 331. Associate Justice John Paul Stevens presided in accordance with 28 U.S.C. § 3, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge Hector M. Laffitte,
District of Puerto Rico

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Michael B. Mukasey,
Southern District of New York

Third Circuit:

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

Fourth Circuit:

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

Fifth Circuit:

Chief Judge Carolyn Dineen King
Chief Judge Glen H. Davidson,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Danny J. Boggs
Judge William O. Bertelsman,
Eastern District of Kentucky

Seventh Circuit:

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

Eighth Circuit:

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

Ninth Circuit:

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

Tenth Circuit:

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

Eleventh Circuit:

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

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Paul R. Michel

Court of International Trade:

Chief Judge Jane A. Restani

The following Judicial Conference committee chairs attended the Conference session: Circuit Judges Samuel A. Alito, Jr., Julia S. Gibbons, Marjorie O. Rendell, Jane R. Roth, and David B. Sentelle; and District Judges Susan C. Bucklew, W. Royal Furgeson, Jr., Nina Gershon, D. Brock Hornby, Robert B. Kugler, Sim Lake, David F. Levi, John W. Lungstrum, Howard D. McKibben, James Robertson, Lee H. Rosenthal, and Patti B. Saris. Bankruptcy Judge A. Thomas Small and Magistrate Judge John M. Roper, Sr., were also in attendance. Gregory B. Walters of the Ninth Circuit represented the circuit executives.

Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Clarence A. Lee, Jr., Associate Director for Management and Operations; William R. Burchill, Jr., Associate Director and General Counsel; Laura C. Minor, Assistant Director, and Jeffrey A. Hennemuth, Deputy Assistant Director, Judicial Conference Executive Secretariat; Cordia A. Strom, Assistant Director, Legislative Affairs; and David Sellers, Assistant Director, Public Affairs. Judge Barbara Jacobs Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, and Judge Ricardo H. Hinojosa, Chair of the United States Sentencing Commission, were in attendance at the session of the Conference, as was Sally Rider, Administrative Assistant to the Chief Justice. Scott Harris, Supreme Court Counsel, and the 2005-2006 Judicial Fellows also observed the Conference proceedings.

Senators Arlen Specter and Patrick J. Leahy and Representatives Lamar S. Smith and Joseph Knollenberg spoke on matters pending in Congress of interest to the Conference. Attorney General Alberto R. Gonzales addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice.

REPORTS

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

Rothstein spoke to the Conference about Federal Judicial Center (FJC) programs, Judge Hinojosa reported on Sentencing Commission activities, Judge Gibbons reported on judiciary appropriations, and Judge Hornby reported on judicial compensation.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the Judicial Conference committee chairs whose terms of service end in 2005:

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

HONORABLE CAROLYN DINEEN KING
Executive Committee

HONORABLE JOHN W. LUNGSTRUM
Committee on Court Administration and Case Management

HONORABLE SIM LAKE
Committee on Criminal Law

HONORABLE PATTI B. SARIS
Committee on Defender Services

HONORABLE MARY M. LISI
Committee on Financial Disclosure

HONORABLE JAMES ROBERTSON
Committee on Information Technology

HONORABLE FERN M. SMITH
Committee on International Judicial Relations

HONORABLE DEANELL REECE TACHA
Committee on the Judicial Branch

HONORABLE SAMUEL A. ALITO, JR.
Advisory Committee on Appellate Rules

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

NEW BANKRUPTCY LEGISLATION

The Executive Committee was asked to approve on behalf of the Judicial Conference a number of emergency measures required to facilitate timely implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law No. 109-8), which generally takes effect on October 17, 2005. On recommendation of the Committee on Rules of Practice and Procedure, the Executive Committee adopted new and revised official bankruptcy forms for nationwide use and, to facilitate uniformity of practice until the Federal Rules of Bankruptcy Procedure can be amended to reflect the new legislation, agreed to authorize distribution to the courts of proposed changes in the Bankruptcy Rules that can be adopted in individual districts by local rule or general order as interim rules. On recommendation of the Committee on the Administration of the Bankruptcy System, the Executive Committee also approved interim procedures for *in forma pauperis* waivers of chapter 7 filing fees and interim guidelines for certification of credit counseling agencies and debtor education programs.

JUDICIAL SECURITY COMMITTEE

Because of increased concerns for the personal safety of judges and their families, the Executive Committee recommended to the Conference that the Committee on Security and Facilities be divided into a Committee on Judicial Security and a Committee on Space and Facilities so that a committee could devote its efforts entirely to security matters. With the approval of the Chief Justice, the Conference was polled by mail ballot and adopted the recommendation. The Executive Committee approved jurisdictional

statements for the two committees and determined that the organizational change would take effect on October 1, 2005.

HURRICANE KATRINA RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee, introduced as new business on the Conference floor, to adopt the following resolution expressing appreciation for the efforts of judiciary employees related to Hurricane Katrina:

> The Judicial Conference of the United States notes with deepest appreciation the extraordinary performance and exemplary dedication to the administration of justice of the federal court personnel who are working to help the affected courts recover from the devastation wrought by Hurricane Katrina.
>
> The Conference expresses special thanks to the judges and court employees of the Fifth and Eleventh Circuits who have suffered great personal loss but continue to work tirelessly to restore court operations. The Conference also recognizes the extraordinary efforts of the chief judges and their staffs who have displayed remarkable leadership under the most difficult of circumstances. The courage, commitment, and hard work of the court personnel in these locations have enabled the affected courts to continue to serve the public – some in their own courthouses and others in temporary quarters – and help to hasten the return of those courts to normal operations.
>
> The Conference also would like to acknowledge the fine work and generosity of the entire federal court family. Across the country, judges, court employees, and Administrative Office staff members have devoted countless hours to assisting their colleagues in the areas affected by Hurricane Katrina, and many are also supplying personal financial and other assistance to hurricane victims.
>
> Finally, on behalf of the entire federal judiciary, the Judicial Conference pledges support and encouragement for the ongoing recovery effort and offers the deepest sympathy to everyone who has lost family, friends, homes, or livelihood in this terrible disaster. The Conference acknowledges with pride the federal judiciary's response to the challenges of recovery –

a response that shows firm determination and a strong, cooperative spirit.

MEMORIAL RESOLUTION FOR CHIEF JUSTICE REHNQUIST

The Executive Committee approved, and the Judicial Conference affirmed, the following resolution expressing deep regret at the death of the Honorable William H. Rehnquist of the Supreme Court of the United States:

> The Judicial Conference of the United States notes with sadness the death, on September 3, 2005, of the Honorable
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> **WILLIAM HUBBS REHNQUIST**
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> Chief Justice of the United States. A Wisconsin native and an adopted son of Arizona, he was born in Milwaukee in 1924, and he served in the United States Army Air Corps in North Africa in World War II. He was a Phi Beta Kappa graduate of Stanford University and received Master of Arts degrees from both Stanford and Harvard University. He graduated first in his class from Stanford Law School in 1952, and served as law clerk to Associate Justice Robert H. Jackson at the Supreme Court of the United States.
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> Chief Justice Rehnquist entered private practice in Phoenix in 1953, and in 1969 was appointed Assistant Attorney General, Office of Legal Counsel in the Department of Justice. In 1971, President Richard M. Nixon nominated him to serve as Associate Justice of the Supreme Court of the United States; he was confirmed by the Senate and took his oath as the 100th Justice in January 1972.
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> Nominated to serve as Chief Justice by President Ronald Reagan in June of 1986, he became the 16th Chief Justice of the United States on September 26 of that year. In 1999, he became the second Chief Justice in the history of the United States to preside over an impeachment trial of a president of the United States.
>
> The Chief Justice excelled in administering the federal courts. The Chief Justice displayed his leadership in the Judicial Conference of the United States almost immediately

by appointing in 1986 a committee of federal judges to study the organization and operations of the Conference, the first such effort in 17 years. He took his role in the Conference structure seriously, and through the establishment of term limits, he significantly expanded the numbers of judges appointed to serve on Conference committees. Chief Justice Rehnquist presided at the semi-annual Judicial Conference sessions for almost two decades with a firm hand. He ran efficient, effective meetings – showing respect for the rules of order and expecting succinctness in presentation, while demonstrating the wit that was his hallmark. His tenure as head of the judicial branch encompassed, among many other things, the Federal Courts Study Committee, the Powell Committee on capital *habeas corpus* remedies, which he established, and the White Commission study on the structural alternatives for the federal appellate courts.

Chief Justice Rehnquist loved history as well as the law, and he was the author of four books. Above all, he was a man of integrity and courtesy, deep humility, and courage.

We mourn the passing of our Chief, a great jurist and good friend, and we express our deepest sympathy to his family, which he loved above all else.

MISCELLANEOUS ACTIONS

The Executive Committee—

- On recommendation of the Committees on Court Administration and Case Management and Information Technology, approved and authorized transmittal to Congress of the annual report for 2005 on deferred court compliance with section 205 of the E-Government Act of 2002 (Public Law No. 107-347);

- Adopted a Committee on Rules of Practice and Procedure recommendation to request that the Supreme Court withdraw a proposed amendment to Rule 4008 of the Federal Rules of Bankruptcy Procedure so that it could be recommitted to the Committee for further consideration in light of its inconsistency with a provision of the new Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;

- Approved a recommendation of the Committee on Financial Disclosure to authorize the chair of that committee to work on the Conference's behalf to obtain enactment of legislation extending, in the broadest possible terms, the Conference authority to redact financial disclosure reports for security purposes that is scheduled to expire on December 31, 2005, with the understanding that, if extension is otherwise unattainable, the Conference would not oppose legislation limiting that authority to protection against physical danger;

- On recommendation of the Committee on Criminal Law, approved a revised Statement of Reasons form to be attached to the Judgment in a Criminal Case;

- On recommendation of the Committee on the Budget, agreed to seek legislation to give the judiciary the flexibility in multi-year contracting and contract payments already permitted to executive branch and certain legislative branch agencies;

- Approved interim fiscal year 2006 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts, and for the Electronic Public Access program, pending congressional enactment of the judiciary's appropriations for fiscal year 2006;

- Recommitted to the Committee on Federal-State Jurisdiction a recommendation regarding the proposed REAL ID Act of 2005 (H.R. 418 and H.R. 1268, 109th Congress) for development of a more general position that would address any legislation intended to preclude judicial review of constitutional claims (see also *infra*, "Legislation to Eliminate Federal Court Jurisdiction," p. 23);

- Approved an amended jurisdictional statement for the Committee to Review Circuit Council Conduct and Disability Orders that reflects minor technical changes to the Judicial Conduct and Disability Act;

- Approved a recommendation of the Committee on Judicial Resources that the judiciary seek legislation to amend 5 U.S.C. § 6391(a)(2) to include judicial branch agencies among those agencies authorized to participate in emergency leave transfer programs; and

- Deferred for six months implementation of a policy adopted by the Conference in March 2005 relating to funding of circuit judicial conferences so that various practical issues could be studied.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it considered issues regarding pay parity between executive-level employees in the judiciary and the executive branch and expressed support for the AO Director to apply to AO executives any interim adjustments in salary caps approved by the Judicial Conference for court executives (see "Executive Compensation," *infra*, p. 29). The Committee also endorsed pursuing statutory authorities for AO executive pay comparable to those that already exist or that will be sought in the future for court executives, in order to achieve parity with the executive branch. In light of renewed interest in Congress regarding an inspector general for the judiciary, the Committee determined that there is no reason to propose any change to the Judicial Conference policy strongly opposing an inspector general for the judiciary (JCUS-MAR 96, p. 7).

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATIONS/ PLACES OF HOLDING COURT

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, enacted on April 20, 2005, authorizes the appointment of 28 new bankruptcy judgeships in 21 districts. Pursuant to 28 U.S.C. § 152(b)(1), the Judicial Conference is responsible for determining the official duty stations of bankruptcy judges and their places of holding court, based on recommendations of the Director of the Administrative Office, who in turn must consult with the respective judicial councils. After considering the requests of the judicial councils (some of which requested permission to move an incumbent bankruptcy judge to a new duty station and to locate the newly created judgeship at the original duty station), the Bankruptcy Committee recommended, and the Judicial Conference approved, the following designations of official duty stations and places of holding court:

Official Duty Stations for New Judgeships

District	***Number of New Judgeships***	***Official Duty Station***
First Circuit		
Puerto Rico	1	Ponce
Second Circuit		
New York Northern	1	Syracuse
New York Southern	1	New York, New York (Bowling Green)
Third Circuit		
Delaware	4	Wilmington
New Jersey	1	Trenton
Pennsylvania Eastern	1	Philadelphia
Pennsylvania Middle	1	Wilkes-Barre or Harrisburg
Fourth Circuit		
Maryland	2	Baltimore
	1	Greenbelt
North Carolina Eastern	1	Wilson
South Carolina	1	Spartanburg
Virginia Eastern	1	Richmond
Fifth Circuit		
Mississippi Southern	1	Jackson
Sixth Circuit		
Michigan Eastern	1	Flint or Bay City, with the other city designated as an additional place of holding court
Tennessee Western	1	Memphis, with Jackson, Tennessee designated as an additional place of holding court
Ninth Circuit		
Nevada	1	Las Vegas

Eleventh Circuit		
Florida Southern	1	Miami
	1	Fort Lauderdale
Georgia Southern	1	Augusta

Changes in Official Duty Stations

District	***Former Duty Station***	***New Duty Station***
Fourth Circuit		
North Carolina Eastern		
Hon. J. Rich Leonard	Wilson	Raleigh
Eleventh Circuit		
Georgia Southern		
Hon. John S. Dalis	Augusta	Brunswick

RETIREMENT REGULATIONS

For each bankruptcy or magistrate judge covered under the Federal Employees' Retirement System, the government contributes up to five percent of salary to the Thrift Savings Plan (TSP) on behalf of that judge, one percent automatically and up to four percent as a matching contribution. However, if a judge then later elects to participate in the Judicial Retirement System (JRS), 5 U.S.C. § 8440b(b)(7) requires that any annuity received under JRS be offset by an amount equal to the portion of any TSP distribution the judge received that represents the government's earlier contribution to TSP. Noting that § 6.03(e) of the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 is inconsistent with 5 U.S.C. § 8440b(b)(7) because it treats any contributions still unrecovered at the time of a judge's death as a debt to the government, even though there is no longer a JRS annuity to offset, the Committee recommended that the section be deleted. Since § 6.03(e) also applies to magistrate judges, the Committee on the Administration of the Magistrate Judges System made the same recommendation (see *infra* "Retirement Regulations," p. 33). The Conference adopted the Committee's recommendation.

CONFIDENTIALITY OF TAX INFORMATION

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 expands the list of tax documents a debtor must file under 11 U.S.C. § 521 and requires that courts make these documents available to any party in interest in accordance with procedures (to be established by the Director of the Administrative Office) that safeguard the confidentiality of the information. On recommendation of the Committee and pursuant to the Act, the Conference agreed to adopt the "Director's Interim Guidance Regarding Tax Information under 11 U.S.C. § 521," which balances the disclosure requirements of section 521 with the need to protect sensitive financial and personal information from unrestricted dissemination.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it reaffirmed its long-standing view that the bankruptcy administrator program should be retained within the judiciary. It also received status reports on a wide range of topics, including the activities of its Subcommittee on Automation to address automation concerns of bankruptcy judges, a study of venue-related issues being conducted by a joint subcommittee of the Bankruptcy Committee and the Advisory Committee on Bankruptcy Rules, the Administrative Office study on administrative resources, and developments regarding consumer education programs.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2007 BUDGET REQUEST

In recognition of continuing budgetary constraints, the Budget Committee recommended a fiscal year 2007 budget request that reflected a number of cost-containment measures. The Judicial Conference approved the budget request subject to amendments that may become necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the judiciary's ongoing efforts to acquire additional resources from Congress and the program committees' progress on implementing the Judicial Conference-approved cost-containment strategy. The Committee also discussed judicial travel and space rental issues, and endorsed seeking appropriate legislation to affirm the judiciary's need for increased procurement flexibility (see *supra*, "Miscellaneous Actions," pp. 8-9).

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in March 2005, the Committee received 19 new written inquiries and issued 18 written advisory responses (one inquiry was withdrawn). During this period, the average response time for requests was 16 days. The Chairman received and responded to 23 informal inquiries (by telephone, electronic mail, or in person), and the other Committee members responded individually to 166 informal inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

RESTRUCTURING THE NINTH JUDICIAL CIRCUIT

In response to efforts in the 108th and 109th Congresses to link authorization of new judgeships requested by the judiciary to legislation to restructure the Ninth Judicial Circuit (i.e., to split it into two or three circuits), the Executive Committee asked the Committees on Court Administration and Case Management and Judicial Resources to advise the Conference on whether it should take a position on the proposed circuit split and, if so, what considerations should inform that position. Following discussion, the Conference agreed to adopt the following recommendations of the Committee on Court Administration and Case Management:

a. The Conference's consideration of the issue of splitting the Ninth Circuit should be independently based on the circuit split issue alone and should not be driven by possible linkage of that issue to a judgeship bill.

b. The Conference should not take a position either endorsing or opposing legislation providing for the split of the Ninth Circuit.

c. The Conference should continue to provide Congress with such information on the current status of court administration and case management in the Ninth Circuit as Congress may request.

d. While neither endorsing nor opposing the merits of proposals to divide the Ninth Circuit, the Conference should strongly emphasize to Congress the impact the existing proposals would have on the judiciary as well as on the citizens it serves, specifically, (i) the extent to which a split would exacerbate the current imbalance between the number of appeals originating in California and the number of appellate judges available to hear these cases and (ii) the uncertain amount of appropriations to support the new circuit structures.

e. The Conference should endorse the report entitled "Position of the Committee on Court Administration and Case Management Regarding Legislation to Divide the Ninth Circuit" to the extent it is not inconsistent with the recommendations specifically approved by the Conference.

The Conference took additional actions with regard to this issue (see *infra*, "Restructuring the Ninth Judicial Circuit," p. 29).

ELECTRONIC TRANSCRIPTS

In September 2003, the Judicial Conference adopted a policy requiring courts that make documents electronically available via the Public Access to Court Electronic Records (PACER) system also to make prepared electronic transcripts of court proceedings available remotely. To address privacy concerns, the policy includes a process for redacting personal identifying information from transcripts. The Conference deferred implementation of the policy, however, until it could consider a report to be prepared by the Committee on Judicial Resources regarding the impact the policy would have on court reporter compensation (JCUS-SEP 03, pp. 16-17). After considering the Judicial Resources Committee's report, presented to the Conference at this session, as well as information submitted by court reporters and the views of the Committees on Defender Services and Information Technology, the

Committee on Court Administration and Case Management recommended that the Conference implement its policy on electronic availability of transcripts by —

a. Adopting a $.75 per-page fee for remote electronic public access to transcripts, providing that a portion of that transcript fee be paid to the court reporter who prepared the transcript and setting that portion at $.50 per page, and directing the judiciary to retain the remainder of the fee ($.25 per page, which includes the current public access fee of $.08 per page) to recoup the cost of developing, maintaining, and operating the systems to perform these functions;

b. Seeking appropriate legislation necessary to effectuate these fees;

c. Authorizing the expansion of the existing pilot project on the electronic availability of transcripts – for at least six months – while the modifications noted above are implemented; and

d. Directing this Committee, as part of the ongoing pilot project, to work with the Defender Services Committee to evaluate the impact of the policy on the Defender Services program (i.e., develop cost estimates for the Defender Services budget and examine implementation issues) and to determine whether to recommend changes to the policy.

The Conference adopted the Committee's recommendations.

ATTORNEY ADMISSION FEE FOR THE COURT OF FEDERAL CLAIMS

The Judicial Conference adopted a recommendation of the Committee on Court Administration and Case Management to increase the attorney admission fee for the United States Court of Federal Claims from $50 to $150. This makes the Court of Federal Claims fee consistent with the attorney admission fee charged in the district courts, which was raised to $150 in March 2004 (JCUS-MAR 04, p. 9), and in the courts of appeals, which was established at $150 in September 2004 (JCUS-SEP 04, p. 12).

FEE FOR TECHNOLOGY RESOURCES IN THE COURTS

In September 1997, the Judicial Conference agreed to seek legislation to authorize the judiciary to establish fees for the use of court-provided

technology resources (JCUS-SEP 97, p. 62). Since that time, there have been legislative and other changes affecting the establishment, collection, and retention of fees by the judiciary that obviate the need for seeking such legislation. Therefore, on the Committee's recommendation, the Conference agreed to rescind its position to seek legislation that would expressly provide for fee authority for technology resources in the courts.

APPOINTING AUTHORITY FOR CIRCUIT LIBRARIANS

In September 2001, the Conference adopted a recommendation of the then Committee on Automation and Technology (which at that time had jurisdiction over the library program) to seek legislation amending 28 U.S.C. § 713 to provide that circuit librarians be selected and hired by the circuit judicial councils rather than by the courts of appeals. This was one of a number of recommendations intended to improve library program governance (JCUS-SEP/OCT 01, pp. 42-43). After reviewing the breadth of services librarians are providing and the level of coordination that currently takes place between the chief circuit judges and library committees or the circuit judicial councils, the Court Administration and Case Management Committee determined that this proposed legislation was not necessary. The Committee recommended that the Conference rescind its September 2001 position seeking change in the appointing authority for circuit librarians, and the Conference agreed.

GEOGRAPHIC LOCATION REQUIREMENT FOR COURT RECORDS

In March 2001, on recommendation of the then Committee on Automation and Technology (which had jurisdiction over records management issues at that time), the Judicial Conference agreed to pursue legislation that would eliminate the requirement of 28 U.S.C. § 457 that records be kept at a place where court is held (JCUS-MAR 01, pp. 7-8). The intent of seeking such legislation was to ensure that electronic records of a court could be maintained on servers that might not be located at a place where court was actually held. It was subsequently determined that such legislation was unnecessary as electronic court records are accessible at the courthouse, as well as at other locations, through the courts' Case Management/Electronic Case Files (CM/ECF) system, and therefore the statutory requirements are met and actually exceeded. The Conference adopted the Committee's recommendation that the position be rescinded.

LAWBOOKS AND LIBRARIES

On recommendation of the Committee on Court Administration and Case Management, the Conference, as part of the judiciary's cost-containment efforts, adopted a policy with regard to lawbooks and libraries that judges (a) maintain only those subscriptions to print case reporters deemed essential to chambers, (b) cancel all existing subscriptions to print case reporters that are not essential to chambers, and (c) give serious consideration to whether subscriptions to law journals, law reviews, and treatises are essential. The Conference also approved the Committee's recommendation that the policy be implemented through the librarians with the assistance and participation of the chief judges of the appellate, district, and bankruptcy courts. Finally, on the Committee's recommendation, the Conference recognized that, although print case reporters are not deemed essential by all judges, the responses from a large number of judges to a questionnaire regarding lawbooks clearly show that, for a significant number of judges, print reporters remain an essential resource for carrying out the courts' fundamental mission of administering justice.

MODEL LOCAL RULES FOR ELECTRONIC FILING

The Judicial Conference adopted model local rules for electronic filing in civil and bankruptcy cases in September 2001 and in criminal cases in September 2003 and delegated to the Committee on Court Administration and Case Management the authority to make routine, technical and/or non-substantive modifications to these model local rules (JCUS-SEP/OCT 01, p. 50; JCUS-SEP 03, p. 15). At this session, on recommendation of that Committee, the Conference adopted model local rules for appellate electronic case filing with a similar delegation of authority to the Committee to make subsequent routine, technical, and/or non-substantive modifications. Adoption of the rules by individual appellate courts is discretionary, and it is expected that each court will tailor the rules to fit its local situations.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that, among other things, it discussed the impact on the courts of the judiciary's policy on privacy and public access to electronic case files and requested that the Federal Judicial Center conduct a study of this issue. The Committee also reviewed a draft of the American Bar Association's

"Principles for Juries and Jury Trials," and created a subcommittee to review the principles in greater detail. The Committee was also briefed on the efforts by the Administrative Office to work with the National Archives and Records Administration regarding the implementation of an agreement reached to permit the disposal of paper documents after they have been scanned into the Case Management/Electronic Case Files system. The Committee reiterated its support for the agreement and urged its implementation as quickly as possible.

COMMITTEE ON CRIMINAL LAW

CONTRACTING AUTHORITY FOR NON-TREATMENT SERVICES

In addition to broad general contracting authority under 28 U.S.C. § 604(a), the Director of the Administrative Office has explicit authority under 18 U.S.C. § 3672 to contract for reentry services for federal offenders addicted to drugs or suffering from a mental defect who are under post-conviction supervision. Such services include substance abuse and mental health treatment, and medical, educational, social, vocational training, and/or other rehabilitative interventions. Noting that all offenders could benefit from transitional services such as emergency housing and vocational training, the Committee recommended that the Judicial Conference seek legislation to explicitly authorize the AO Director to contract for non-treatment services (e.g., medical, educational, emergency housing, and vocational training) and other reentry interventions for post-conviction supervision offenders generally. The Conference adopted the Committee's recommendation.

POST-CONVICTION SUPERVISION MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to *The Supervision of Federal Offenders*, Monograph 109, for publication and distribution to the courts. The revisions, modeled after the early termination policy applicable to parolees and other offenders under the jurisdiction of the United States Parole Commission, create a presumption in favor of recommending early termination of supervised releasees and probationers who —

a. have been under supervision for at least 18 months and

   1. are not career violent and/or drug offenders, sex offenders, or terrorists,

2. present no identified risk to the public or victims, and
3. are free from any moderate or high severity violations; or

b. have been under supervision for at least 42 months and

1. are not career violent and/or drug offenders, sex offenders, or terrorists, and
2. are free from any moderate or high severity violations.

PRETRIAL SERVICES SUPERVISION MONOGRAPH

On recommendation of the Committee, the Judicial Conference approved revisions to *The Supervision of Federal Defendants,* Monograph 111, for publication and distribution to the courts. The revisions incorporate program changes that implement cost-containment measures approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 14-15). The revisions are designed to limit the growth in the number of offenders under pretrial services supervision, reduce pretrial services supervision program requirements, and contain costs in substance abuse treatment services paid for by the judiciary.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it proposed revisions to the Statement of Reasons attached to the Judgment in a Criminal Case forms (AO 245B and AO 245C) in view of the Supreme Court decision in the consolidated cases, *United States v. Booker/United States v. Fanfan*, 125 S.Ct. 738 (2005). The revisions, which were approved by the Executive Committee on behalf of the Conference, are designed to enable the Sentencing Commission to determine more precisely the number of sentences imposed (1) within the advisory guideline sentencing range, (2) within the advisory guidelines as adjusted by any departure under the advisory guidelines (including departures initiated or supported by the government), and (3) outside the advisory guideline system based on the sentencing judge's articulation of other sentencing factors set forth in 18 U.S.C. § 3553(a) (including those sentencing adjustments initiated or supported by the government). In addition, the Committee unanimously agreed to generally support the revisions to the *U.S. Courts Design Guide* recommended by the Committee on Security and Facilities that would reduce the square footage for office space related to probation and pretrial services staff.

COMMITTEE ON DEFENDER SERVICES

CASE BUDGETING

Pilot Project. In order to control costs of Criminal Justice Act representations in capital cases and non-capital "mega-cases," the Committee on Defender Services recommended, and the Judicial Conference approved, a pilot project lasting up to three years wherein the Defender Services appropriation would fund up to three circuit positions to support the case-budgeting process. These positions are intended to provide objective case-budgeting advice to judges and enhance management of, and accountability for, the cases most significantly affecting the Defender Services account.

Investigative and Expert Services. Concerned that some panel attorneys are delaying pursuit of aspects of their representation during the initial stages of the case-budgeting process, the Committee recommended that the Conference amend paragraphs 2.22B(4) and 6.02F of the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume 7, *Guide to Judiciary Policies and Procedures*, to state that courts, pending submission and approval of case budgets, should act upon requests for investigative, expert, and other services where prompt authorization is necessary for adequate representation. The Conference approved the Committee's recommendation.

NON-PROSPECTUS SPACE MORATORIUM

On recommendation of the Committee, the Judicial Conference agreed to continue for one year, until September 2006, the moratorium initially imposed in September 2004 on all federal defender organization non-prospectus space requests,[1] except requests for lease renewals, official parking, and space necessary for recovery from natural disasters or terrorist attacks. The Director is authorized to make limited exceptions in consultation with the Defender Services Committee's chair and the Committee member who is the liaison to the federal defender's circuit. Any exceptions involving space requests for federal public defender organizations will also require coordination with the circuit judicial council.

[1]Non-prospectus space requests are those whose construction costs are less than $2.36 million in FY 2005, and less than $2.47 million in FY 2006.

LOCATION OF FEDERAL DEFENDER OFFICE SPACE

In September 2003, the Judicial Conference amended the *U.S. Courts Design Guide* to provide, among other things, that federal defender offices must be located outside the courthouse, or other federal buildings housing law enforcement agencies, unless the federal defender has determined that the location would not compromise the defender organization's ability to fulfill its mission (JCUS-SEP 03, p. 38). At this session, in order to ensure that the independent character and image of the federal defender function is maintained, and that the fiscal impact of locating a defender office in a courthouse has been fully examined, the Committee on Defender Services recommended that the policy be amended to require the Defender Services Committee's approval before locating a defender office in a courthouse and, further, that the revision be reflected in the *Design Guide*. The Conference adopted the Committee's recommendation.

PANEL ATTORNEY COMPENSATION

Non-Capital Compensation Rate. On recommendation of the Committee, the Judicial Conference approved revisions to paragraphs 2.22A(1) through (3) of the CJA Guidelines to reflect the increase by Congress of the non-capital hourly rate for panel attorneys to $90 and to delete obsolete provisions for establishing alternative hourly rates up to $75.

Capital Compensation Rate. The Conference approved a Committee recommendation to revise paragraphs 6.02A(1)(a) and 6.02B(1) of the CJA Guidelines to reflect the recent increase by Congress in the maximum capital hourly rate from $125 to $160.

Interim Voucher Withholding Percentage. Sample interim voucher orders for non-capital panel attorney claims and for capital and non-capital claims from investigative, expert, and other service providers, contained in Appendices E and F of the CJA Guidelines, include provisions for withholding one-third of compensation on interim vouchers. The purpose of the withholding provision is to strike a balance between the interest in relieving court-appointed attorneys of financial hardships in extended and complex cases, and in preserving the statutorily imposed responsibility of the chief judge of the circuit to provide a meaningful review of claims for excess compensation (CJA Guideline 2.30A). Noting that these objectives could be accomplished by withholding less than one-third of compensation, the Committee recommended that the Judicial Conference endorse revisions to the sample interim voucher orders contained in Appendices E and F of the

CJA Guidelines to reduce the suggested one-third of compensation withholding amount to 20 percent. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), it approved FY 2006 federal defender organization budgets and grants totaling $423,163,000. In addition, after considering proposed changes to the *U.S. Courts Design Guide*, the Committee communicated its recommendations to the Security and Facilities Committee, including its agreement with the proposed removal of federal defender space standards from the *Guide* and the development of a separate set of standards. The Committee reviewed materials regarding electronic access to official transcripts that were being presented to the Committees on Court Administration and Case Management and Judicial Resources, and then conveyed to those two committees its views on issues potentially affecting the Defender Services program.

COMMITTEE ON FEDERAL-STATE JURISDICTION

LEGISLATION TO ELIMINATE FEDERAL COURT JURISDICTION

The Committee on Federal-State Jurisdiction considered several bills pending in the 109th Congress that would eliminate federal court jurisdiction to hear certain constitutional claims. Noting the importance of preserving the rights of individuals to bring constitutional claims in Article III courts, and of protecting the independence of the judicial branch as a coordinate and coequal branch of government, the Committee recommended that the Judicial Conference strongly oppose legislation that would deprive a party of the opportunity to pursue claims under the U.S. Constitution in Article III courts. After discussing the potential breadth of the recommendation, the Conference recommitted it to the Committee for further consideration. (See also *supra*, "Miscellaneous Actions," pp. 8-9).

DECLARATION AND REMAND PROPOSAL

As part of its ongoing jurisdictional improvements project, the Committee on Federal-State Jurisdiction recommended that the Judicial

Conference seek legislation to preserve state court jurisdiction in diversity cases in which plaintiffs declare that they will forgo recovery in excess of the threshold amount for federal court jurisdiction. In particular, the Committee recommended, and the Conference approved, seeking legislation to —

a. Amend section 1441(a) of title 28, United States Code, to provide that if the plaintiff has filed a declaration in state court, as part of or in addition to the initial pleading, to the effect that the plaintiff will neither seek nor accept an award of damages or entry of other relief exceeding the amount specified in section 1332(a) of title 28, the case shall not be removed on the basis of the jurisdiction conferred in section 1332(a) of this title so long as the plaintiff abides by the declaration and it remains binding under state practice; and

b. Amend section 1447 of title 28, United States Code, to (1) provide that within 30 days after the filing of a notice of removal of a civil action in which the district court's removal jurisdiction rests solely on original jurisdiction under section 1332(a) of title 28, the plaintiff may file a declaration with the district court to the effect that the plaintiff will neither seek nor accept an award of damages or entry of other relief exceeding the amount specified in section 1332(a), and (2) authorize the district court, upon the filing of such a declaration, to remand the action to state court or retain the case in the interest of justice.

The first part of the proposal would preclude removal in those cases where the plaintiff has filed a declaration in state court, if such declaration is permitted by state practice, that the plaintiff will not seek or accept a recovery in excess of the existing federal jurisdictional threshold (now $75,000). The second part of the proposal would provide the federal court with discretion to remand an action to state court on the basis of a declaration filed within 30 days of removal, but would also allow the court to retain the case in the interest of justice.

HABEAS CORPUS LEGISLATION

Legislation is pending in the 109th Congress (the "Streamlined Procedures Act of 2005," S. 1088 and H.R. 3035) that is intended to reform federal habeas corpus review of state court convictions in both capital and non-capital cases. In July 2005, letters were transmitted to both the House and Senate Judiciary Committees expressing the judiciary's opposition to certain provisions of the bills based on existing positions of the Judicial Conference. In late July 2005, the Senate Judiciary Committee adopted a substitute amendment to S. 1088. The Committee on Federal-State

Jurisdiction (in consultation with the Committees on Criminal Law and Defender Services) undertook a review of those provisions of S. 1088, as amended in July 2005, and H.R. 3035 that had not been addressed in the initial letters to the Senate and House Judiciary Committees. The Committee also examined the underlying premise of the proposed bills that there is unreasonable delay in the resolution of habeas corpus petitions filed by state prisoners in federal courts that requires remedial legislation. Based on its review, the Committee recommended that the Judicial Conference —

a. Express support for the elimination of any unwarranted delay in the fair resolution of habeas corpus petitions filed by state prisoners in the federal courts;

b. Urge that, before Congress considers additional amendments to habeas corpus procedures, analysis be undertaken to evaluate whether there is any unwarranted delay occurring in the application of current law in resolving habeas corpus petitions filed in federal courts by state prisoners and, if so, the causes for such delay;

c. Express opposition to legislation regarding federal habeas corpus petitions filed by state prisoners that has the potential to (1) undermine the traditional role of the federal courts to hear and decide the merits of claims arising under the Constitution; (2) impede the ability of the federal and state courts to conduct an orderly review of constitutional claims, with appropriate deference to state-court proceedings; and (3) prevent the federal courts from reaching the merits of habeas corpus petitions by adding procedural requirements that may complicate the resolution of these cases and lead to protracted litigation, including the following sections of the proposed "Streamlined Procedures Act of 2005" in the 109th Congress (H.R. 3035 as introduced and S. 1088 as amended in July 2005):

   Section 2 of H.R. 3035 and S. 1088 (mixed petitions);
   Section 4 of H.R. 3035 and S. 1088 (procedurally defaulted claims);
   Section 5 of H.R. 3035 and S. 1088 (tolling of limitation period);
   Section 6 of H.R. 3035 (harmless errors in sentencing); and
   Section 9(a) of H.R. 3035 (federal review of capital cases under chapter 154 of title 28, United States Code);

d. Express opposition to section 3 (amendments to petitions) of H.R. 3035 and S. 1088 that would prohibit the federal courts from considering modifications to existing claims or the addition of new claims that meet the requirements of current law;

e. Express opposition to section 7 of H.R. 3035 and section 6 of S. 1088 that would make the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) applicable to cases pending prior to its enactment, and section 14 of H.R. 3035 and S. 1088 that would make the proposed Streamlined Procedures Act applicable to pending cases; and

f. Express opposition to the provision in section 11 of H.R. 3035 and section 10 of S. 1088 that would amend 21 U.S.C. § 848(q) to require an application for investigative, expert, or other services in connection with challenges to a capital sentence involving state or federal prisoners to be decided by a judge other than the judge presiding over the habeas corpus proceeding.

The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it continued to monitor the Social Security Administration's (SSA) proposed changes to the disability claims process, including proposed new regulations, and that a letter commenting on those regulations was sent by the Director of the Administrative Office (Director) to the Commissioner of the SSA. In addition, the Committee asked the Director to convey to Congress the judiciary's opposition to a provision of the proposed "Federal Consent Decree Fairness Act" (S. 489, H.R 1229, 109th Congress) that would require federal district courts to rule on certain motions within 90 days. Such a provision is inconsistent with the long-standing policy of the Conference opposing statutory imposition of litigation priorities, expediting requirements, or time limitations beyond those already specified in certain cases. The Committee also reviewed asbestos legislation, and, at the Committee's suggestion, a letter was sent to Congress reiterating the Conference's concern with provisions that would limit the ability of any court to issue a stay in certain situations.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 11, 2005, the Committee had received 3,634 financial disclosure reports and certifications for calendar year 2004, including 1,240 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 324 reports from bankruptcy judges; 513 reports

from magistrate judges; and 1,557 reports from judicial employees. The Committee also reported that the authority of the Judicial Conference to redact personal and sensitive information from financial disclosure reports will expire on December 31, 2005. The primary focus of the Committee's legislative effort for 2005 continues to be the repeal of this sunset provision (see *supra*, "Miscellaneous Actions," pp. 8-9).

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved a 2006 update to the *Long Range Plan for Information Technology in the Federal Judiciary*. Funds for the judiciary's information technology program will be spent in accordance with this plan.

JUDICIARY NETWORK SECURITY AND PRIVACY REPORT

Based on an independent security assessment of the judiciary's data communications network (DCN), Case Management/Electronic Case Files system, and Lotus Notes, the Committee on Information Technology prepared a report and recommendations regarding judiciary network security and privacy, as well as an overall strategy for implementing the report. After soliciting input from the courts and revising the report where possible, the Committee recommended that the Judicial Conference approve the report and adopt its recommendations and direct the Committee on Information Technology to coordinate implementation of the recommendations. The Conference agreed.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed a revised approach to information technology training for judges to focus more specifically on judges' tasks and functions and discussed various options. The Committee reaffirmed its commitment to cost containment, including identifying and implementing cost-effective service delivery models that take into consideration performance, service levels, security, and disaster recovery techniques. It agreed to permit access to the DCN by community defender organizations for administrative purposes and considered issues within its

jurisdiction related to the implementation of the E-Government Act of 2002 and the Judicial Conference's electronic transcript policy.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 2005 to June 30, 2005, a total of 47 intercircuit assignments, undertaken by 36 Article III judges, were processed and recommended by the Committee and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance by both identifying and obtaining judges willing to take assignments. The Committee received an update of the Administrative Office's effort to collect additional data on visiting judge assignments (both intercircuit and intracircuit) to help evaluate the costs and benefits of the intercircuit assignment program.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its involvement in rule-of-law and judicial reform activities throughout the world, highlighting those in Cambodia, Ecuador, Korea, Liberia, Mexico, and the Russian Federation. The Committee continues to work closely on the rule-of-law component of the Open World Program at the Library of Congress, which has been expanded to bring Ukrainian as well as Russian jurists and judicial officials to the United States.

COMMITTEE ON THE JUDICIAL BRANCH

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that its priority attention is concentrated on the problem of the adequacy of judicial compensation. This includes seeking vigorously to widen the circle of outside supporters of improved compensation. While focusing upon that objective, the Committee continues to consider other matters of relevance to the judiciary within its jurisdiction, e.g., it is actively examining ways to improve judicial-legislative communications.

COMMITTEE ON JUDICIAL RESOURCES

RESTRUCTURING THE NINTH JUDICIAL CIRCUIT

Along with the recommendations of the Committee on Court Administration and Case Management (see *supra* "Restructuring the Ninth Judicial Circuit," pp. 14-15), the Conference considered and discussed recommendations of the Committee on Judicial Resources on proposals to restructure the Ninth Circuit. The Conference agreed to adopt, and to give prompt notice to Congress of, the following Committee recommendations:

a. The Conference opposes any legislation that would restructure the Ninth Circuit if, as with H.R. 211, H.R. 212, H.R. 3125, S. 1296, and S. 1301 (109th Cong.), it would provide an inadequate level of judicial resources and an uncertain amount of appropriations to support the new circuit structures.

b. The Conference opposes efforts to condition legislative action regarding the establishment of new judgeships recommended by the Conference on the restructuring of judicial circuits.

Since the Conference determined not to take a position either endorsing or opposing legislation providing for the split of the Ninth Circuit (see *supra*, pp. 14-15), it did not reach recommendations of the Committee regarding factors the Conference should consider were it to take such a position.

EXECUTIVE COMPENSATION

The salaries of circuit and court unit executives have been subject to a locality pay cap established by the Judicial Conference in September 1993 to match executive branch limits that are no longer applicable to the executive branch senior executive service (JCUS-SEP 93, p. 50). In order to provide relief to unit executives, especially those in high cost-of-living areas who have reached the pay cap and have had limited pay increases in the past few years, to help enhance recruitment and retention efforts in high cost-of-living areas, and to take a step toward re-establishing pay parity with the executive branch, the Committee recommended that the Judicial Conference approve, as an interim measure pending completion of a comprehensive compensation study, the application of locality pay to circuit and court unit executive salaries up to the salary of a district judge, to be applied at the request of the chief judge on behalf of the court. The Conference adopted the Committee's recommendation.

WORKFORCE RESHAPING

The judiciary has in place through 2005 a voluntary separation incentive (buyout) program and a voluntary early retirement program for Court Personnel System (CPS) employees, official court reporters, and federal public defender organization employees (JCUS-SEP 03, pp. 27-28; JCUS-SEP 04, pp. 7, 21-22). Noting the success of these programs both in achieving savings for the judiciary and in facilitating organizational restructuring in court offices, the Committee recommended that the Judicial Conference offer both the buyout and early retirement programs through FY 2009, to be implemented each fiscal year at the discretion of the Director of the Administrative Office. The Committee also recommended that, for the early retirement program only, non-chambers Judiciary Salary Plan employees be permitted to participate. CPS employees, official court reporters, and federal public defender organization employees would continue to be included in both programs. The Conference adopted the Committee's recommendations.

TEMPORARY REPLACEMENTS FOR CHAMBERS STAFF

On recommendation of the Committee on Judicial Resources, the Judicial Conference, with regard to the judiciary's policy on centrally funded temporary replacements for absent chambers staff, affirmed that (a) central funding is generally limited to 20 weeks for maternity reasons, and 24 weeks for medical reasons to care for a family member with a serious health condition; (b) centrally funded temporary replacement is unlimited in cases where the chambers employee is absent due to his or her own illness; (c) appropriate medical documentation is required; and (d) the policy does not cover swing pool secretaries.

WAIVER OF COURT REPORTER QUALIFICATIONS

Pursuant to 28 U.S.C. § 753(a), the Judicial Conference has established minimum qualifications for official court reporters in federal courts to ensure speed and accuracy needed to preserve reliable records of court proceedings (see *Guide to Judiciary Policies and Procedures*, Volume 6, Court Reporters Manual, Part 3.4.2.). Conference policy also allows for waivers of these qualifications when a court demonstrates a good faith effort to recruit a qualified reporter and when employment is probationary until the qualifications requirements are fulfilled. *Guide*, Volume 6, Part 3.4.4. Concerned that requests for waivers are increasing in

frequency and that courts are not taking active steps to meet the qualification requirements, the Committee recommended amendments to the qualifications policy to stress the importance of maintaining court reporting skills at the minimum levels provided. The Committee recommended, and the Conference agreed to adopt, a qualifications waiver policy for official court reporters that (a) waivers may be granted for a period of one year;[2] (b) a court's request for a waiver must demonstrate a good faith effort to recruit a qualified reporter through a nationwide search; (c) a court reporter hired under a waiver must demonstrate that he or she has taken the scheduled certification tests required pursuant to Conference policy each time the tests have been offered, and has provided the test results to the respective court and the Administrative Office; (d) annual waivers may be authorized by the Administrative Office for a total of no more than three years, after which any continued request (including justification) would be made to the Committee; and (e) a court reporter not meeting the qualification requirements would be on probation during the waiver period until the requirements are fulfilled.

TELEWORK FOR COURT REPORTERS

Under an existing Judicial Conference guideline, court reporters who have been placed on a regular tour of duty and earn annual leave in accordance with the Leave Act (5 U.S.C. § 6301 et seq.) are required to serve their tour of duty "in the courthouse" (JCUS-SEP 83, p. 49). In order to allow court reporters to participate in the judiciary's telework program, the Judicial Conference, on recommendation of the Committee, agreed to amend its September 1983 guideline to permit any such court reporter, if the court determines the reporter to be eligible for telework under the court's telework program and has authorized the reporter to do so, to perform official duties outside the courthouse in a designated location approved by the court.

COURT INTERPRETERS

Based on established criteria, the Committee on Judicial Resources recommended that the Judicial Conference approve four additional Spanish staff court interpreter positions for fiscal year 2007, one for the District of Arizona, one for the District of Nebraska, and two for the District of New

[2]By mail ballot completed on November 30, 2005, the Executive Committee, acting on behalf of the Conference, slightly modified this provision to provide that waivers may be granted for a period of one year and one day, so that court reporters hired under the waiver policy are eligible to receive benefits.

Mexico, based on the Spanish language interpreting workloads in these courts. The Committee recommended that the Conference not approve additional Spanish staff court interpreter positions for the Southern District of Iowa and the District of New Jersey. The Committee further recommended that with regard to the District of New Mexico's request for a third additional Spanish staff court interpreter position, the Conference should advise the District to utilize the position currently providing Navajo language interpreting for Spanish language interpreting in light of the decreased need for Navajo language interpreting and the increased need for Spanish language interpreting in that district. Finally, the Committee recommended accelerated funding in fiscal year 2006 for one of the additional Spanish staff court interpreter positions for the District of New Mexico. The Conference adopted the Committee's recommendations.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

The Judicial Conference adopted a recommendation of the Committee to raise the target grades of the following positions for the Judicial Panel on Multiditrict Litigation: the executive attorney from Judiciary Salary Plan (JSP)-16 to JSP-17, to bring that salary into conformity with the salary of senior staff attorneys, and the clerk from JSP-15 to JSP-16 and chief deputy clerk from JSP-14 to JSP-15, to reflect new classification criteria adopted in 2004 for clerks of district courts.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it endorsed a report on the first phase of a study of court compensation and a revised plan for further study, including advancing the component dealing with executive-level compensation. A report will be presented to the Committee at its June 2006 meeting. Regarding access to work measurement data, the Committee endorsed continuation of the current practice of strict confidentiality for individual employees' data, but decided to allow access by judiciary personnel to aggregate data without the names of the courts. The Committee reviewed a report and considered a proposal concerning electronic access to official court transcripts and court reporter income. It also affirmed its strong support for the Human Resources Management Information System (HRMIS) and the total funding requested for fiscal year 2006 for HRMIS as part of the judiciary's cost-containment and productivity initiatives.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

RETIREMENT REGULATIONS

As explained above (see "Retirement Regulations," *supra*, p. 12), Section 6.03(e) of the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 is inconsistent with 5 U.S.C. § 8440b(b)(7). The Committee on the Administration of the Magistrate Judges System, in parallel with the Bankruptcy Committee, recommended that the provision be deleted. The Conference adopted the Committee's recommendations.

CHANGES IN MAGISTRATE JUDGE POSITIONS

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

DISTRICT OF COLUMBIA CIRCUIT

District of Columbia

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

FIRST CIRCUIT

District of Puerto Rico

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

SECOND CIRCUIT

Southern District of New York

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

THIRD CIRCUIT

Eastern District of Pennsylvania

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

Western District of Pennsylvania

1. Did not authorize filling one of the magistrate judge positions at Pittsburgh when it becomes vacant in September 2005.

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

District Court of the Virgin Islands

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

FIFTH CIRCUIT

Western District of Texas

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

NINTH CIRCUIT

District of Arizona

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

Central District of California

1. Authorized an additional full-time magistrate judge position at Los Angeles.

2. Redesignated a magistrate judge position previously designated as Los Angeles as Santa Ana.

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

Eastern District of Washington

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

TENTH CIRCUIT

District of Colorado

1. Authorized an additional full-time magistrate judge position at Denver.

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

District of New Mexico

1. Authorized an additional full-time magistrate judge position at Las Cruces.

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

Western District of Oklahoma

1. Increased the salary of the part-time magistrate judge position at Lawton from Level 2 ($62,597 per annum) to Level 1 ($68,857 per annum).

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

ELEVENTH CIRCUIT

Southern District of Georgia

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

ACCELERATED FUNDING

On recommendation of the Committee, the Conference agreed to designate the new full-time magistrate judge position at Las Cruces, New Mexico, for accelerated funding in fiscal year 2006.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it is updating its 2001 report on the growth of the magistrate judges system in response to a request from the Executive Committee. The Committee also continued its cost-containment efforts, recommending accelerated funding for only one of the three new magistrate judge positions it is recommending to the Judicial Conference and agreeing not to consider requests for new full-time magistrate judge positions at its December 2005 meeting. The Committee discussed the issue of security for judges and resolved that "full-time magistrate judges, part-time magistrate judges, and recalled magistrate judges should be included in the spending plan for funds appropriated in the FY 2005 Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief for increased judicial security outside of courthouse facilities, including home intrusion detection systems for judges."

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed amendment to Appellate Rule 25 (Filing and Service), and a proposed new Rule 32.1 (Citing Judicial Dispositions), together with Committee notes explaining their purpose and intent. The Conference approved the amendment to Rule 25, and after discussion, approved new Rule 32.1 with the stipulation that it apply only to judicial

dispositions issued on or after January 1, 2007. The Conference authorized the transmittal of the amendment and new rule to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1009 (Amendments of Voluntary Petitions, Lists, Schedules and Statements), 5005 (Filing and Transmittal of Papers), and 7004 (Process; Service of Summons, Complaint), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmission to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Civil Rules 5 (Service and Filing of Pleadings and Other Papers), 9 (Pleading Special Matters), 14 (Third-Party Practice), 16 (Pretrial Conferences; Scheduling; Management), 26 (General Provisions Governing Discovery; Duty of Disclosure), 33 (Interrogatories to Parties), 34 (Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes), 37 (Failure to Make Disclosure or Cooperate in Discovery; Sanctions), 45 (Subpoena), 50 (Judgment as a Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings), and 65.1 (Security: Proceedings Against Sureties), and Civil Form 35 (Report of Parties' Planning Meeting); and proposed amendments to Rules A (Scope of Rules), C (In Rem Actions: Special Provisions), and E (Actions in Rem and Quasi in Rem: General Provisions), and proposed new Rule G (Forfeiture Actions in Rem) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and new rule and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rules 5 (Initial Appearance), 6 (The Grand Jury), 32.1 (Revoking or Modifying Probation or Supervised Release), 40 (Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District), 41 (Search and Seizure), and 58 (Petty Offenses and Other Misdemeanors), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

FEDERAL RULES OF EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Evidence Rules 404 (Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes), 408 (Compromise and Offers to Compromise), 606 (Competency of Juror as Witness), and 609 (Impeachment by Evidence of Conviction of Crime), together with Committee notes explaining their purpose and intent. The Judicial Conference approved the amendments and authorized their transmittal to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that, in preparation for implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, many of whose provisions would become effective on October 17, 2005, it recommended a package of proposed interim bankruptcy rules for adoption through standing or general orders by the courts, as well as new official forms. In light of the time constraint, the Executive Committee acted on behalf of the Judicial Conference to approve the forms and authorize distribution of the interim bankruptcy rules to the courts (see *supra*, "New Bankruptcy Legislation," p. 5). The Committee expects to publish for public comment no later than August 2006 proposed new and amended Federal Rules of Bankruptcy Procedure based substantially on the interim rules, modified, as appropriate, after considering comments

from the bench and bar reflecting the use of the interim rules, as well as any additional revisions to the official forms.

COMMITTEE ON SECURITY AND FACILITIES

U.S. COURTS DESIGN GUIDE

Phase I Revisions. In accordance with the integrated cost-containment strategy approved by the Judicial Conference in September 2004 (JCUS-SEP 04, pp. 6-7), the Committee on Security and Facilities has been conducting a comprehensive review of the *U.S. Courts Design Guide* to assess the validity of current design standards for new courthouses and to identify revisions that would control costs without affecting functionality. After soliciting suggestions and comments from judges, court unit executives, and other interested parties, and obtaining the views of seven other Conference committees, the Committee completed Phase I of the review by recommending that the Conference endorse 18 *Design Guide* revisions for chambers suites and court office space. Following discussion, the Conference endorsed 10 of the proposed revisions and recommitted the other 8 proposals to the Committee for further consideration.

Exceptions to the *U.S. Courts Design Guide*. As stated in a policy adopted by the Judicial Conference in March 1999 (JCUS-MAR 99, p. 35), the authority to approve exceptions to the *Design Guide* lies generally with the circuit judicial councils. As part of its comprehensive review of the *Design Guide*, the Committee recommended that this policy be revised to provide that, while the circuit judicial council has the authority and responsibility for a circuit's space management program (*see* 28 U.S.C. § 462(b)), the authority to approve the following exceptions to the *Design Guide* should rest with the Judicial Conference: (a) exceeding the total space "envelope" for either the court unit or project as a whole; (b) changing the standard configurations for judges' chambers; and (c) changing the plumbing standard for an office. Authority to approve exceptions to exceed the recommended office space standards within the total envelope of space for the court unit would remain with the circuit judicial councils. The Conference adopted the recommendation with a modification that once a circuit judicial council has endorsed one of the exceptions itemized above, authority to grant that exception would rest with the Committee on Space and Facilities unless the Committee disagreed with the circuit judicial council, in which case the Judicial Conference would decide whether to grant the exception. Finally, on recommendation of the Committee, the Conference rescinded its September/October 2001 policy (JCUS-SEP/OCT 01, p. 71), which

substituted the term "special requirements" for the term departures (also referred to as exceptions, deviations, and waivers) in the *Design Guide*.

INDEPENDENT REAL PROPERTY AUTHORITY

In September 1989, the Judicial Conference endorsed seeking legislation to provide the judicial branch with independent authority to manage, acquire, construct, maintain, and dispose of its own real property (JCUS-SEP 89, p. 81). Citing increasing concern with regard to escalating rent payments to the General Services Administration (GSA) and lack of progress in obtaining rent reductions from GSA, the Committee on Security and Facilities recommended that the Conference reaffirm support for legislation to establish independent real property authority for the judiciary separate from GSA. After discussion, the Conference determined to recommit the matter so that the Committee on Space and Facilities, acting in consultation with the Committee on the Budget, could develop and submit to the Conference a detailed plan illustrating how independent real property authority could be implemented.

RENT AS A SEPARATE APPROPRIATION

Space rent was a separate appropriation prior to FY 1987, when it was merged into the Salaries and Expenses account. In December 2004, the Committee on Security and Facilities adopted a resolution recommending that rent again be sought as a separate appropriation and forwarded the resolution to the Budget Committee for its consideration. The Budget Committee expressed a preference for pursuing administrative rather than legislative remedies at that time. Noting that pursuit of rent as a separate appropriation could provide rental relief for the judiciary in the long term, the Committee asked the Judicial Conference to refer the resolution to the Committee on the Budget for its reconsideration. The Conference adopted the Committee's recommendation.

COURTHOUSE CONSTRUCTION PLAN

In advance of the March 2005 Conference session, the Committee recommended a courthouse construction project plan through which the judiciary would request fiscal year 2007 funding for seven courthouse projects. The Committee's recommendation was deferred to the September 2005 Judicial Conference to give the Budget Committee an opportunity to make recommendations to the Security and Facilities Committee and the

Executive Committee regarding the affordability of pending courthouse construction projects not yet approved for construction funding by the Conference (JCUS-MAR 05, p. 8). The Security and Facilities Committee subsequently reaffirmed its support for the FY 2007 project plan, expanded to include two projects suggested by GSA. The Budget Committee recommended that, except for projects deemed a judicial space emergency, all funding requests for new construction projects should be deferred until at least the March 2006 Conference session. Following discussion of the two committees' views, the Conference agreed to seek FY 2007 funding for the pending courthouse projects in Buffalo, New York; Salt Lake City, Utah; Jackson, Mississippi; Fort Pierce, Florida; and Savannah, Georgia,[3] and it deferred action on other projects until March 2006.

BUILDING MANAGEMENT DELEGATION PROGRAM

In March 1988, the Judicial Conference approved a pilot program in which courts could assume responsibility for managing their courthouses under a delegation of authority from the General Services Administration (JCUS-MAR 88, p. 40). Courts in Birmingham, Alabama, and Miami and West Palm Beach, Florida, assumed responsibilities for court facilities under this program. Following recent changes to the program instituted by GSA, the judiciary sought an independent review of the program. Based on that review, the Committee recommended that the Judicial Conference (a) end the judiciary's participation in the building management delegation program, and (b) develop a transition plan to return to GSA the operation and management of the court facilities within the Southern District of Florida and the Northern District of Alabama. The Conference adopted both recommendations.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it discussed and continues to pursue several cost-containment initiatives, including a comprehensive reevaluation of the long-range facilities planning process, a review of existing criteria for closure of non-resident court facilities, and an effort to reduce Federal Protective Service (FPS) costs for contract guard services. After the Congress provided $11.9 million as an emergency supplemental appropriation to improve off-site security for the judiciary, the

[3]These five projects were specifically excluded from the 2-year moratorium on planning, authorizing, and budgeting for courthouse construction projects imposed by the Conference in September 2004 (*see* JCUS-SEP 04, pp. 34-35).

Committee resolved to develop an agreement between the Administrative Office and the Department of Justice regarding use of the supplemental funding to provide up to $4,000 per judge for the purchase of home intrusion detection systems for all federal judges.

FUNDING

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

Leonidas Ralph Mecham
Secretary to the Judicial
Conference of the United States