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

September 23, 2003

The Judicial Conference of the United States convened in Washington, D.C., on September 23, 2003, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Michael Boudin
Judge D. Brock Hornby,
District of Maine

Second Circuit:

Chief Judge John M. Walker, Jr.
Chief Judge Frederick J. Scullin, Jr.,
Northern District of New York

Third Circuit:

Chief Judge Anthony J. Scirica
Chief Judge Sue L. Robinson,
District of Delaware

Fourth Circuit:

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

Fifth Circuit:

Chief Judge Carolyn Dineen King
Judge Martin L. C. Feldman,
Eastern District of Louisiana

Sixth Circuit:

Chief Judge Boyce F. Martin, Jr.
Chief Judge Lawrence P. Zatkoff,
Eastern District of Michigan

Seventh Circuit:

Chief Judge Joel M. Flaum
Judge Marvin E. Aspen,
Northern District of Illinois

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
Chief Judge Frank Howell Seay,
Eastern 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 Haldane Robert Mayer

Court of International Trade:

Chief Judge Gregory W. Carman

The following Judicial Conference committee chairs or their designees attended the Conference session: Circuit Judges Edward E. Carnes, Dennis G. Jacobs, Marjorie O. Rendell, and Jane R. Roth and District Judges Lourdes G. Baird, John G. Heyburn II, Sim Lake, David F. Levi, John W. Lungstrum, Catherine D. Perry, Lee H. Rosenthal, Patti B. Saris, Harvey E. Schlesinger, and Frederick P. Stamp, Jr. Karen Greve Milton of the Second 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; Karen K. Siegel, Assistant Director, Judicial Conference Executive Secretariat; Michael W. Blommer, Assistant Director, Legislative Affairs; David Sellers, Assistant Director, Public Affairs; and Wendy Jennis, Deputy Assistant Director, Judicial Conference Executive Secretariat. Judge Barbara Rothstein and Russell Wheeler, Director and Deputy Director of the Federal Judicial Center, also attended the session of the Conference, as did Sally Rider, Administrative Assistant to the Chief Justice; Scott Harris, Supreme Court Legal Counsel; and the 2003-2004 Judicial Fellows.

Senators Patrick J. Leahy and Jeff Sessions and Representative John Conyers, Jr. spoke on matters pending in Congress of interest to the Conference. Attorney General John Ashcroft 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 programs, and Judge Diana E. Murphy, Chair of the United States Sentencing Commission, reported on Sentencing Commission activities.

EXECUTIVE COMMITTEE

RESOLUTIONS

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution in recognition of the substantial contributions made by Judicial Conference committee chairs who will complete their terms of service in 2003:

> The Judicial Conference of the United States recognizes with appreciation, respect and admiration the following judicial officers:
>
> **HONORABLE LOURDES G. BAIRD**
> Committee on the Administrative Office
>
> **HONORABLE MICHAEL J. MELLOY**
> Committee on the Administration of the Bankruptcy System
>
> **HONORABLE WILLIAM W. WILKINS**
> Committee on Criminal Law
>
> **HONORABLE JAMES C. CACHERIS**
> Committee on Intercircuit Assignments
>
> **HONORABLE PAUL A. MAGNUSON**
> Committee on International Judicial Relations
>
> **HONORABLE HARVEY E. SCHLESINGER**
> Committee on the Administration of the Magistrate Judges System
>
> **HONORABLE ANTHONY J. SCIRICA**
> Committee on Rules of Practice and Procedure
>
> **HONORABLE DAVID F. LEVI**
> Advisory Committee on Civil 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.

SENTENCING-RELATED LEGISLATION

On March 27, 2003, the House of Representatives approved a floor amendment (the "Feeney Amendment") to H.R. 1104, 108th Congress, the then-pending "Child Abduction Prevention Act," which would have, among other things, restricted district courts' authority to depart downward from the sentencing guidelines to grounds specifically identified by the United States Sentencing Commission. It also would have required, in appeals of downward departures, *de novo* review by the courts of appeals of sentencing judges' application of the guidelines to the facts. The House substituted H.R. 1104 for an earlier-passed Senate bill dealing with child pornography, and a conference was scheduled forthwith. In light of the rapidity with which the bill was moving through Congress, the Committee on Criminal Law reviewed the legislation on an expedited basis and sought Executive Committee consideration of the matter. By mail ballot concluded on April 3, 2003, the Executive Committee approved the Criminal Law Committee's recommendations that the Conference—

Oppose legislation that would eliminate the courts' authority to depart downward in appropriate situations unless the grounds relied upon are specifically identified by the Sentencing Commission as permissible for the departure;

Consistent with the prior Judicial Conference position on congressionally mandated guideline amendments, oppose legislation that directly amends the sentencing guidelines, and suggest that, in lieu of mandated amendments, Congress should instruct the Sentencing Commission to study suggested changes to particular guidelines and to report to Congress if it determines not to make the recommended changes;

Oppose legislation that would alter the standard of review in 18 U.S.C. § 3742(e) from "due deference" regarding a sentencing judge's application of the guidelines to the facts of a case to a "*de novo*" standard of review;

Oppose any amendment to 28 U.S.C. § 994(w) that would impose specific recordkeeping and reporting requirements on federal courts in all criminal cases or that would require the Sentencing Commission to disclose confidential court records to the Judiciary Committees upon request; and

Urge Congress that, if it determines to pursue legislation in this area notwithstanding the Judicial Conference's opposition, it do so only after the Judicial Conference, the Sentencing Commission, and the Senate have had an opportunity to consider more carefully the facts about downward departures and the implications of making such a significant change to the sentencing guideline system.[1]

FISCAL YEAR 2003 APPROPRIATIONS SHORTFALL

In June 2003, the judiciary forwarded to Congress an emergency fiscal year (FY) 2003 supplemental appropriations request to address funding shortfalls for juror fees, payments to private panel attorneys under the Criminal Justice Act (CJA), and housing for 15 newly created district judgeships. In mid-July, when it became apparent that the 2003 Fees of Jurors and Commissioners appropriations account would be depleted earlier than expected, the Executive Committee agreed that if supplemental funds were not forthcoming, the judiciary should seek approval from Congress to reprogram up to $5 million from the Salaries and Expenses emergency reserve fund to cover the jury fee shortfall. The Committee also determined to urge judges to defer, if possible, non-critical civil jury trials, so as to minimize spending of funds that had been earmarked for emergencies.

Having received no fiscal year 2003 supplemental appropriation by late-July 2003, the judiciary promptly sought approval from Congress to reprogram $5 million from the Salaries and Expenses emergency reserve fund into the Fees of Jurors and Commissioners account. The chair of the Senate Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary declined to approve the request, encouraging, instead, the submission of a

[1]A somewhat narrower version of the bill was subsequently passed by Congress and signed into law on April 30, 2003, as the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 or "PROTECT Act" (Public Law No. 108-21). The Conference, at this session, voted to support repeal of certain provisions of the PROTECT Act. *See infra*, "The PROTECT Act," pp. 18-20.

revised request to reprogram the entire $10 million reserve to be used both for jury expenses and for payments to CJA panel attorneys. The Executive Committee agreed to that approach, and a request to reprogram $10 million from the Salaries and Expenses account to the Fees of Jurors and the Defender Services accounts was approved by Congress in mid-August 2003. Judges were notified that deferral of civil jury trials was no longer necessary.[2]

ASBESTOS LEGISLATION

S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003 ("FAIR Act"), pending in the 108th Congress, is intended to establish an efficient process for the resolution of asbestos-related personal injury claims. The Committee on Federal-State Jurisdiction was asked to review those jurisdictional provisions of the bill that would impact court structure and operations and made a number of substantive recommendations for changes. On June 18, 2003, the Executive Committee, on behalf of the Conference, unanimously approved a letter to Congress, based on the recommendations of the Federal-State Jurisdiction Committee, expressing the concerns of the Conference.

Subsequently, the Bankruptcy Committee reviewed the portions of the bill that would impact the bankruptcy system. On August 14, 2003, the Executive Committee approved, with modifications, a second letter to Congress, prepared by the Bankruptcy Committee, expressing the judiciary's deep concerns over the legislation's significant impact on the bankruptcy system.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved a recommendation of the Magistrate Judges Committee to increase from Level 4 to Level 1 the salary of the part-time magistrate judge in Martinsburg, West Virginia, during the time the resident district court judge is on active duty in the National Guard;

[2]A supplemental appropriation, including $32.5 million for the judiciary, was enacted on September 29, 2003.

- Approved a recommendation of the Magistrate Judges Committee to waive the residency requirement contained in the selection and appointment regulations for magistrate judges for the chair of the merit selection panel that is considering the reappointment of an incumbent magistrate judge in the Western District of Arkansas;

- On recommendation of the Committee on Federal-State Jurisdiction, following the request of the Ninth Circuit Judicial Council, agreed that the judiciary would seek Article III status for the District Court of Guam;

- On recommendation of the Committee on Court Administration and Case Management, agreed to modify the Conference's March 1988 and September 1998 positions (JCUS-MAR 88, p. 30; JCUS-SEP 98, p. 62) regarding the elimination of the automatic exemptions from jury service for active members of the Armed Forces, fire and police officials, and "public officers" of federal and state governments to provide instead that the Conference seek amendment of 28 U.S.C. § 1863(b)(5)(B) to make these persons eligible for automatic excuse from jury service upon individual request;

- Approved a recommendation of the Court Administration and Case Management Committee that the Conference seek amendment of 28 U.S.C. § 124(d) to move Hudspeth County from the Pecos Division to the El Paso Division in the Western District of Texas;

- Approved the recommendation of the Bankruptcy Committee that the Judicial Conference express concern regarding legislation that would expunge case records in an involuntary bankruptcy case filed in bad faith against an individual and instead support a policy and procedure to retain case records upon dismissal of such cases with a notation, flag, or other means to signal to the public the nature of the dismissal.

- Approved a letter responding to two requests from Congress, one for legislative language implementing the Judicial Conference's March 2003 position on class action legislation, and a second for the Conference's views on S. 274 (108th Congress), the proposed Class Action Fairness Act of 2003, as ordered reported by the Senate Judiciary Committee on April 11, 2003;

- On recommendation of the Committee on Court Administration and Case Management, approved a joint legislative proposal of the judiciary and the Department of Justice, arrived at upon the request of Congress,

to amend provisions of the E-Government Act of 2002, Public Law No. 107-347, that concern the development of rules addressing the protection of personal identifying information in court records.

- In light of uncertainties in the fiscal year 2004 appropriations process and the likelihood that the judiciary would be operating under a continuing resolution for up to two months, approved strategies for balancing the budget with anticipated resources during the period covered by the continuing resolution and also approved the issuance of interim allotments to the courts during the continuing resolution period.

COMMITTEE ON THE ADMINISTRATIVE OFFICE

COMMITTEE ACTIVITIES

The Committee on the Administrative Office reported that it was briefed on the organization and functions of the Office of Legislative Affairs. The Committee also received a comprehensive briefing on the AO's audit, review, and investigative assistance programs, and reviewed the status of implementation of internal control enhancements that were endorsed by the Committee in December 2000. The Committee discussed an initiative launched by Director Mecham in 2002 to post for comment on the judiciary's intranet site draft versions of program changes, guides, and publications developed by the Administrative Office for the courts. This comment process has been successful and will be continued.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

EMERGENCY AUTHORITY TO HOLD BANKRUPTCY COURT OUTSIDE A DISTRICT

In the wake of the terrorist attacks of September 11, 2001, some courts determined that federal court facilities in adjoining districts or circuits might be more readily accessible in the event of an emergency than facilities within the district. However, under the current statutory framework, bankruptcy judges are only specifically authorized to hold court within their own judicial districts

(28 U.S.C. § 152(c)). On recommendation of the Committee on the Administration of the Bankruptcy System, the Judicial Conference agreed to seek legislation to permit bankruptcy judges to hold court outside of their districts and circuits in the event of an emergency. *See also, infra*, "Emergency Authority to Hold Proceedings Outside a District or Circuit," p. 15.

TRAVEL BY RECALLED BANKRUPTCY JUDGES

In March 2003, the Judicial Conference amended the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, ch. C-V, to clarify that reimbursement of transportation expenses for senior judges who commute between their homes and the courthouse should be limited to the commuted mileage or public mass transit fare rate, absent approval of a different rate by the circuit judicial councils (JCUS-MAR 03, p. 17). Since the travel provision for recalled bankruptcy judges contains similar language to the provision amended by the Conference (*Guide to Judiciary Policies and Procedures*, Vol. III, section B, ch. VII, ¶ 11), at this session, the Judicial Conference adopted a recommendation of the Committee to amend the travel provision for bankruptcy judges to make it consistent with the corresponding provision in the *Guide* dealing with senior judge travel. *See also, infra*, "Magistrate Judge Recall Regulations," pp. 31-32.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it endorsed proposals of the Committee on Court Administration and Case Management to (1) amend provisions of the Bankruptcy Code to implement the Conference policy on privacy and public access to bankruptcy court records; and (2) amend the Bankruptcy Court Miscellaneous Fee Schedule. The Committee also recommended that the Judicial Conference express concerns regarding pending legislation in the 108th Congress on asbestos litigation reform and on involuntary petition filing. In order to communicate those concerns to Congress in an expeditious manner, the Executive Committee acted on the Conference's behalf on each of these matters. *See supra,* "Asbestos Legislation," p. 7 and "Miscellaneous Actions," pp. 7-9. In addition, the Committee approved fiscal year 2005 funding recommendations for the areas within its program oversight; discussed ways to

limit growth in the judiciary's budget; and was briefed on a wide range of topics, including mediation/arbitration by retired bankruptcy judges, and studies of bankruptcy case weights and court sharing of administrative resources.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2005 BUDGET REQUEST

Facing a particularly dire budget environment, the Budget Committee recommended a fiscal year 2005 budget request that incorporated a number of cost-saving mechanisms, including modifications to the methodologies used to calculate the cost of staffing and non-salary formulae. The Judicial Conference approved the budget request subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported on the status of the judiciary's fiscal year 2003 supplemental appropriations request and budget requests for FYs 2004 and 2005. The Committee recommended to the Executive Committee that the changes to the formula allotment methodologies that were incorporated in the fiscal year 2005 budget request also be used in developing the fiscal year 2004 and future financial plans. In addition, the Committee endorsed proposed increases to various judiciary fees being recommended to the Judicial Conference by the Court Administration and Case Management Committee.

COMMITTEE ON CODES OF CONDUCT

GIFT REGULATIONS

On recommendation of the Committee on Codes of Conduct, the Judicial Conference adopted revised regulations under title III of the Ethics Reform Act of 1989 concerning the giving, solicitation, or acceptance of certain gifts by officers and employees of the judicial branch, and directed that they be published in Volume II of the *Guide to Judiciary Policies and*

Procedures. The revisions were primarily technical and organizational in nature, intended to align the regulations more closely with the underlying statute, and to incorporate improvements and useful provisions from other sources.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2003, it had received 26 new written inquiries and issued 22 written advisory responses. During this period, the average response time for these requests was 21 days. The Chairman received and responded to 20 telephone inquiries. In addition, individual committee members responded to 148 inquiries from their colleagues.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEES

The Committee on Court Administration and Case Management undertook a comprehensive review of the miscellaneous fees set by the Judicial Conference for the courts of appeals, the district courts, the United States Court of Federal Claims, the bankruptcy courts, and the Judicial Panel on Multidistrict Litigation, pursuant to 28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932, respectively, and recommended several changes, including adjustments for inflation, specific fee increases, establishment of new fees, and clarification of certain provisions, as specifically noted below. The Committee's recommendations were endorsed in relevant part by the Budget and Bankruptcy Committees.

Inflationary increases. In September 1996, the Judicial Conference raised certain miscellaneous fees to account for inflation and rising court costs (JCUS-SEP 96, p. 54). At that time, the Committee on Court Administration and Case Management determined that it would be appropriate to review the miscellaneous fee schedules approximately every five years to determine if any inflationary adjustments were warranted. At this session, the Conference approved a recommendation of the Committee to adopt inflationary increases to most miscellaneous fees.

Court of Appeals Miscellaneous Fee Schedule.

Appellate Docketing Fee. On recommendation of the Committee, the Judicial Conference amended Item 1 of the Court of Appeals Miscellaneous Fee Schedule to increase the fee for docketing a case on appeal or review, or docketing any other proceeding, from $100 to $250. The Committee recommended the increase after considering the benefits derived from, and the resources required for, such filings and after comparing the appellate docketing fee to other filing and docketing fees. An increase in this fee will also result in an increase in Item 15 (fee for docketing an appeal in the bankruptcy court) and Item 21 (fee for docketing a cross appeal in the bankruptcy court) of the Bankruptcy Court Miscellaneous Fee Schedule, both of which track the appellate docketing fee.

Videoconferencing Fee. The Conference adopted a recommendation of the Committee to add a new, optional fee to the Court of Appeals Miscellaneous Fee Schedule of $200 per remote location for the use, at the request of counsel, of videoconferencing equipment in connection with an oral argument. This discretionary fee would be used to defray the cost of transmission lines and maintaining the videoconferencing equipment.

Bankruptcy Court Miscellaneous Fee Schedule.

Amendment Fee. On recommendation of the Committee, the Conference amended Item 4 of the Bankruptcy Court Miscellaneous Fee Schedule, which requires a $20 fee for each amendment to the debtor's list of creditors, matrix, or mailing lists, to make explicit two exceptions that have heretofore been made as a matter of policy: first, that no fee be charged to change the address of a creditor or an attorney for a creditor listed on the schedules; and second, that no fee be charged to add the name and address of a listed creditor's attorney.

Reopening Fee. Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule requires a fee for filing a motion to reopen a Bankruptcy Code case, but allows a court to defer payment from trustees pending discovery of additional assets. To clarify how this fee applies in situations in which no assets are located and to encourage trustees to reopen cases where the possibility of locating additional assets exists, the Committee recommended that the following language be added to Item 11: "If payment is deferred, the fee shall be waived if no additional assets are discovered." The Conference adopted the Committee's recommendation.

Fee for Splitting a Case. On recommendation of the Committee, the Conference amended the fee for splitting a joint case filed under § 302 of title 11 of the United States Code into two separate cases at the request of a debtor(s) (Item 19), from one-half the applicable filing fee, to the full cost of filing such a case, since an entirely new case is being created.

Fee for Filing a Motion to Lift Stay. Item 20 of the Bankruptcy Court Miscellaneous Fee Schedule sets forth a fee "for filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362(a) of title 11, a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d)." On recommendation of the Committee, the Judicial Conference agreed to make explicit two exemptions from this fee that have been applied in practice: (a) exemptions for motions to lift a co-debtor stay under 11 U.S.C. §§ 1201 and 1301; and (b) exemptions for stipulations for court approval of an agreement regarding relief from a stay. In addition, the Conference adopted a recommendation of the Committee that the fee for filing motions listed in Item 20 be amended from one-half the filing fee prescribed in 28 U.S.C. § 1914(a) to the full filing fee, which is currently $150.

ELECTRONIC PUBLIC ACCESS FEE EXEMPTION POLICY

The Committee on Court Administration and Case Management recommended, and the Judicial Conference adopted, amendments to the Electronic Public Access Fee Schedule that articulate a national policy regarding exemptions from electronic public access fees. The amendments clarify that exemptions to the fee are only to be given upon a showing of cause, are limited to specific categories of users, may be granted for a specific period of time, may be revoked at the discretion of the court, and are only for access related to the purpose for which the exemption was given. The Committee also recommended, and the Conference agreed, that the current 30-page fee cap on the cost of obtaining "documents" via PACER (JCUS-MAR 02, p. 11) be extended to cover docket sheets and case-specific reports, but not transcripts of court proceedings. A 30-page cap on the cost of obtaining transcripts via PACER would result in a transcript cost that is inconsistent with the current cost of obtaining those transcripts.

EMERGENCY AUTHORITY TO HOLD PROCEEDINGS OUTSIDE A DISTRICT OR CIRCUIT

Current law with respect to district courts and courts of appeals (28 U.S.C. §§ 141 and 48(b), respectively) authorizes special court sessions to be held within the district and/or circuit in which the court is located. Recognizing that places of holding court in adjoining districts and circuits are often closer or more accessible to each other than are the closest places of holding court within the same district and/or circuit, the Committee on Court Administration and Case Management recommended that the Conference seek legislation that makes explicit a court's authority, in times of emergency, to hold special court sessions outside of the district or the circuit in which a court may be located. The Conference adopted the Committee's recommendation. *See also, supra*, "Emergency Authority to Hold Bankruptcy Court Outside a District," pp. 9-10.

MODEL LOCAL RULES FOR ELECTRONIC FILING

In September 2001, the Judicial Conference adopted model local rules for electronic filing in civil and bankruptcy cases (JCUS-SEP/OCT 01, p. 50). At this session, on recommendation of the Committee on Court Administration and Case Management, in consultation with the Committee on Rules of Practice and Procedure, the Conference adopted model local rules for electronic filing in criminal cases, as well as minor amendments and clarifications to the civil and bankruptcy model local rules. These model rules are non-binding and are intended only to provide courts with guidance on the implementation of electronic case filing. The Conference also agreed to delegate to the Court Administration and Case Management Committee the authority to make routine, technical and/or non-substantive modifications to these model local rules.

PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES

In September 2001, the Judicial Conference approved a judiciary-wide privacy policy addressing public remote electronic access to case files (JCUS-SEP/OCT 01, pp. 48-50). The policy permits remote access to civil and bankruptcy case files so long as certain personal data identifiers, such as

Social Security numbers and names of minor children, are modified or partially redacted. Remote public electronic access to criminal case files was prohibited, with the proviso that the policy would be reexamined within two years. To facilitate that reexamination, in March 2002, the Judicial Conference approved creation of a pilot program to allow selected courts to provide such access (JCUS-MAR 02, p. 10). At this session, noting that a study of the pilot courts revealed no evidence of harm to an individual as a result of remote public access, and that such access reinforced the concept of the courts as being an open, public institution, the Court Administration and Case Management Committee recommended that the Judicial Conference amend current Judicial Conference policy to permit remote public access to electronic criminal case file documents to be the same as public access to criminal case file documents at the courthouse. The Committee also recommended that upon the effective date of any change in policy, the Conference require that personal data identifiers be redacted by the filer of the document, whether the document is filed electronically or on paper, as follows:

1. Social Security numbers to the last four digits;
2. financial account numbers to the last four digits;
3. names of minor children to the initials;
4. dates of birth to the year; and
5. home addresses to city and state.

Further, recognizing the need for specific guidelines before the policy can become effective, and noting concerns expressed by the Committee on Criminal Law, the Committee recommended that the Conference delay the effective date of this new policy until such time as the Conference approves specific guidance on the implementation and operation of the policy to be developed by the Committees on Court Administration and Case Management, Criminal Law, and Defender Services. Finally, pending approval of such guidance, the Committee recommended continuation of the pilot project, with monitoring by the Federal Judicial Center. After discussion, the Conference, with one member dissenting, adopted the Committee's recommendations.

ELECTRONIC ACCESS TO OFFICIAL TRANSCRIPTS

After extensive study, the Committee on Court Administration and Case Management recommended that the Judicial Conference adopt a policy requiring courts that make electronic documents remotely available to the

public to make electronic transcripts of proceedings remotely available if such transcripts are otherwise prepared. The Committee also recommended that the policy include a process for redacting certain identifying information from these documents in order to protect individual privacy and security and to be consistent with the Judicial Conference policy on privacy and public access to electronic case files. In addition, the Committee recommended that it be delegated the authority to develop and issue guidance to the courts on implementation of this policy. In making its recommendations, the Committee specifically noted that it was not the intent of the policy to impact court reporter income, and suggested that the Committee on Judicial Resources examine this issue. After discussion, the Judicial Conference, with one member dissenting, adopted the policy on electronic availability of transcripts of court proceedings recommended by the Committee. However, in light of concerns expressed about the effect of the policy on court reporter compensation, the Conference deferred implementation of the policy until the March 2004 Judicial Conference session, at which time the Conference will consider a report of the Judicial Resources Committee on the impact of the policy on court reporter compensation. The Conference also agreed to delegate to the Committee the authority to develop and issue guidance to the courts upon implementation of the policy.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it approved a fiscal year 2005 funding request for lawbooks and computer-assisted legal research and provided its recommendations to the Budget Committee to be included in the overall budget request. The Committee also considered how to provide assistance to the courts in implementing the requirements of the E-Government Act of 2002 (Public Law No. 107-347), which requires, among other things, that each appellate, district and bankruptcy court maintain a website that provides information on the clerk's office and chambers; all written opinions issued by the court, in a text-searchable format; and access to documents filed or converted to electronic form. The Committee continued its consideration of long-range planning issues, with a particular focus on the need of the court system to provide court information in languages other than English so as to ensure meaningful access to the federal courts for all citizens.

COMMITTEE ON CRIMINAL LAW

PRETRIAL SERVICES SUPERVISION MONOGRAPH

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to a monograph entitled *United States Pretrial Services Supervision*, Publication 111, for publication and distribution to the courts. To be consistent with other Conference-approved guidance for officers, the document was renamed *The Supervision of Federal Defendants*, Monograph 111. The revisions incorporate "best practice" findings from research and other sources, and because those findings relate to the effectiveness of supervision in general, many of the revisions are similar to recently approved revisions to *The Supervision of Federal Offenders*, Monograph 109 (JCUS-MAR 03, pp. 11-12).

JUDGMENTS IN A CRIMINAL CASE

On recommendation of the Committee, the Judicial Conference approved revised forms of judgments in criminal cases (AO 245B-245I) for publication and distribution to the courts. The revisions include certain technical and other changes required by new legislation. The Statement of Reasons was also amended to ensure that court-ordered findings that differ from information in presentence investigation reports are transmitted to Bureau of Prisons staff for use in classification and designation decisions and to facilitate better documentation of sentencing and departure actions taken by courts to help the Sentencing Commission perfect its data collection and reporting efforts. In addition, a new payment option has been added to the Schedule of Payments that defers the setting of a payment schedule until after an offender's release from imprisonment to provide the court an opportunity to evaluate the offender's earning capability at the time of release. Also on recommendation of the Committee, the Conference designated the Statement of Reasons as the mechanism by which courts comply with the requirements of the PROTECT Act to report reasons for sentences to the United States Sentencing Commission.

THE PROTECT ACT

As noted earlier, the PROTECT Act was signed into law on April 30, 2003. This Act expands to national coverage a rapid-response system to help

find kidnapped children. However, just prior to passage, an amendment ("the Feeney Amendment") was adopted in the House that would have severely limited, in all cases, the authority of judges to depart downward from the sentencing guidelines. The Judicial Conference, through its Executive Committee, which acted on an expedited basis on recommendation of the Criminal Law Committee, opposed a number of provisions of the Feeney Amendment. *See supra*, "Sentencing-Related Legislation," pp. 5-6. Although the enacted legislation included a somewhat narrower version of the sentencing amendments, it still contained provisions of concern to the judiciary.

At this session, the Judicial Conference considered, and slightly modified, a recommendation of the Criminal Law Committee seeking repeal of certain portions of the PROTECT Act. The Conference agreed by overwhelming majority (with one member voting "present") that, because the judiciary and the Sentencing Commission were not consulted in advance concerning this legislation, it would support repeal of those provisions of the PROTECT Act that do not directly relate to child kidnapping or sex abuse, including the provisions previously acted upon on behalf of the Conference by the Executive Committee (*see supra*, "Sentencing-Related Legislation," pp. 5-6), as well as the following provisions of the Act on which the Conference has not previously taken positions:

a. The requirement that directs the Sentencing Commission to make available to the House and Senate Judiciary Committees all underlying documents and records it receives from the courts without established standards on how these sensitive and confidential documents will be handled and protected from inappropriate disclosure;

b. The requirement that the Sentencing Commission release data files containing judge-specific information to the Attorney General;

c. The requirement that the Department of Justice submit judge-specific sentencing guideline departure information to the House and Senate Judiciary Committees;

d. The requirement that the Sentencing Commission promulgate guidelines and policy statements to limit departures;

e. The requirement that the Sentencing Commission promulgate a policy statement limiting the authority of the courts and the United States attorneys' offices to develop and implement early disposition programs; and

f. The amendment of 28 U.S.C. § 991(a) to limit the number of judges who may be members of the Sentencing Commission.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it was briefed on a proposed Department of Justice policy and on proposed Bureau of Prisons procedures for handling presentence investigation reports and that it continues to work with those agencies to ensure that the use and distribution of such reports is commensurate with their confidential nature. The Committee also authorized the distribution to the courts of revisions to *The Federal Home Confinement Program for Defendants and Offenders*, Monograph 113, that are technical in nature and do not require approval by the Judicial Conference. The Committee received reports on the status of a strategic assessment of the probation and pretrial services system, an ongoing study of administrative services, and the implementation of various probation and pretrial services system information technology initiatives.

COMMITTEE ON DEFENDER SERVICES

CASE BUDGETING IN HIGH-COST CASES

The Judicial Conference approved a recommendation of the Committee on Defender Services to add a new subparagraph 2.22B(4) to the Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), Volume VII, *Guide to Judiciary Policies and Procedures.* The new section is intended to encourage courts to use case budgeting techniques in complex, non-capital panel attorney representations that appear likely to become or have become extraordinary in terms of cost. Similar provisions have already been included in paragraph 6.02F of the CJA Guidelines for capital cases (*see* JCUS-MAR 97, p. 23).

CJA VOUCHER APPROVAL

Under sections (d)(3) and (e)(3)of the Criminal Justice Act, 18 U.S.C. § 3006A, and a death penalty provision of the Controlled Substances Act, 21 U.S.C. § 848(q)(10)(B), vouchers submitted by panel attorneys and investigative, expert, and other service providers that are in excess of certain

statutory maximum amounts, must be approved by the chief judge of the circuit, who may delegate such approval authority to an active circuit judge. The Committee on Defender Services recommended that the Judicial Conference seek amendments to those statutes to include senior circuit judges and appropriate non-judicial officers qualified by training and legal experience to perform those tasks, among those to whom circuit chief judges may delegate authority. The proposed amendments would also allow a claimant to seek review by the chief judge in any case in which the delegate judge or non-judicial officer reduced an excess payment that had been certified as necessary by the court before which the services were provided. The Conference adopted the Committee's recommendations.

RELOCATION REGULATIONS

At this session, on recommendation of the Committee on Judicial Resources, concurred in by the Committee on Defender Services, the Judicial Conference adopted comprehensive relocation regulations for court and federal public defender organization employees, which authorize relocation reimbursement for federal public defenders and first assistant federal public defenders, if the chief judge of the hiring circuit certifies that the relocation is in the interest of the government and the chair of the Committee on Defender Services concurs. *See infra*, "Relocation Regulations," p. 28. Noting that community defender organizations are the functional equivalents of federal public defender organizations and that the level of responsibility of capital resource counsel is at least comparable to that of a first assistant defender, the Committee on Defender Services recommended, and the Judicial Conference agreed, that relocation reimbursement eligibility also be authorized for—

a. Executive directors and first assistant defenders in community defender organizations, consistent with the policies set forth in the relocation regulations applicable to federal public defender organization personnel, except that reimbursement for individuals in community defender organizations would be approved when the board of directors of the hiring organization makes a determination that the requested reimbursement is "in the interest of the Defender Services program," and the chair of the Committee on Defender Services concurs; and

b. Capital resource counsel in federal defender organizations, pursuant to the procedure applicable to the defender organization where the capital resource counsel is to be stationed.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it was briefed on the status of the Defender Services appropriation and considered ways in which a projected shortfall might be addressed. In addition, it discussed the long-term growth projected for the Criminal Justice Act program and identified several initiatives for potential cost containment. The Committee endorsed the use of surveys to address congressional concerns about the need for increasing the panel attorney hourly compensation rate in non-capital cases and to point out strengths or weaknesses in the quality of representation furnished by appointed counsel. Under its delegated authority from the Judicial Conference (JCUS-MAR 89, pp. 16-17), the Committee approved FY 2004 budgets for 74 federal defender organizations totaling $360,116,400.

COMMITTEE ON FEDERAL-STATE JURISDICTION

JURISDICTIONAL IMPROVEMENTS

As part of its jurisdictional improvements project, the Committee on Federal-State Jurisdiction recommended that the Judicial Conference seek seven amendments to title 28 of the United States Code to improve the clarity of the law and increase judicial efficiency. Six of the seven recommendations pertain to removal and remand procedures; the seventh relates to the definition of citizenship, for purposes of diversity jurisdiction, of insurance companies engaged in direct action litigation. After discussion, the Judicial Conference unanimously agreed to seek the following amendments to title 28 of the United States Code:

a. Amend 28 U.S.C. § 1446(b) to codify in multiple-defendant cases the requirement that all defendants join in or consent to a notice of removal, to give each defendant 30 days in which to have the opportunity to remove or consent to removal, and to permit earlier-served defendants, who did not remove within their own 30-day time period, to consent to a timely notice of removal by a later-served defendant;

b. Address situations where the amount in controversy in diversity jurisdiction cases is unspecified or in doubt by amending 28 U.S.C. § 1446(b) to commence the 30-day period for removal when it

becomes known, through responses to discovery or information that enters the record of the state proceeding, that the amount in controversy exceeds the statutory minimum figure, and to create an exception to the current one-year period for removal upon a showing of plaintiff's deliberate non-disclosure of the amount in controversy;

c. Amend 28 U.S.C. § 1446(b) to authorize district courts to permit removal after the one-year period in appropriate circumstances;

d. Amend 28 U.S.C. § 1441(c) to clarify the right of access to federal court upon removal for the adjudication of separate federal law claims that are joined with state law claims by requiring district courts to retain the federal claims and remand unrelated state law claims;

e. Amend 28 U.S.C. § 1446 to separate the removal provisions relating to civil and criminal proceedings into two statutes;

f. Amend 28 U.S.C. § 1446(a) to replace the specific reference to Rule 11 of the Federal Rules of Civil Procedure with a generic reference to the rules governing pleadings and motions in civil actions in federal court; and

g. Amend 28 U.S.C. § 1332(c) to extend to insurers in direct action litigation the same definition of citizenship as that previously adopted by the Judicial Conference with regard to corporations with foreign contacts.

NLRB ORDERS

In May 1990, the Executive Committee, on behalf of the Judicial Conference, approved, after endorsement by the Federal-State Jurisdiction Committee, a proposal of the Federal Courts Study Committee that the Conference seek amendment of 29 U.S.C. § 160 to make National Labor Relations Board (NLRB) orders self-enforcing and to give jurisdiction over contempt actions and actions to execute judgments to the district courts (JCUS-SEP 90, p. 62). After several unsuccessful attempts to pursue this proposal through the judiciary's courts improvement bill, and at the request of the Executive Committee, the Federal-State Jurisdiction Committee revisited this position. The Committee noted that the policy behind the 1990 Conference position remains essentially sound, and that enactment of the proposed amendments would likely result in efficiency gains for the judiciary. However, the Committee also recognized that a change in the law is most unlikely because the NLRB has declined to comment on the legislation.

Therefore, the Committee recommended that the Conference policy be modified to indicate that the Conference "supports in principle" the legislative amendments. In that way, the position could be used to support the efforts of other entities if they chose to pursue similar legislation in the future, but the judiciary would no longer actively pursue the legislation itself. The Conference adopted the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it made recommendations to the Judicial Conference on the claims resolution process proposed in the Fairness in Asbestos Injury Resolution Act of 2003 (S. 1125, 108th Congress), on class action legislation, and on Article III status for the District Court of Guam. As these issues needed to be addressed on an expedited basis, the Executive Committee acted in each instance on behalf of the Conference. *See supra*, "Asbestos Legislation," p. 7, and "Miscellaneous Actions," pp. 7-9. The Committee also heard a presentation on federal-state coordination of complex litigation and received updates on a number of issues, including state-federal judicial education initiatives, and proposed changes to the Social Security claims process.

COMMITTEE ON FINANCIAL DISCLOSURE

STATUTORY FILING REQUIREMENTS

Judicial Officers. The Committee on Financial Disclosure, in consultation with the Committees on Codes of Conduct and Security and Facilities, recommended that the Judicial Conference seek legislation to create a separate financial disclosure statute for judges that would make the financial disclosure reporting requirements for judicial officers more consistent with the narrowly focused role of the judiciary and with judges' recusal obligations under 28 U.S.C. § 455, and at the same time address legitimate security concerns of the judiciary. Under this proposal, existing reporting requirements would be amended to eliminate the value and income thresholds for reporting investment assets, the value and income codes for investment assets reported, and the reporting of purchases or sales of investment assets. In addition, copies of judges' reports would be required to be made available at the courthouse pursuant to regulations established by the Judicial Conference. The Conference agreed to seek legislation consistent in principle

with the Committee's proposed draft legislation, which would change and make more meaningful judicial officers' obligations to prepare and file financial disclosure reports.

Judicial employees. On July 16, 2003, the Office of Government Ethics (OGE) transmitted to Congress proposed legislation to simplify the financial disclosure requirements for all three branches of government by increasing the thresholds for reporting income, liabilities, and investments and reducing the number of value categories for reporting. The Committee reviewed the proposal and determined that the provisions would be appropriate for non-judge employees of the judiciary, but not for judicial officers (see above). On recommendation of the Committee, the Judicial Conference agreed to support the inclusion of non-judge employees of the judiciary in the OGE's proposed amendments to the Ethics in Government Act transmitted to Congress on July 16, 2003.

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that as of July 15, 2003, the Committee had received 3,574 financial disclosure reports and certifications for the calendar year 2002, including 1,269 reports and certifications from Supreme Court justices, Article III judges, and judicial officers of special courts; 323 from bankruptcy judges; 507 from magistrate judges; and 1,475 from judicial employees.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that both an assessment of the adequacy of security measures for the judiciary's data communications network and a comprehensive study to examine the costs associated with the judiciary's information technology (IT) investments are nearing completion. The Committee discussed efforts underway to identify locally developed IT applications that could be shared across the judiciary. IT training for judges was reviewed, and the Committee suggested focusing training more on how judges can apply technical tools to accomplish day-to-day judicial business. The Committee also endorsed resource requirements and priorities for the programs under its jurisdiction and received updates on a number of information technology projects and issues.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that during the period from January 1, 2003, to June 30, 2003, a total of 62 intercircuit assignments, undertaken by 48 Article III judges, were processed and recommended by the Committee on Intercircuit Assignments and approved by the Chief Justice. In addition, the Committee aided courts requesting assistance by identifying and obtaining judges willing to take assignments.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported that it scheduled its Spring 2003 meeting to coincide with the Center for Democracy's annual international judicial conference, at which more than 100 foreign jurists participated. The conference focused on judicial independence and strengthening the rule of law. The Committee also reported on its judicial reform activities throughout the world, including in the Russian Federation, Ecuador, Ghana, and Korea. In May 2003, the Administrative Office assumed responsibility for the database of federal judges, court administrators, and defenders interested in assisting foreign judiciaries, which had been developed at the Committee's request by the Federal Judicial Center.

COMMITTEE ON THE JUDICIAL BRANCH

TRAVEL REGULATIONS FOR UNITED STATES JUSTICES AND JUDGES

Special Lower Fares. On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved an amendment to the Travel Regulations for United States Justices and Judges expressly to authorize judges reimbursement for special lower fares obtained for official travel, including non-refundable fares, and to provide judges with clear and specific guidance on the use of such fares.

Recalled Judges' Official Duty Stations. The Committee also recommended, and the Conference approved, an amendment to the travel regulations to clarify that the official duty station for a recalled bankruptcy or magistrate judge is the abode the retired judge designates in writing to the Administrative Office as his or her principal residence. This brings the travel regulations into conformity with 28 U.S.C. § 374 and Judicial Conference regulations on the recall of retired bankruptcy and magistrate judges, which relieve recalled judges of any restrictions as to their residence, thereby treating them similarly to senior Article III judges.

JUDICIAL COMPENSATION

Noting a recently released report of the National Commission on the Public Service, which identified judicial salaries as the most egregious example of the failure of federal compensation policies and recommended an immediate increase in judicial salaries, the Judicial Branch Committee recommended that the Judicial Conference endorse and vigorously seek legislation that would increase judicial salaries by 16.5 percent, which would yield an average of $24,948, across all levels of judicial offices. By mail ballot concluded on May 5, 2003, the Judicial Conference voted unanimously to approve the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it continues to work toward securing judges' compensation legislation. The Committee has been assisted in its efforts by representatives from the organized bar and other groups concerned about the independence and quality of the federal judiciary. The Committee also continues to work to educate the media and the public on the role of the federal judiciary, as well as the needs of the federal courts and the problems they face in discharging their duties.

COMMITTEE ON JUDICIAL RESOURCES

VOLUNTARY SEPARATION INCENTIVE PAYMENT AUTHORITY

Pursuant to authority established in the Homeland Security Act of 2002, Public Law No. 107-296, and on recommendation of the Committee on

Judicial Resources, the Judicial Conference adopted for fiscal year 2004 a judiciary voluntary separation incentive payment program for Court Personnel System employees, consistent with the requirements of the Act. The program, which will use courts' decentralized funds, will provide unit executives with flexibility in reducing staffing levels in furtherance of strategic workforce-reshaping goals.

RELOCATION REGULATIONS

The judiciary is authorized to pay the relocation expenses of employees of the judicial branch pursuant to chapter 57 of title 5 of the United States Code and implementing regulations adopted by the General Services Administration (41 C.F.R. Part 302). The judiciary administers the program in conformance with those regulations as well as with interim policies on court employee eligibility established by the Executive Committee. At this session, on recommendation of the Judicial Resources Committee, with the concurrence of the Defender Services Committee, the Judicial Conference adopted comprehensive relocation regulations for court and federal public defender organization employees that largely incorporate, with only three substantive changes, the interim policies and are substantially similar to relocation regulations adopted for justices and judges in March 1999 (JCUS-MAR 99, pp. 20-21). Two of the substantive changes involve overseas law clerk reimbursements, and the third gives to the Director of the Administrative Office the express authority to grant exceptions to the eligibility requirements of the regulations where the Director finds it to be "in the interest of the government," if the exception has been approved by the chief judge of the receiving court, and the circuit judicial council has concurred (*see also, supra,* "Relocation Regulations," p. 21).

LAW CLERK QUALIFICATIONS

The Committee on Judicial Resources, with the concurrence of the Magistrate Judges Committee, recommended that the qualifications standards for "elbow" law clerks be expanded to allow experience as a pro se law clerk in the federal courts to be considered as equivalent to elbow law clerk experience for purposes of establishing the grade level for elbow law clerks. The Judicial Conference adopted the Committee's recommendation.

SENIOR STAFF ATTORNEYS

The Committee on Judicial Resources recommended that the Judicial Conference raise the target grade for senior staff attorneys from JSP-16 to JSP-17 after considering the role of staff attorneys in the administration of the appellate courts and their crucial managerial and legal responsibilities. The Judicial Conference adopted the Committee's recommendation, which is to be implemented upon request from each circuit chief judge, subject to the availability of funds.

BANKRUPTCY ADMINISTRATORS

The Committee on Judicial Resources, with the concurrence of the Committee on the Administration of the Bankruptcy System, recommended that the Judicial Conference approve six new positions for fiscal year 2005 for the bankruptcy administrators, one in the Middle District of Alabama, two in the Eastern District of North Carolina, one in the Middle District of North Carolina, and two in the Western District of North Carolina. The Conference adopted the Committee's recommendation and also agreed that accelerated funding for the positions should be provided in fiscal year 2004, subject to the availability of funds.

COURT INTERPRETERS

In order to address an increased volume of Spanish/English interpreting events, the Judicial Conference, on recommendation of the Committee on Judicial Resources, authorized two staff court interpreter positions for fiscal year 2005: one for the Middle District of Florida and one for the District of Utah. The Conference also approved accelerated funding in fiscal year 2004 for the position in the District of Utah, subject to the availability of funds.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

The Committee on Judicial Resources recommended, and the Judicial Conference approved, a staffing formula for the Judicial Panel on Multidistrict Litigation, to be implemented in fiscal year 2004, subject to the availability of funds. The formula is based on the work that is performed by the Panel and is

expected to determine adequate and accurate levels of staffing to ensure the continued successful completion of necessary Panel support functions.

PAY PARITY

Legislation pending in the 108th Congress, if enacted, would lift the current pay caps for high-level executive branch employees. In order to maintain the judiciary's competitiveness in recruitment and retention of employees, and consistent with past Judicial Conference policy supporting pay parity, the Judicial Conference adopted a recommendation of the Committee to authorize the Director of the Administrative Office to pursue legislative opportunities to ensure pay parity between judicial and executive branch employees, with the understanding that (1) the basic pay plus incentive awards for any judicial branch employee should not exceed the salary of a district court judge; and (2) the implementation of any changes would require further Judicial Conference approval, as appropriate.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it approved a resolution that endorsed a two-percent "productivity adjustment" for fiscal year 2005 budget formulation purposes that is expected to save almost $40 million if it is applied to all court programs. The Committee declined to recommend that either senior staff attorneys or circuit librarians be allowed to establish a single Type II deputy position, and tabled a request to recommend allowing a second Type II deputy position for large and complex district and bankruptcy courts, pending a report from the Administrative Office. Also, the Committee decided to table for one year the issue of the appropriate use of the Temporary Emergency Fund, and asked the Administrative Office to continue to monitor financial data regarding the use of the fund.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

DIVERSITY IN THE MAGISTRATE JUDGE SELECTION PROCESS

The Committee on the Administration of the Magistrate Judges System recommended that the Judicial Conference resolve that:

a. Each district court, as part of the magistrate judge selection process, report on its efforts to achieve diversity by providing information about the dissemination of the notice of a vacancy in a magistrate judge position, and on its efforts to ensure a diverse merit selection panel and to inform panel members of their obligations to make an affirmative effort to identify and give due consideration to all qualified applicants, including women and members of minority groups; and

b. Each district court and merit selection panel report on the race/ethnic group and gender of (1) the merit selection panel; (2) all those interviewed by the panel for the magistrate judge position; (3) the five applicants the panel determined as best qualified and whose names were submitted to the court; and (4) the individual selected and appointed to fill the magistrate judge position.

After discussion, the Judicial Conference voted to recommit the recommendations to the Committee.

MAGISTRATE JUDGE RECALL REGULATIONS

FBI Background Investigations. On recommendation of the Magistrate Judges Committee, the Judicial Conference approved amendments to the Regulations of the Judicial Conference of the United States Establishing Standards and Procedures for the Recall of United States Magistrate Judges (ad hoc recall regulations) and the Regulations of the Judicial Conference of the United States Governing the Extended Service Recall of Retired United States Magistrate Judges (extended service recall regulations) to require that, before beginning recall service (1) a retired magistrate judge who has been separated from federal judicial service for more than one year, but no more than ten years, be subject to a name and finger print check by the FBI, a tax check by the Internal Revenue Service, and a credit check by the Office of Personnel Management; and (2) a retired magistrate judge who has been

separated from federal judicial service for more than ten years be subject to an FBI full-field background investigation with a 15-year scope.

Extensions of Recall Terms. The ad hoc and extended service recall regulations for magistrate judges require the Magistrate Judges Committee to approve all requests for intercircuit service of a recalled magistrate judge and all new requests for recall service in which the magistrate judge's salary and reimbursable travel and subsistence expenses are expected to exceed an annual total of $50,000, but they do not explicitly require approval of requests for extensions of these recall terms. To ensure that there is a continuing need for a recalled judge, the Committee recommended, and the Conference approved, amendments to the ad hoc and extended service recall regulations to require such Committee approval.

Travel by Recalled Magistrate Judges. In March 2003, the Judicial Conference amended section B.3.a.(7)(b) of the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policies and Procedures*, Vol. III-A, ch. C-V, to clarify that reimbursement of transportation expenses for senior judges who commute between their homes and the courthouse should be limited to the commuted mileage or public mass transit fare rate, absent the approval of the circuit judicial council (JCUS-MAR 03, p. 17). Since the ad hoc and extended service recall regulations for retired magistrate judges contain identical provisions to the one amended by the Conference that dealt with senior judges, the Conference approved a Committee recommendation that the Conference amend the recall regulations to be consistent with section B.3.a.(7)(b) of the judges' travel regulations. *See also, supra*, "Travel by Recalled Bankruptcy Judges," p. 10.

CHANGES IN MAGISTRATE JUDGE POSITIONS

After consideration of the report of the Committee on the Administration of the Magistrate Judges System and the recommendations of the Director of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference approved the following changes in 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.

SECOND CIRCUIT

Eastern District of New York

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

2. Authorized an additional full-time magistrate judge position at Central Islip; and

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

District of Vermont

Made no change in the district's number of magistrate judge positions or in the location or arrangements of the current magistrate judge position.

FOURTH CIRCUIT

District of Maryland

1. Converted the part-time magistrate judge position at Hagerstown to full-time status, and designated the position as Baltimore or Greenbelt;

2. Redesignated as Greenbelt the full-time magistrate judge position currently designated as Greenbelt or Baltimore; and

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

FIFTH CIRCUIT

Northern District of Mississippi

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

Northern District of Texas

Increased the salary of the part-time magistrate judge position at Wichita Falls from Level 6 ($11,951 per annum) to Level 4 ($35,854 per annum).

SIXTH CIRCUIT

Eastern District of Tennessee

1. Authorized an additional full-time magistrate judge position at Chattanooga; and

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

EIGHTH CIRCUIT

Western District of Arkansas

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

District of North Dakota

Extended the temporary increase in the salary of the part-time magistrate judge position at Grand Forks from Level 5 ($23,902 per annum) to Level 2 ($59,757 per annum) through March 31, 2004, or until such date as the full-time magistrate judge at Bismarck resumes his full duties, whichever is earlier.

TENTH CIRCUIT

Eastern District of Oklahoma

Redesignated as Muskogee the full-time magistrate judge position currently designated as McAlester.

ELEVENTH CIRCUIT

Middle 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 Judicial Conference agreed to designate for accelerated funding in fiscal year 2004 the new full-time magistrate judge positions at Brooklyn, New York; Central Islip, New York; Chattanooga, Tennessee; and Baltimore or Greenbelt, Maryland.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it decided to defer, but not withdraw, its position that service as an arbitrator or mediator by retired magistrate judges and bankruptcy judges should not be considered the practice of law under the Regulations of the Director Implementing the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act. The Committee also discussed possible additional criteria for the creation of new full-time magistrate judge positions and decided that the current Judicial Conference criteria are comprehensive and that the Committee's detailed review of each request ensures that only justified requests are approved. Further, the Committee considered an item on law clerk assistance for Social Security appeals that was also considered by the Court Administration and Case Management and Judicial Resources Committees, and requested that detailed materials be prepared on this subject for these committees' December 2003 meetings.

COMMITTEE TO REVIEW CIRCUIT COUNCIL CONDUCT AND DISABILITY ORDERS

COMMITTEE ACTIVITIES

The Committee to Review Circuit Council Conduct and Disability Orders reported that, in the absence of any petition before it for review of judicial council action under the Judicial Conduct and Disability Act, it has continued to monitor congressional activity in the area of judicial conduct and disability.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 1011 (Responsive Pleading or Motion in Involuntary and Ancillary Cases), 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee), and 9014 (Contested Matters), 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. In addition, the Committee submitted, and the Conference approved, a proposed new Official Form 21 (Statement of Social Security Number) to take effect on December 1, 2003.

FEDERAL RULES OF CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Criminal Rule 35 (Correcting or Reducing a Sentence), as well as comprehensive revisions to the rules governing 28 U.S.C. § 2254 cases and § 2255 proceedings and accompanying forms, together with Committee notes explaining their purpose and intent. The proposed amendments to the § 2254 and § 2255 rules were intended to conform those rules to recent legislation and to reflect the best practices of the courts, as well as to improve their clarity, consistent with the recent comprehensive style revision of the Federal Rules of Criminal Procedure. 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 a proposed amendment to Evidence Rule 804(b)(3) (Hearsay Exceptions; Declarant Unavailable), together with Committee notes explaining its purpose and intent. The Judicial Conference approved the

amendment and authorized its transmittal to the Supreme Court for its consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it approved for publication proposed amendments to Rules 4, 26, 27, 28, 32, 34, 35, and 45, and new Rules 28.1 and 32.1 of the Federal Rules of Appellate Procedure; Rules 1007, 3004, 3005, 4008, 7004, and 9006 of the Federal Rules of Bankruptcy Procedure; Rules 6, 24, 27, 45, and new Rule 5.1 of the Federal Rules of Civil Procedure, and Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims; and Rules 12.2, 29, 32, 32.1, 33, 34, and 45, and new Rule 59 of the Federal Rules of Criminal Procedure. The Committee also approved publishing at a later date, for public comment, proposed style revisions of Rules 1 through 15 of the Federal Rules of Civil Procedure as part of a larger package of revisions to other rules currently under review.

COMMITTEE ON SECURITY AND FACILITIES

FIVE-YEAR COURTHOUSE PROJECT PLAN

In order to address a growing backlog of construction projects on the annual Five-Year Courthouse Project Plan, the Committee on Security and Facilities considered various options, including freezing the current Five-Year Plan. However, the Committee also wanted to address intolerable security and operational problems in three southwest border courts and in Los Angeles, California. After consulting with the circuit judicial councils, the Committee recommended that the Judicial Conference take the following actions:

a. Designate judicial space emergencies in Los Angeles, California; El Paso, Texas; San Diego, California; and Las Cruces, New Mexico, and display these projects without scores, but in priority order, above the other projects on the first year of the FYs 2005-2009 Five-Year Courthouse Project Plan to convey the critical housing needs at those locations;

b. Approve the Five-Year Courthouse Project Plan for FYs 2005-2009, which consists of the FYs 2004-2008 Five-Year Plan as modified by the designation of the four judicial space emergencies; and

c. Freeze the annual five-year plans until not more than $500 million of courthouse projects remain on the first year.

The Conference adopted the Committee's recommendations.

U.S. COURTS DESIGN GUIDE

The placement of a federal defender office in close proximity to law enforcement offices could conflict with the defender's mission to function as an independent law office that requires the trust, confidence, and cooperation of its clients for effective representation. The Committee on Security and Facilities, in consultation with the Defender Services Committee, therefore recommended that the Judicial Conference amend the *U.S. Courts Design Guide*, Chapter 3, page 3-14 and Chapter 10, page 10-27, with regard to federal defender office space to clarify that federal defenders' staffed offices should be located within reasonable walking distance of the courthouse; must be located outside the courthouse or other federal facility housing law enforcement agencies unless the federal defender determines that being in such buildings would not compromise the organization's mission; and if within such buildings, must be, at a minimum, on a different floor from the law enforcement agencies. The Judicial Conference approved the Committee's recommendations.

TENANT ALTERATIONS PROJECTS

On recommendation of the Committee, the Judicial Conference agreed to urge circuit judicial councils to begin capital planning and prioritizing non-prospectus tenant alterations projects for two to three years in the future and to include a bankruptcy court representative on judicial council space committees to ensure that all courts have an opportunity to provide input.

COMMITTEE ACTIVITIES

The Committee on Security and Facilities reported that it discussed and endorsed for review by other Judicial Conference committees several options for controlling future rental costs, which currently constitute approximately 20 percent of the judiciary's budget. The Committee also discussed two U.S. Marshals Service studies required by the FY 2003 Omnibus Appropriations Act, Public Law No. 108-7: a nationwide courthouse security survey and an independent study of the relationships among the Department of Homeland Security, the U.S. Marshals Service, and the judiciary as they relate to the court security program. The Committee was briefed on a number of ongoing programs and projects, including a non-prospectus tenant alterations project review, a Temporary Emergency Fund survey, the building management delegation program, and the judiciary's emergency preparedness program.

MEMORIAL RESOLUTION

The Judicial Conference approved the following resolution noting the death of the Honorable Edwin L. Nelson of the United States District Court for the Northern District of Alabama, Chair of the Information Technology Committee from 2000 to 2003:

> The Judicial Conference of the United States notes with sadness the death of the Honorable Edwin L. Nelson, on May 17, 2003, near Birmingham, Alabama.
>
> Judge Nelson served with distinction on the federal bench for nearly 30 years, first as a magistrate judge and then as a district judge since 1990. As a member of the Judicial Conference Committee on Information Technology (1997-2003) and as its chair (2000-2003), Judge Nelson played a pivotal role during a period of unprecedented technological change and evolution through his ability to facilitate cooperation and communication. Judge Nelson was a man of integrity, courage, wisdom, and wit, and will be missed by all who knew him.
>
> The members of the Judicial Conference convey their deepest sympathies to Judge Nelson's widow, Linda, and to his family.

FUNDING

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

Chief Justice of the United States
Presiding