

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

September 28, 2021

The Judicial Conference of the United States convened by teleconference on September 28, 2021, 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 participated:

First Circuit:

Chief Judge Jeffrey R. Howard
Chief Judge Gustavo A. Gelpí, Jr.,
District of Puerto Rico

Second Circuit:

Chief Judge Debra Ann Livingston
Chief Judge Stefan R. Underhill,
District of Connecticut

Third Circuit:

Chief Judge D. Brooks Smith
Chief Judge Freda L. Wolfson,
District of New Jersey

Fourth Circuit:

Chief Judge Roger L. Gregory
Judge John Bailey,
Northern District of West Virginia

Fifth Circuit:

Chief Judge Priscilla Richman Owen
Chief Judge S. Maurice Hicks, Jr.,
Western District of Louisiana

Sixth Circuit:

Chief Judge Jeffrey S. Sutton
Judge Sara Lioi,
Northern District of Ohio

Seventh Circuit:

Chief Judge Diane S. Sykes
Chief Judge Rebecca R. Pallmeyer,
Northern District of Illinois

Eighth Circuit:

Chief Judge Lavenski R. Smith
Chief Judge John R. Tunheim,
District of Minnesota

Ninth Circuit:

Chief Judge Sidney R. Thomas
Judge Rosanna Malouf Peterson,
Eastern District of Washington

Tenth Circuit:

Chief Judge Timothy M. Tymkovich
Judge Claire V. Eagan,
Northern District of Oklahoma

Eleventh Circuit:

Chief Judge William H. Pryor, Jr.
Chief Judge Scott Coogler,
Northern District of Alabama

District of Columbia Circuit:

Chief Judge Srikanth Srinivasan
Chief Judge Beryl A. Howell,
District of Columbia

Federal Circuit:

Chief Judge Kimberly A. Moore

Court of International Trade:

Chief Judge Mark A. Barnett

Also participating in this session of the Conference were Judge John W. Lungstrum, outgoing chair of the Judicial Conference Committee on the Budget, Judge Amy J. St. Eve, incoming chair of the Judicial Conference Committee on the Budget, Chief Judge Rodney W. Sippel, chair of the Judicial Conference Committee on the Judicial Branch, and Chief Bankruptcy Judge Jeffery P. Hopkins and Magistrate Judge Nannette A. Baker, as the bankruptcy judge and magistrate judge observers, respectively. Betsy Paret of the District of Columbia Circuit represented the circuit executives.

Participating from the Administrative Office of the United States Courts were Judge Roslynn R. Mauskopf, Director; Lee Ann Bennett, Deputy Director; Sheryl L. Walter, General Counsel; Katherine H. Simon, Secretariat Officer, and WonKee Moon, Supervisory Attorney Advisor, Judicial Conference Secretariat; David T. Best, Legislative Affairs Officer; and David A. Sellers, Public Affairs Officer. John S. Cooke, Director, and Clara J. Altman, Deputy Director, Federal Judicial Center, as well as Judge Charles R. Breyer, Acting Chair, and Kenneth P. Cohen, Staff Director, United States Sentencing Commission, also participated, as did Jeffrey P. Minear, Counselor to the Chief Justice, and Ethan V. Torrey, Supreme Court Legal Counsel.

Attorney General Merrick B. Garland addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senators Patrick Leahy and Sheldon Whitehouse and Representatives Jim Jordan, Hank Johnson, Darrell Issa, Mike Quigley, and Steve Womack spoke on matters pending in Congress of interest to the Conference.

REPORTS

Judge Mauskopf reported to the Judicial Conference on the judicial business of the courts and on matters relating to the Administrative Office. Mr. Cooke spoke to the Conference about Federal Judicial Center programs, and Judge Breyer reported on United States Sentencing Commission activities.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by Judicial Conference committee chairs whose terms of service end in 2021:

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

HONORABLE JOHN W. LUNGSTRUM
Committee on the Budget

HONORABLE RALPH R. ERICKSON
Committee on Codes of Conduct

HONORABLE THOMAS M. HARDIMAN
Committee on Information Technology

HONORABLE DAVID W. MCKEAGUE
Committee on Judicial Security

HONORABLE NANCY FREUDENTHAL
Committee on the Administration of the Magistrate
Judges System

Appointed as committee chairs by the Chief Justice of the United States, 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.

TEMPORARY EXCEPTIONS TO HUMAN RESOURCES POLICIES

In 2020, the Executive Committee acted on behalf of the Judicial Conference on an expedited basis to approve three temporary exceptions to Judicial Conference human resources policies to address the impact of the Coronavirus Disease 2019 (COVID-19) pandemic on the federal judiciary, and to extend those temporary exceptions until September 30, 2021 (JCUS-SEP 2020, pp. 10-12; JCUS-MAR 2021, pp. 4-5). Due to continued issues related to COVID-19, the Committee on Judicial Resources recommended that the Executive Committee act on behalf of the Judicial Conference on an expedited basis to further extend each temporary exception. Approving the Judicial Resources Committee's recommendations, the Executive Committee:

Time Limits for Term and Temporary Appointments. Authorized a waiver of the four-year limitation on term and temporary appointments under September 2007 and March 2011 Judicial Conference policy for employees whose appointments have expired or will expire within six months after the national emergency has ended, to allow up to one-year extensions of their term or temporary appointments, upon a finding by the appointing officer that hiring a replacement prior to this date is not feasible due to COVID-19.

Mandatory Background Checks. Authorized the use of Federal Bureau of Investigation National Crime Information Center checks in lieu of fingerprint checks when conducting a background check for new and transferring employees for sensitive positions under September 2002 Judicial Conference policy, through September 30, 2022, due to health and safety concerns resulting from COVID-19.

Limitation on Law Enforcement Officer Reemployed Annuitants. Authorized an additional one-year reemployment period for law enforcement officers serving as reemployed annuitants under March 2009 Judicial Conference policy whose appointment expires on or before six months after the national emergency has ended, upon a finding by the chief district judge that a robust recruitment process cannot be conducted due to COVID-19.

COURT SECURITY APPROPRIATIONS

The Executive Committee, acting on behalf of the Judicial Conference on an expedited basis at the recommendation of the Committee on Judicial Security, approved seeking a modification to the Court Security appropriation language to consolidate funding related to the activities of the Administrative Office (AO)'s Judiciary Security Division into the Court Security appropriation account. The Committee on Judicial Security, with the concurrence of the Committee on the Budget, recommended the modification to capture the full range of activities in which the AO must engage to sustain an appropriate level of security services to the judiciary and to realign all relevant security costs into a single appropriations account. The proposed amended appropriations language would also incorporate statutory authorization for the judiciary to conduct activities envisioned by the judiciary vulnerability management program (*see infra*, p. 25) related to the removal of judges' personally identifiable information, in furtherance of the Judicial Conference's 2020 position seeking legislation to "enhance the protection of judges' PII, particularly on the internet" (JCUS-SEP 2020, pp. 12-13).

JUDICIARY ACCOUNTABILITY ACT OF 2021

The "Judiciary Accountability Act of 2021," introduced in the U.S. House of Representatives as H.R. 4827 and the U.S. Senate as S. 2553 in July 2021, would significantly change how the judicial branch handles workplace misconduct issues. Because of the fundamental impact the bill would have on the Third Branch if passed, and the uncertainty of how quickly Congress may act on it, the Executive Committee considered the bill before review by appropriate Judicial Conference committees, and determined to:

- (1) Act on behalf of the Judicial Conference on an expedited basis to oppose the Judiciary Accountability Act of 2021 because it interferes with the internal governance of the Third Branch; creates structures that compete with existing governing bodies and authorities within the judiciary; and imposes intrusive requirements on Judicial Conference procedures; and
- (2) Refer the bill to the Committees on Judicial Resources, Audits and Administrative Office Accountability, Codes of Conduct, Defender Services, the Judicial Branch, and Judicial Conduct and Disability for

further study, and request that the Committees provide their views on the bill to the Executive Committee.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Acting on an expedited basis on behalf of the Judicial Conference on recommendation of the Committee on Space and Facilities, approved an exception to the No Net New space policy for any space needed within the Tenth Circuit to accommodate increased workload requirements resulting from the Supreme Court’s decision in *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020), and an exception to the AMP Business Rules and *U.S. Courts Design Guide* to allow the construction of dedicated courtrooms and more than one chambers for visiting judges in the Eastern District of Oklahoma assisting with increased caseloads resulting from *McGirt*
- Approved interim fiscal year 2022 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts and endorsed a strategy for distributing court allotments among court programs.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office (AO) Accountability reported that it was updated on the status and results of various audits and engagements, including cyclical financial audits of court units and federal public defender organizations, including the ongoing use of innovative methods to complete all aspects of cyclical financial audits and the biennial appropriations audits remotely in response to the COVID-19 pandemic. The Committee was briefed on the AO’s progress in addressing corrective actions relating to various audit findings. In addition, the Committee responded to the request of the judiciary’s planning coordinator to identify strategies that will be the Committee’s focus over the next two years: strategic initiatives include an ongoing effort to enhance internal control tools and increase awareness about internal control requirements, tools, and assistance available;

and a new initiative to improve AO contract management and acquisition programs to better ensure that contracted services are delivered with appropriate controls and in a cost-effective and timely manner.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

GUIDELINES FOR DESIGNATIONS OF BANKRUPTCY JUDGE DUTY STATIONS AND ADDITIONAL PLACES OF HOLDING COURT

The *Guidelines for Designations of Bankruptcy Judge Duty Stations and Additional Places of Holding Court*, which were adopted by the Judicial Conference in March 2018 (JCUS-MAR 2018, p. 11) and are codified in the *Guide to Judiciary Policy (Guide)*, Vol. 3, Ch. 15, require circuit judicial councils to submit requests to change duty stations for bankruptcy judges or additional places of holding court to the Director of the Administrative Office (AO). The AO Director, in turn, will make a recommendation to the Committee on the Administration of the Bankruptcy System, which will then make a recommendation to the Judicial Conference. The Bankruptcy Committee noted that the chief of the AO's Judicial Services Office, as staff to the Bankruptcy Committee, could in most instances adequately and efficiently develop recommendations regarding official duty stations and places of holding court for bankruptcy judges without the direct involvement of the Director. The Bankruptcy Committee recommended, and the Judicial Conference approved, revisions to the *Guidelines for Designations of Bankruptcy Judge Duty Stations and Additional Places of Holding Court* to authorize the chief of the AO's Judicial Services Office to make recommendations on behalf of the AO Director to the Bankruptcy Committee regarding changes to bankruptcy judge official duty stations and places of holding court.

SELECTION AND APPOINTMENT REGULATIONS

On recommendation of the Bankruptcy Committee, the Conference approved revisions to the *Regulations for the Selection and Appointment of Bankruptcy Judges, Guide*, Vol. 3, Ch. 3. The revisions (1) establish the circuit judicial council as the entity with the authority to waive a background report, in keeping with the responsibility of the circuit judicial councils to assist the court of appeals in the bankruptcy judge appointment process under 28 U.S.C. § 152(a)(1); (2) provide a longer time period and additional flexibility for circuits to waive background reports

for sitting bankruptcy judges; and (3) clarify the process for the submission and resubmission of finalists for consideration by the court of appeals.

OFFICIAL DUTY STATIONS AND PLACES OF HOLDING COURT

On recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request from the Fourth Circuit Judicial Council to redesignate an official bankruptcy judge duty station in the District of South Carolina from Spartanburg to Greenville.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it continues to consider whether to identify additional courts to participate in the bankruptcy judgeship vacancy pilot, which was approved by the Judicial Conference in September 2014, but decided again to defer the matter until bankruptcy filings increase. The Committee advised that the judiciary should continue to defer pursuit of a legislative proposal that would align the authority of bankruptcy administrators with their U.S. trustee counterparts. Finally, the Committee continues its initiatives to promote and improve diversity on the bankruptcy bench and in the bar through outreach to and education of law students and attorneys. It confirmed a partnership with the Committee on the Administration of the Magistrate Judges System on a proposal to hold judiciary-wide diversity events every three years and expand them to encompass both bankruptcy and magistrate judges.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2023 BUDGET REQUEST

After considering the budget requests of the program committees, the Budget Committee recommended to the Judicial Conference a fiscal year 2023 budget request of \$8.0 billion in discretionary appropriations, which is 5.4 percent above assumed discretionary appropriations for fiscal year 2022, but \$180.6 million below the funding levels requested by the program committees. The Judicial Conference approved the Budget Committee's fiscal year 2023 budget request, subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, (c) changes in standard inflation factors or funding assumptions, or (d) any other reason the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the status of fiscal year 2022 appropriations, the continued importance of congressional outreach, the impact of the COVID-19 pandemic on the judiciary’s budget, and reinvigorating cost-containment initiatives within the judiciary. In addition, the Budget Committee updated the capital goods allotment formula to remove information technology (IT)-related requirements that are now included in the revised IT infrastructure formula approved by the Committee on Information Technology.

COMMITTEE ON CODES OF CONDUCT

CERTIFICATES OF DIVESTITURE REGULATIONS

On recommendation of the Committee on Codes of Conduct, the Judicial Conference approved amendments to the Certificates of Divestiture Regulations, *Guide*, Vol. 2, Pt. C, Ch. 2., and delegated to the Committee the authority to make non-substantive or technical amendments. The amendments clarify: (a) that if property to be divested under 28 U.S.C. § 455(f) and/or Canon 3C(4) of the Code of Conduct for United States Judges could be substantially affected by the outcome of the matter giving rise to the conflict of interest, such effect serves as a disqualifier to obtaining a certificate of divestiture; and (b) that while the Committee has the delegated authority to apply the regulations in acting upon individual certificates of divestiture requests, it is the Judicial Conference that has authority to establish and approve amendments to the regulations themselves.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2021, the Committee received 13 new written inquiries and issued 12 written advisory responses. During this period, the average response time for requests was 13 days. In addition, the Committee chair responded to 15 informal inquiries, individual Committee members responded to 160 informal inquiries, and Committee counsel responded to 661 informal inquiries, for a total of 836 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

JUROR QUALIFICATION QUESTIONNAIRE

In September 2016, the Judicial Conference approved a complete revision to the style and substance of the Juror Qualification Questionnaire to make it clearer and easier for jurors to understand (JCUS-SEP 2016, p. 13). As district courts began using the revised form, AO staff solicited and incorporated court and juror feedback for the next iteration of the form. On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved the final revised jury qualification questionnaire.

AUDIO STREAMING PILOT PROGRAM

Extension. In March 2020, the Judicial Conference authorized a two-year pilot program to evaluate district court streaming of live audio of oral arguments in civil cases of public interest (JCUS-MAR 2020, p. 9), and in March 2021 amended the scope of the pilot to permit the U.S. Court of Federal Claims and a limited number of bankruptcy courts to participate (JCUS-MAR 2021, pp. 13-14). The Committee on Court Administration and Case Management noted that the pilot is currently set to expire in March 2022 (less than six months after participating bankruptcy courts will have begun livestreaming); that some courts have expressed interest in joining the pilot at a later date to avoid overburdening court information technology staff responsible for coordinating virtual proceedings during the COVID-19 pandemic; and that the number of proceedings included in the pilot may be artificially low due to the impact of the pandemic, such that an additional year would provide the Committee with additional data on which to base its assessment. It therefore recommended that the Judicial Conference extend by one year the audio streaming pilot project, to conclude in March 2023. The Judicial Conference approved the Committee's recommendation.

Scope. Noting that the U.S. Court of International Trade has expressed interest in serving as a pilot court, and that the court—like district courts, bankruptcy courts, and the U.S. Court of Federal Claims—routinely holds proceedings that are of public interest and may attract large audiences from across the country, the Committee on Court Administration and Case Management recommended that the Judicial Conference amend the scope of the audio streaming pilot to permit the U.S. Court of

International Trade to participate. The Judicial Conference approved the Committee's recommendation.

COURT LAW CLERK PROGRAM

On recommendation of the Committee on Judicial Resources, the Judicial Conference between 2011 and 2019 approved, modified, and extended a court law clerk pilot program to facilitate case resolution in high-workload courts by providing additional law clerks to district courts with exceptionally heavy caseloads (JCUS-MAR 2011, p. 23; JCUS-MAR 2014, p. 21; JCUS-MAR 2015, p. 20; JCUS-SEP 2015, p. 21; JCUS-MAR 2016, pp. 19-20; JCUS-MAR 2018, p. 20; JCUS-MAR 2019, p. 28; JCUS-SEP 2019, pp. 17-18). At the request of the Judicial Resources Committee, the Court Administration and Case Management Committee considered potential governance standards for a court law clerk program should the Judicial Conference approve converting the pilot program into a permanent national program. The Committee noted that the proposed court law clerk program is structurally very similar to the pro se law clerk and death penalty law clerk programs, and that the governance structure applicable to the pro se law clerk and death penalty law clerk programs—approved by the Conference on recommendation of the Court Administration and Case Management Committee in March 2019 (JCUS-MAR 2019, pp. 15-16)—is therefore also suitable for the court law clerk program. It therefore recommended (with the endorsement of the Judicial Resources Committee), and the Judicial Conference approved, the following governance standards for a national court law clerk program:

The chief judge of each district will appoint and supervise court law clerks, under the authority of 28 U.S.C. § 752, and will have the discretion to delegate appointment authority to another judicial officer or to the clerk of court, as appropriate for the court.

The chief judge may delegate supervisory responsibilities with respect to court law clerks to another judicial officer, the clerk of court, or to a law clerk, who will report to the chief judge or to another judicial officer or the clerk of court, who will be designated by the chief judge.

RECORDS MANAGEMENT

The retention and disposition of judiciary records is controlled by records disposition schedules jointly established by the Judicial Conference and the National Archives and Records Administration (NARA). The records disposition schedules do not permit courts to dispose of permanently sealed records belonging to a case file classified as temporary (and thus eligible for disposal) if the seal is not vacated. The Court Administration and Case Management Committee accordingly proposed an amendment to the schedules to allow the disposal of permanently sealed paper case records if and when the case file becomes eligible for destruction. On the Committee's recommendation, the Judicial Conference approved the addition to Records Disposition Schedule 2 (which applies to, *inter alia*, district and bankruptcy courts).

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it discussed initiatives it could pursue, on its own and in partnership with other committees, to promote diversity on juries and within the judiciary. The Committee endorsed the concept of developing a Google-like search functionality for all dockets, documents, and filings as part of the judiciary's modernization of its case filing system, subject to further investigation into potential impacts in areas such as technology, system performance, privacy, and fee collections, and recognized that this would provide the public with a valuable tool to access public case information. The Committee also discussed the July 2021 termination of the ten-year, statutorily established patent pilot (Pub. L. 111-349) and concluded that, because there was no compelling evidence to justify expansion or extension, the pilot program should be allowed to terminate. The Committee is working with the AO Director, pilot participant courts, and the Federal Judicial Center to close out the pilot and prepare a final report that must be submitted to Congress in October 2021. Finally, the Committee discussed the results of the first phase of the AO's interagency agreement with 18F, a digital consultancy within the General Services Administration's Federal Acquisition Service, to perform an independent assessment of the judiciary's case management and electronic case filing (CM/ECF) system. The Committee affirmed its strong support for the 18F engagement, and committed to work closely with the AO, 18F, other Judicial Conference committees, and the broader court community to ensure the success of the CM/ECF modernization initiative.

COMMITTEE ON CRIMINAL LAW

PILOT PROGRAM ON INCORPORATION OF COMPARATIVE SENTENCING INFORMATION INTO THE PRESENTENCE INVESTIGATION REPORT

In connection with ongoing discussions between the Committee on Criminal Law and the U.S. Sentencing Commission about how to ensure the effectiveness and fairness of sentencing, the Sentencing Commission has developed a data tool that can provide, for any given case before a judge, the five-year national average sentence imposed for defendants sentenced under the same primary sentencing guideline, and with the same Total Offense Level and Criminal History Category. The Criminal Law Committee considered whether to incorporate this comparative sentencing information into the Presentence Investigation Report to allow the information to be considered by probation officers and judges as part of their sentencing recommendations and determinations. Noting suggestions and issues raised by various stakeholders such as the Department of Justice and the Defender Services Committee, including concerns from the Defender Services Committee about the need for further study, the Criminal Law Committee recommended that the Judicial Conference authorize a two-year pilot program to evaluate the incorporation of comparative sentencing information into the Presentence Investigation Report, and delegate to the Committee the authority to issue and amend guidelines consistent with the parameters of the pilot. The Judicial Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it has continued to provide regular updates and guidance to the courts on issues related to criminal justice administration during the COVID-19 pandemic, including suggested best practices when granting motions for compassionate release and statistics and procedures related to the vaccination of Bureau of Prisons (BOP) inmates and staff. Additionally, the Judiciary-BOP Working Group, which includes members from the Criminal Law Committee and other Judicial Conference committees, has held monthly meetings to discuss the impact of the pandemic on operations within the BOP, Department of Justice, and probation and pretrial services system, and on criminal proceedings in the courts, as well as other issues of shared interest. The Committee also endorsed the release of statistical dashboards developed by the AO, which allow judges to view their own pretrial release rates by risk level, as well as other metrics, and compare them to the nation, their circuit, and their district. The Committee agreed to endorse the release of the dashboards with judge-identifying information to chief and deputy

chief probation and pretrial services officers so they can carry out their duties in 18 U.S.C. §3154(9) to develop and implement a system to monitor bail activities, provide information to judicial officers on the results of bail decisions, and prepare periodic reports to assist in the improvement of the bail process.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee reported that it discussed the widespread use of videoconferencing for attorney-client meetings and court proceedings during the COVID-19 pandemic, and the difficulties inherent in establishing attorney-client relationships and maintaining confidential communications using this technology. Although these communications may be a useful supplement, the Committee concluded that this technology does not serve as an adequate substitute for in-person communications and revised the Defender Services strategic plan to reinforce the importance of in-person attorney-client meetings as the standard of practice. The updated strategies clarify that Criminal Justice Act practitioners are expected to visit their detained clients in person—even when clients are remotely detained and videoconferencing technology is available—and should be compensated for doing so. The Committee also voted to approve the establishment of a new federal defender organization (FDO) in Oklahoma-Eastern, consistent with Judicial Conference policy that an FDO should be established in every district that has 200 or more appointments each year (JCUS-SEP 2018, p. 39), due to the substantial caseload increase as a result of the U.S. Supreme Court’s decision in *McGirt v. Oklahoma*, 591 U.S. __ (2020). In addition, the Committee approved operational guidelines for the non-capital component of the Defender Services Diversity Fellowship Program, with the first cohort of fellows scheduled for onboarding in September 2022. Finally, the Committee met with Deputy Attorney General Lisa Monaco, who expressed support for continued collaboration on issues that have a significant impact on the Defender Services program, including, for example, the remote detention of pretrial detainees.

COMMITTEE ON FEDERAL-STATE JURISDICTION

DIVERSITY OF CITIZENSHIP JURISDICTION

In 1990, the Judicial Conference agreed to seek legislation to raise the jurisdictional minimum for diversity jurisdiction from \$50,000 to \$75,000 and index

the new floor amount (JCUS-SEP 1990, p. 60). The Committee on Federal-State Jurisdiction noted that since the jurisdictional minimum was raised to \$75,000 in 1996, there has been no further adjustment for inflation, and that to return to the 1996 status quo on an inflation-adjusted basis, the amount would need to be raised to at least \$125,000. The Committee determined that an increase to \$150,000 would provide some cushion for expected future inflation, and furthermore that indexing on a decennial basis in \$25,000 increments going forward may avoid the extreme erosion of the amount threshold that occurs when it is not updated for long periods of time (without the negative consequences that could be caused by more frequent, relatively small increases). It accordingly recommended that the Judicial Conference amend its September 1990 position seeking legislation to raise the amount in controversy requirement for general diversity jurisdiction matters from \$50,000 to \$75,000 and index the new floor amount, to instead seek legislation to increase the amount in controversy requirement from \$75,000 to \$150,000, and index this amount to inflation, preferably on a decennial basis in increments of \$25,000. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it continued its discussion of the Federal Judicial Center's survey regarding attorneys' preference of forum between state and federal court. It also received a report on behalf of the state chief justice members of the Committee on state courts' continuing efforts to adjust to conditions resulting from the COVID-19 pandemic. In addition, the Committee was briefed on legislative matters of interest, including immigration reform, the "For the People Act of 2021," and the "Copyright Alternative in Small-Claims Enforcement Act" (signed into law as part of the "Consolidated Appropriations Act, 2021," Pub. L. No. 116-260), and on the continuing impact of *McGirt v. Oklahoma*, 591 U.S. _____ (2020), on federal, state, and tribal court jurisdiction.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it was updated on efforts to develop and implement a new electronic financial disclosure system, including a change in software development companies. The Committee approved revisions to the financial disclosure report form to conform with the financial disclosure regulations in

the *Guide to Judiciary Policy*, Volume 2, Part D. The Committee also expanded the authorization to release to the public financial disclosure reports in Portable Document Format (PDF) to reports filed before 2020, as those reports could be prepared for release by year of report, starting with the 2018 reports. In addition, the Committee discussed the need to review and potentially amend the Judicial Conference regulations on redaction of financial disclosure reports given current efforts to enhance judicial security. As of May 20, 2021, the Committee had received 4,658 financial disclosure reports and certifications for calendar year 2019 (out of a total of 4,672 required to file), including 1,292 annual reports from Supreme Court justices and Article III judges; 325 annual reports from bankruptcy judges; 586 annual reports from magistrate judges; 1,599 annual reports from judicial employees; and 856 reports from nominee, initial, and final filers.

COMMITTEE ON INFORMATION TECHNOLOGY

LONG RANGE PLAN FOR INFORMATION TECHNOLOGY IN THE FEDERAL JUDICIARY

Pursuant to 28 U.S.C. § 612 and on recommendation of the Committee on Information Technology, the Judicial Conference approved the fiscal year 2022 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.

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it received information and updates on several initiatives, including the Insight Program (standardization and security tools), a network access study, and the impending need to move out of the San Diego internet data center. In addition, the Committee was updated on the Administrative Office Director's recent establishment of a Judiciary IT Security Task Force to examine the judiciary's current IT security posture and make recommendations to ensure the judiciary is protected to the best of its abilities. The Committee approved a new IT infrastructure formula (last updated in 2007) for implementation in the fiscal year (FY) 2022 financial plan and FY 2023 budget request. The Committee also approved a budget request for FY 2023. Finally, the Committee continued its discussion on whether to grant local IT administrators data access rights so they could manage local mailbox permissions in the same manner they

could with the old Lotus Notes email system. The Committee agreed that finding a way to streamline the process to reduce the burden on courts would be preferable to amending the *Guide to Judiciary Policy*.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 57 Article III judges undertook 65 intercircuit assignments from January 1, 2021, to June 30, 2021. During this time, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments. The Committee also reviewed and concurred with eight proposed intercircuit assignments of bankruptcy judges and 14 of magistrate judges.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on virtual international rule of law work that was supported by federal judges from October 12, 2020 through April 3, 2021. In advance of the Committee's May 2021 meeting, written reports concerning federal judicial Rule of Law activities were provided by the Administrative Office (AO), Federal Judicial Center (FJC), Congressional Office for International Leadership (COIL), U.S. Department of State/International Narcotics and Law Enforcement Bureau (INL), U.S. Department of Justice Office of Overseas Prosecutorial Development Assistance and Training (OPDAT), U.S. Patent and Trademark Office (USPTO), U.S. Commerce Department – Commercial Law Development Program (CLDP), U.S. Agency for International Development (USAID), Federal Defenders, and Federal Court Clerks Association (FCCA). The Committee received updates from the Counselor to the Chief Justice and the AO's Acting Associate Director for the Department of Program Services, presentations from Supreme Court Fellows regarding their research work, and reports from the AO and the FJC. Committee members and participating agency representatives also took part in a discussion session titled "Identifying the Needs of Judiciaries in Other Countries as Courts Throughout the World Emerge from the Pandemic" on the focus by Committee agency partners on international Rule of Law programs as international judiciaries emerge from the pandemic.

COMMITTEE ON THE JUDICIAL BRANCH

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it discussed recent legislative items of interest to the judiciary, including those related to judicial security and reform of the judiciary’s case management system. The Committee received briefings from the chair of the Financial Disclosure Committee regarding issues related to congressional and public interest in financial disclosure reports and from the chair of the Judicial Resources Committee regarding legislation creating additional judgeships. The Committee also received briefings from the Judicial Integrity Officer on the status of the workplace employment initiatives and from its liaison to the Committee on Judicial Resources Subcommittee on Diversity, Equity, and Inclusion. In addition, the Committee continued its discussion regarding concerns about disinformation and the politicization of the branch. Finally, the Committee was briefed on civics education activities across the judiciary.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it discussed and considered complaint-related matters under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364 (Act), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules). The Committee also discussed the ongoing work of the Federal Judiciary Workplace Conduct Working Group, and approved revisions to its strategic initiatives in support of the strategies and goals contained in the *Strategic Plan for the Federal Judiciary* related to workplace conduct. The Committee and its staff have also continued to address inquiries regarding the Act and the Rules, and to give other assistance as needed to circuit judicial councils and chief judges.

COMMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIPS

In March 2021, on the recommendation of the Committee on Judicial Resources after considering the 2021 biennial survey of judgeship needs, the Judicial Conference agreed to request from Congress the addition of 2 permanent Article III judgeships for the courts of appeals and the addition of 77 permanent Article III judgeships and the conversion to permanent status of 9 existing temporary Article III judgeships in the district courts (JCUS-MAR 2021, pp. 23-24). The Committee on Judicial Resources considered out-of-cycle requests for additional judgeships in the Eastern and Northern Districts of Oklahoma based on projections that felony filings would significantly increase in those districts as a result of the Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. __ (2020). On recommendation of the Judicial Resources Committee, the Judicial Conference agreed to recommend to Congress the addition of three permanent Article III judgeships for the Eastern District of Oklahoma and two permanent Article III judgeships for the Northern District of Oklahoma.

COURT LAW CLERK PROGRAM

On recommendation of the Committee on Judicial Resources, the Judicial Conference between 2011 and 2019 approved, modified, and extended until September 30, 2021 a court law clerk pilot program to facilitate case resolution in district courts with exceptionally heavy caseloads by providing them with additional law clerks (JCUS-MAR 2011, p. 23; JCUS-MAR 2014, p. 21; JCUS-MAR 2015, p. 20; JCUS-SEP 2015, p. 21; JCUS-MAR 2016, pp. 19-20; JCUS-MAR 2018, p. 20; JCUS-MAR 2019, p. 28; JCUS-SEP 2019, pp. 17-18).

On recommendation of the Judicial Resources Committee, the Judicial Conference, with regard to court law clerks, agreed to:

- a. Convert the court law clerk pilot program into a permanent national program beginning in fiscal year 2023 using proposed eligibility criteria and staffing formulas;
- b. Extend the court law clerk pilot program until September 30, 2022 and establish a transition period from October 1, 2021 through September

- 30, 2025 for district courts and incumbent court law clerks in the existing pilot program;
- c. Delegate to the Committee on Judicial Resources the authority to administratively manage the national court law clerk program for district courts, including authorizing court law clerk positions, consistent with proposed parameters; and
 - d. Approve amendments to the *Guide to Judiciary Policy*, Volume 12, Chapters 5 and 6, to establish a permanent term court law clerk position in the Judiciary Salary Plan (JSP), including qualification standards.

To qualify for the program, a district court would be required to meet the eligibility criteria of one of three tracks: Track I (high caseload), Track II (low judge occupancy rate), or Track III (significant long-term caseload or workload hardship that current law clerks are unable to address in full). Court law clerk positions would be authorized for renewable, two-year periods and would be term appointments limited to a maximum of four years of service in a term law clerk capacity, with a target grade level of JSP-13, and not eligible for retirement benefits. District courts allocated court law clerk positions would be required to track semiannually the number of opinions and orders on motions that court law clerks draft, by the type of motion and level of complexity, and provide this data to the Administrative Office.

TEMPORARY EMERGENCY FUND

The Temporary Emergency Fund (TEF) provides funds to circuit judicial councils and the Court of Federal Claims (CFC) for temporary staffing emergencies in chambers. While these funds may be reprogrammed between courts' TEF and tenant alteration funds (JCUS-SEP 1995, p. 73), the Judicial Conference has stressed the importance of using them for staff rather than alterations (JCUS-SEP 2006, pp. 26-27). Five percent of the TEF was held in reserve and managed by the Administrative Office (AO) each year until 2006, when the reserve fund was dissolved, thereby allotting the entirety of the TEF directly to circuit judicial councils and the CFC. Currently, some recipients of TEF funds use all or a vast majority of their funding for emergency personnel and may request supplemental funding for emergency personnel which can sometimes be fulfilled by reprogramming funds from the AO's unfunded requirements funds. Other recipients regularly reprogram significant amounts or allow funding to lapse. The Judicial Resources Committee noted that, given the diminishing availability of funding for emergency personnel, reinstating a reserve to be used only for such purposes would allow courts to more reliably access TEF funding if initial

TEF allotments are exhausted (as there would otherwise be no guarantee that other available funds could be identified in any given fiscal year to be reprogrammed for supplemental TEF purposes) and would also promote efficiency in supplemental funding transactions. The Committee also proposed prohibiting more than 50 percent of the remaining directly allocated funds from being reprogrammed from the TEF to tenant alterations, in keeping with the Conference's view that the TEF should generally be used for staff rather than alterations.

On recommendation of the Judicial Resources Committee, the Judicial Conference, with regard to the TEF, agreed to:

- a. Create a 20 percent centrally held TEF reserve to be administered by the AO, consistent with proposed Guidelines for the Temporary Emergency Fund; and
- b. Institute a 50 percent limit on reprogramming directly allocated TEF funds to tenant alterations.

The Guidelines, among other things, allow the AO to elect not to grant TEF reserve requests from circuits with an average reprogramming rate of 20 percent or higher over the previous five fiscal years; specify a baseline amount of funding that the Judicial Resources Committee will request for the TEF each fiscal year, in an effort to provide greater stability and predictability in available annual funding; and stipulate that TEF resources should be used only to address unanticipated caseload challenges expected to affect the court for less than two years (as distinguished from the assistance with longer-term caseload challenges that the national court law clerk program is intended to provide).

TRANSCRIPT RATES

Under the Judicial Conference's current transcript fee schedule, realtime transcripts are billed at one of three rates based on the number of feeds or unedited transcripts requested. The Judicial Resources Committee noted that this creates complications when requests are submitted after proceedings have ended, as the court reporter must determine whether other requesters have already purchased realtime transcripts, and if so, refund part of the fee to earlier requesters since the increase in the number of feeds requested will have driven the fee lower. The Committee therefore recommended that the Judicial Conference amend its transcript fee schedule to simplify how batch billing is conducted for realtime court reporting by stipulating that orders placed on or before the day of the proceeding will be batched together for

purposes of determining the number of feeds and that subsequent orders will be charged at the page rate assessed on the previous orders. The Conference approved the Committee's recommendation.

HUMAN RESOURCES POLICY EXCEPTIONS TO ADDRESS ALLEGATIONS OF HARASSMENT OR ABUSIVE CONDUCT

Exceptions to Judicial Conference human resources policy may sometimes be needed to provide employees impacted by allegations of harassment or abusive conduct relief that allows them to maintain comparable grade, pay, and position. In October 2020, the Federal Judiciary Workplace Conduct Working Group discussed the need for a streamlined process for resolving workplace conduct matters when existing Judicial Conference approved human resources policies may otherwise prevent resolution of the matter, and suggested that the Committee on Judicial Resources consider recommending to the Judicial Conference that the authority to grant exceptions to human resources policy be delegated. The Committee on Judicial Resources agreed there was a need for a streamlined process for corrective or remedial action that could be expedited and implemented quickly to minimize any negative impact on the employee or court operations. It therefore recommended that the Judicial Conference delegate to the Committee on Judicial Resources the authority to grant exceptions to Judicial Conference human resources policy to resolve allegations of harassment or abusive conduct. The Conference approved the Committee's recommendation.

MODEL FEDERAL PUBLIC DEFENDER ORGANIZATION EMPLOYMENT DISPUTE RESOLUTION PLAN

In September 2019, the Judicial Conference adopted a revised *Model Employment Dispute Resolution Plan (Model EDR Plan)* for the federal judiciary (JCUS-SEP 2019, pp. 21-22), which applied to all judges and court employees as well as federal public defenders (FPDs) and their employees. To address issues unique to federal public defender organizations (FPDOs), including the distinct employment relationship between FPDs and their employees, their role as legal representatives with ethical obligations to clients on whose behalf they appear in court, and the need to mitigate concerns regarding access to sensitive information (including protecting attorney-client privileged information as well as sensitive information about internal FPDO operations), the Committee on Defender Services recommended that the

Judicial Resources Committee consider a separate plan for federal public defender organizations.

After taking into consideration the proposal recommended by the Defender Services Committee, feedback received from judiciary-wide stakeholders, and a recommendation from the Judicial Resources Committee’s Diversity Subcommittee, the Judicial Resources Committee endorsed a *Model FPDO EDR Plan* that mirrors to the greatest extent possible the general processes, timelines, and standards for reporting and remediating wrongful conduct set forth in the *Model EDR Plan*, while recognizing the distinct employment relationship and mission of FPDOs. On recommendation of the Committee on Judicial Resources, the Judicial Conference adopted the *Model FPDO EDR Plan*, and delegated to the Committee on Judicial Resources the authority to make non-substantive changes or technical amendments as necessary.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it received an update on work measurement and a report on the Online System for Clerkship Application and Review (OSCAR) program. The Committee also considered a request from the chief district judge in the Eastern District of Oklahoma for an additional court reporter position to help the court address the impact of the July 2020 decision of the United States Supreme Court in *McGirt v. Oklahoma* and rulings from the Oklahoma Court of Criminal Appeals, which require prosecutions under the Major Crimes Act that were formerly considered state court matters to now be prosecuted in federal court. The Committee agreed to defer consideration of the request until its December 2021 meeting.

COMMITTEE ON JUDICIAL SECURITY

CRIMINAL HISTORY CHECKS ON GENERAL SERVICES ADMINISTRATION CONTRACT WORKERS

On recommendation of the Committee on Judicial Security, the Judicial Conference rescinded its September 2017 position adopting a standard for use by the U.S. Marshals Service when conducting criminal history checks to determine whether the General Services Administration (GSA)’s prospective contract workers are eligible to access restricted court space (JCUS-SEP 2017, p. 19). Recognizing that the

Conference-approved standard has never been and likely cannot be implemented due to operational realities, the Committee noted that an alternative strategy for ensuring the suitability of contractors to access restricted areas—involving the utilization of existing GSA contracting provisions to determine terms of contractor access—is likely to be more achievable.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it endorsed a proposed Judiciary Vulnerability Management Program to be managed by the Administrative Office (AO) that will address emerging security threats and existing vulnerabilities by increasing the capacity and resources available to the AO’s Judiciary Security Division to provide dedicated security support to circuit, district, and bankruptcy court units across the country. The Committee discussed efforts being taken to secure supplemental funding from Congress for the installation of security systems to harden federal courthouses as well as the repair and/or replacement of failing perimeter security cameras managed by the Federal Protective Service. The Committee was also updated on the actions taken by the COVID-19 Task Force, a partnership across all three branches of the federal government that was established by the AO to provide operational and security support to federal courts nationwide.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After considering the recommendations of the Committee on the Administration of the Magistrate Judges System and the views of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial Conference agreed to (a) authorize the conversion of the Level 1 part-time magistrate judge position at Washington, D.C. in the District of Columbia to a full-time position; (b) authorize an additional full-time magistrate judge position at Concord in the District of New Hampshire, and discontinue the combination clerk of court/magistrate judge position upon the filling of the new full-time magistrate judge position; (c) authorize an additional magistrate judge position at New York City in the Southern District of New York; (d) authorize the conversion of the part-time magistrate judge position at Greenville in the Eastern District of North Carolina to a full-time position; (e) increase the salary level of the part-time magistrate judge position at Fairbanks in

the District of Alaska, from Level 2 (currently \$80,445 per annum) to Level 1 (currently \$100,556 per annum), effective October 1, 2021; (f) authorize an additional magistrate judge position at Muskogee in the Eastern District of Oklahoma; and (g) authorize an additional magistrate judge position at Tampa in the Middle District of Florida.

ACCELERATED FUNDING

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Conference agreed to designate for accelerated funding, effective April 1, 2022 (subject to available funding), the new full-time magistrate judge positions in the District of Columbia, the Eastern District of Oklahoma at Muskogee, and the Middle District of Florida at Tampa.

COMMITTEE ACTIVITIES

The Committee reported that it considered six district-wide surveys and, where appropriate, endorsed suggestions regarding magistrate judge utilization in those districts. Between its December 2020 and June 2021 meetings, the Committee, through its chair, approved filling 21 magistrate judge position vacancies in 18 district courts (JCUS-SEP 2004, p. 26), and the Committee approved two recall requests and one request to modify the recall of a magistrate judge serving with staff in one district, to allow that judge to assist another district in a different circuit. At its June 2021 meeting, the Committee also approved requests from five courts for the extension of recall, or extension of staff or clerk's office support, for six retired magistrate judges. In addition, the Committee endorsed a proposed Federal Judicial Center survey on the magistrate judge selection and appointment process and a joint proposal with the Bankruptcy Committee to expand future judiciary-wide diversity events to include magistrate judges as well as bankruptcy judges. Finally, the Committee continued its discussions on evaluating magistrate judge utilization and making resource decisions based on those evaluations, including efforts to revise the *Suggestions for Utilization of Magistrate 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 proposed amendments to Appellate Rules 25 (Filing and Service) and 42 (Voluntary Dismissal), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for 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 1007 (Lists, Schedules, Statements, and Other Documents; Time Limits), 1020 (Chapter 11 Reorganization Case for Small Business Debtors), 2009 (Trustees for Estates When Joint Administration Ordered), 2012 (Substitution of Trustee or Successor Trustee; Accounting), 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status), 3002 (Filing Proof of Claim or Interest), 3010 (Small Dividends and Payments in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13), 3011 (Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13), 3014 (Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case), 3016 (Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case), 3017.1 (Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11), 3018 (Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 3019 (Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case), 5005 (Filing and Transmittal of Papers), 7004 (Process; Service of Summons, Complaint), and 8023 (Voluntary Dismissal), and proposed new Rule 3017.2 (Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendments and authorized their transmittal to the Supreme Court for consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

The Conference also approved, on recommendation of the Committee, revised Official Bankruptcy Form 122B (Chapter 11 Statement of Your Current Monthly

Income), effective December 1, 2021, for use in all bankruptcy proceedings commenced after the effective date and, insofar as just and practicable, all proceedings pending on the effective date.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed new Supplemental Rules for Social Security Review Actions Under 42 U.S.C. § 405(g), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed rules and authorized their transmittal to the Supreme Court for 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 a proposed amendment to Criminal Rule 16 (Discovery and Inspection), together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed amendment and authorized its transmittal to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported on its progress with rules amendments that would provide for procedures during future emergencies as directed by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281. The Standing Committee unanimously approved proposed emergency rules in the Appellate, Bankruptcy, Civil and Criminal Rules for publication for public comment in August 2021. This schedule would put the emergency rules on track to take effect in December 2023 if approved at each stage of the Rules Enabling Act process and if Congress takes no contrary action. In addition, the Committee reported that its Advisory Committee on Bankruptcy Rules is reviewing procedures for turning over estate property to the debtor or estate trustee in response to the Supreme Court's decision in *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021). Supreme Court Associate Justice Sonia Sotomayor's concurring opinion encouraged the Advisory Committee to consider amendments that would ensure

prompt turnover resolution and several suggestions from the public recommended that turnover proceedings be initiated by motion rather than adversary proceeding. A subcommittee of the Advisory Committee has begun to consider the suggestions and is gathering information about local rules and procedures that already allow for turnover of certain estate property by motion.

COMMITTEE ON SPACE AND FACILITIES

COURTHOUSE PROJECT PRIORITIES

The *Federal Judiciary Courthouse Project Priorities (CPP)* identifies the judiciary's priorities for new courthouse construction. Part I lists the projects for which the judiciary will request funding in its annual budget submission, while Part II consists of the judiciary's out-year courthouse construction priorities. The priority order of all projects on Part I is maintained until a project is fully funded, at which time the project is removed from the list. The priority order of projects on Part II is updated each year based on the project's urgency evaluation score, which is developed as part of the judiciary's Asset Management Planning process (see JCUS-MAR 2008, p. 26). On recommendation of the Committee on Space and Facilities, the Judicial Conference adopted a fiscal year (FY) 2023 *CPP*, which carried forward all the projects on Part I and Part II of the FY 2022 *CPP*, as they had not yet received full funding. The projects on the FY 2023 *CPP* were approved in the following priority order:

- a. Part I: (1) Hartford, Connecticut; and (2) Chattanooga, Tennessee; and
- b. Part II: (1) Bowling Green, Kentucky; (2) Anchorage, Alaska; (3) McAllen, Texas; (4) Greensboro/Winston Salem, North Carolina; and (5) Norfolk, Virginia.

FEASIBILITY STUDIES

Courthouse construction projects must have a completed General Services Administration (GSA) feasibility study prior to being placed on the *CPP* (JCUS-MAR 2008, p. 26). After considering the space, security, and building needs at the courthouses in Portland, Maine; West Palm Beach, Florida; Raleigh, North Carolina; and Tampa, Florida, the Committee on Space and Facilities recommended that the Judicial Conference request that the GSA perform feasibility studies for the

courthouses in Portland, Maine and West Palm Beach, Florida, and defer the requests for the courthouses in Raleigh, North Carolina and Tampa, Florida. The Conference adopted the Committee's recommendation.

EXCEPTIONS TO THE *U.S. COURTS DESIGN GUIDE*

Sherman/Plano, Texas. A multi-party courtroom is considered an exception to the *U.S. Courts Design Guide (Design Guide)* if (1) there are fewer than four planned district courtrooms; or (2) more than one such courtroom is provided in a facility (JCUS-MAR 2021, p. 30). The Fifth Circuit Judicial Council, on behalf of the Eastern District of Texas, requested an exception to the *Design Guide* to include a multi-party courtroom in the program of requirements for a new courthouse construction project in Sherman or Plano, Texas, which is projected to have only three district courtrooms. The Committee on Space and Facilities noted that the district lacks any multi-party courtroom in any of its facilities, and that the population in the region is also growing, which is likely to correspond to an increase in complex multi-party cases. On recommendation of the Committee, the Conference approved an exception to the *Design Guide* to include a multi-party courtroom in the program of requirements for the new courthouse construction project in Sherman/Plano, Texas.

Toledo, Ohio. Ceilings in jury assembly spaces exceeding ten feet in height are considered an exception to the 2007 version of the *Design Guide*. The Sixth Circuit Judicial Council, on behalf of the Northern District of Ohio, requested an exception to the 2007 *Design Guide* to exceed this height in the jury assembly room being constructed as part of a courthouse construction project in Toledo, Ohio that is governed by the 2007 *Design Guide*, since it was the version in place at the time the project's space requirements were provided to GSA. Noting that the ceiling height exception was an integral component to the design for the project, would not result in additional costs, and would be similar to other ceiling height exceptions approved by the Judicial Conference upon the recommendation of this Committee (JCUS-MAR 2020, p. 24; JCUS-SEP 2020, p. 38), the Space and Facilities Committee recommended that the Judicial Conference approve an exception to the 2007 *Design Guide* to include a twelve-foot ceiling height in the program of requirements for the jury assembly room in the new courthouse annex being constructed in Toledo, Ohio. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it agreed to request that the General Services Administration (GSA) conduct a Phase II feasibility study for Anchorage, Alaska. In addition, the Committee approved 15 Component B requests for construction of courtrooms or chambers, and three requests for funding for No Net New projects in support of the Judicial Conference’s No Net New policy adopted in September 2013 (JCUS-SEP 2013, p. 32), all subject to funding availability. Further, the Committee discussed the status of the implementation strategy for the updated *U.S. Courts Design Guide*, including the completion of a companion Best Practices Guide. The Committee continues its work with AO staff and its partners at the GSA to identify judiciary locations most at risk from severe weather and climate events, assess possible mitigation measures that would prevent damage from such future events, and secure a funding stream for these mitigation measures.

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