

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

March 14, 2017

The Judicial Conference of the United States convened in Washington, D.C., on March 14, 2017 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 Jeffrey R. Howard
Judge Paul J. Barbadoro,
District of New Hampshire

Second Circuit:

Chief Judge Robert A. Katzmann
Chief Judge Colleen McMahon,
Southern District of New York

Third Circuit:

Chief Judge D. Brooks Smith
Chief Judge Leonard P. Stark,
District of Delaware

Fourth Circuit:

Chief Judge Roger L. Gregory
Judge Robert J. Conrad, Jr.,
Western District of North Carolina

Fifth Circuit:

Chief Judge Carl E. Stewart
Chief Judge Lee H. Rosenthal,
Southern District of Texas

Sixth Circuit:

Chief Judge Ransey Guy Cole, Jr.
Judge Joseph M. Hood,
Western District of Kentucky

Seventh Circuit:

Chief Judge Diane P. Wood
Chief Judge Michael J. Reagan,
Southern District of Illinois

Eighth Circuit:

Chief Judge Lavenski R. Smith
Judge Linda R. Reade
Northern District of Iowa

Ninth Circuit:

Chief Judge Sidney R. Thomas
Judge Claudia Wilken,
Northern District of California

Tenth Circuit:

Chief Judge Timothy M. Tymkovich
Judge Martha Vazquez,
District of New Mexico

Eleventh Circuit:

Chief Judge Ed Carnes
Judge Federico A. Moreno,
Southern District of Florida

District of Columbia Circuit:

Chief Judge Merrick B. Garland
Chief Judge Beryl A. Howell,
District of Columbia

Federal Circuit:

Chief Judge Sharon Prost

Court of International Trade:

Chief Judge Timothy Stanceu

The following Judicial Conference committee chairs also attended the Conference session: Circuit Judges Richard R. Clifton, Julia Smith Gibbons, Raymond J. Lohier, and Anthony J. Scirica; District Judges John D. Bates, Susan R. Bolton, David G. Campbell, Gary A. Fenner, David R. Herndon, Ricardo S. Martinez, Donald W. Molloy, Karen E. Schreier, Richard Seeborg, William K. Sessions III, Rebecca Beach Smith, and Lawrence F. Stengel; and Bankruptcy Judge Helen E. Burris. Attending as the bankruptcy judge and magistrate judge observers, respectively, were Chief Bankruptcy Judge Marcia Phillips Parsons and Magistrate Judge Kevin N. Fox. James P. Gerstenlauer of the Eleventh Circuit represented the circuit executives.

James C. Duff, Director of the Administrative Office of the United States Courts, attended the session of the Conference, as did Lee Ann Bennett, incoming Deputy Director; Sheryl L. Walter, General Counsel; Katherine H. Simon, Secretariat Officer, and Helen G. Bornstein, Senior Attorney, Judicial Conference Secretariat; Cordia A. Strom, Legislative Affairs Officer; and David A. Sellers, Public Affairs Officer. District Judge Jeremy D. Fogel, Director, and John S. Cooke, Deputy Director, Federal Judicial Center, and Judge William J. Pryor, Jr, Acting Chair, and Kenneth P. Cohen, Staff Director, United States Sentencing Commission, were in attendance at the session of the Conference, as were Sheldon Snook, Special Assistant to the Counselor to the Chief Justice, and Ethan V. Torrey, Supreme Court Legal Counsel.

Attorney General Jeff Sessions addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senator Chuck Grassley and Representative Bob Goodlatte spoke on matters pending in Congress of interest to the Conference.

REPORTS

Administrative Office Director James C. Duff reported to the Judicial Conference on the judicial business of the courts and on matters relating to the Administrative Office. Judge Jeremy D. Fogel spoke to the Conference about Federal

Judicial Center (FJC) programs and Judge William J. Pryor, Jr., reported on United States Sentencing Commission activities. Judge Julia Smith Gibbons, Chair of the Committee on the Budget, presented a special report on budgetary matters.

EXECUTIVE COMMITTEE

FIVE-YEAR COMMITTEE SELF-EVALUATION AND JURISDICTIONAL REVIEW

Every five years, each committee of the Judicial Conference must recommend to the Executive Committee, with a justification, whether it should be maintained or abolished (JCUS-SEP 87, p. 60). Pursuant to this mandate, each committee completed, and submitted to the Executive Committee for consideration at its February 2017 meeting, a self-evaluation questionnaire regarding its continuation, jurisdiction, workload, composition, and operating procedures.¹ The Executive Committee made no changes to the committee structure itself, but agreed to make technical or clarifying amendments to the jurisdictional statements of the following committees, either at the committee's request, or after consultation with that committee: Audits and Administrative Office Accountability, Codes of Conduct, Court Administration and Case Management, Intercircuit Assignments, Judicial Resources, and the Administration of the Magistrate Judges System. The Executive Committee deferred a request from the Committee on Judicial Security for a change to its jurisdictional statement to obtain additional information and input on the request. The Executive Committee decided not to recommend any changes to committee composition at this time.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved an adjustment to the FY 2018 budget request to add \$10 million for emergency repairs to the Thurgood Marshall Federal Judiciary Building.
- Reviewed the determinations of Conference committees as to whether the judiciary should pursue in the 115th Congress, or defer pursuit of, Conference-approved legislative proposals within their jurisdictions.

¹ The Committee on Defender Services deferred completion of portions of the questionnaire relating to its jurisdiction and composition pending receipt of the final report of the Ad Hoc Committee to Review the Criminal Justice Act Program.

- Determined that prior to Judicial Conference action on any recommendations of the Ad Hoc Committee to Review the Criminal Justice Act Program, all Conference committees whose jurisdictions are implicated by such recommendations will be provided an opportunity to comment and that the Executive Committee will coordinate the presentation of these comments to the Judicial Conference.
- Approved on behalf of the Judicial Conference a resolution recognizing Jill C. Sayenga's service as the Deputy Director of the Administrative Office from 2007-2017.
- Agreed with the determination of the Judicial Branch Committee that an annual inflationary adjustment to the judges' alternative maximum subsistence allowance and an inflationary adjustment for reimbursement of the actual cost of meals be allowed to go into effect (*see Guide to Judiciary Policy*, Vol.19, Ch. 2, § 250.20.20(b)(1) and § 250.20.30).
- Proposed six judges for consideration by the Judicial Conference as candidates for recommendation to the President, pursuant to 28 U.S.C. § 991, for service on the United States Sentencing Commission.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office Accountability reported that it was briefed on updates to the cyclical audit program for courts and federal public defender organizations, including an interim strategy to continue district-level financial statement audits during the implementation of the Judiciary Integrated Financial Management System (JIFMS), a new accounting and financial management system. The Committee also reviewed the scope of judiciary audit programs, including their frequency or cycle, and discussed strategies to ensure that the judiciary's audit program is comprehensive. The Committee discussed the development of presentations designed to describe the audit program's substance and scope to a broader audience.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

The Judicial Conference conducts a biennial survey to evaluate requests for additional bankruptcy judgeships and conversion of temporary judgeships to permanent status, and transmits its recommendations to Congress, which establishes the number of bankruptcy judgeships in each judicial district (28 U.S.C. § 152(b)(2)). Based on the results of the 2016 biennial survey of additional judgeship needs, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference ask Congress to authorize 4 additional permanent judgeships and convert 14 existing temporary judgeships to permanent status as set forth below (“P” denotes permanent; “T/P” denotes conversion of temporary to permanent):

Puerto Rico	2 T/P
Delaware	2 P, 5 T/P
Maryland	1 T/P
North Carolina (Eastern)	1 T/P
Virginia (Eastern)	1 T/P
Michigan (Eastern)	1 P, 1 T/P
Nevada	1 T/P
Florida (Middle)	1 P
Florida (Southern)	2 T/P

The Conference adopted the Committee’s recommendation.

CONSENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

In the early 1990s, the Executive Committee agreed, on behalf of the Judicial Conference, to seek legislation, initially recommended by the Federal Courts Study Committee, to amend 28 U.S.C. § 157(c)(1) to allow a party in a non-core, related bankruptcy proceeding to be deemed to have consented to the finality of a bankruptcy judge’s findings unless the party objects within 10 days of entry of the findings (JCUS-SEP 92, p. 57). At this session, the Committee noted that the Supreme Court opinions in *Stern v. Marshall*, 564 U.S. 462 (2011) and subsequent cases, as well as changes to the Federal Rules of Bankruptcy Procedure, have rendered the proposed legislation unnecessary. On recommendation of the Committee, the Conference agreed to rescind the position.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it authorized a comprehensive study of official duty stations and additional places of holding court designations for United States bankruptcy judges, as well as preparation of related guidelines. The Committee also reported on its continuing efforts to analyze and secure bankruptcy judgeship resources and, in particular, its discussions regarding temporary bankruptcy judgeships that will lapse on May 25, 2017, absent Congressional action. The Committee continues to work to enroll volunteers for, and facilitate the implementation of, its horizontal consolidation pilot, which was approved by the Judicial Conference in March 2016 (JCUS-MAR 16, p. 8).

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Budget Committee reported that it discussed the uncertainty of the overall budget outlook and the potential short- and long-term impact on the judiciary. It also discussed the need for program committees to set funding priorities for requirements over which they have jurisdiction, as well as for requirements that fall within other committees' jurisdictions, but may benefit their program. The Committee reported that congressional outreach will be particularly important in the upcoming appropriations cycle due to membership changes in the 115th Congress on the House and Senate Appropriations Committees and their Financial Services and General Government Appropriations Subcommittees.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2016, it received 19 new written inquiries and issued 22 written advisory responses. During this period, the average response time for requests was 13 days. In addition, the Committee chair responded to 63 informal inquiries, individual Committee members responded to 178 informal inquiries, and Committee counsel responded to 824 informal inquiries, for a total of 1,065 informal inquiries. At the request of the Executive Committee, the Committee on Codes of Conduct is also reviewing its guidance prohibiting the practice of law during reserve military service duty by judges and judicial employees while actively employed by the

judiciary, in consultation with the Committees on the Judicial Branch and Judicial Resources.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

TECHNICAL SUPPORT FOR OLDER VERSIONS OF CM/ECF

The Administrative Office currently provides technical support to a large number of past and present versions of the case management/electronic case files (CM/ECF) system, which is costly and time-consuming. In order to focus on the development of the Next Generation CM/ECF system, the Administrative Office proposed limiting support to the two most recent versions of the legacy CM/ECF software for each court type (appellate, bankruptcy, and district), and the two most recent versions of the Next Generation CM/ECF software for each court type. On recommendation of the Committee on Court Administration and Case Management, and with the concurrence of the Committee on Information Technology, the Judicial Conference endorsed the proposal.

DEPARTMENT OF THE TREASURY OFFSET OF JUROR PAYMENTS

A key component of the judiciary's new financial system, the Judiciary Integrated Financial Management System (JIFMS), is that it shifts the issuance of checks for payment of juror attendance fees and reimbursable expenses (as well as for most other judiciary payments) from individual courts to the Department of the Treasury. Payments disbursed by the Department of the Treasury are subject to the Treasury Offset Program (TOP), which requires applicable federal government entities to collect delinquent debts by garnishing most federal payments. Expressing concern that applying such offsets to juror payments could impact juror representativeness and affect jurors' objectivity, the Committee recommended that the Conference oppose any administrative offset under 31 U.S.C. § 3716(c)(1)(A) to fees and reimbursements paid to federal grand and petit jurors. The Conference adopted the Committee's recommendation.

RECORDS DISPOSITION SCHEDULE FOR CIVIL CASE FILES

The retention and disposition of court case files are controlled by record disposition schedules jointly established by the Judicial Conference and the National Archives and Records Administration (NARA) (28 U.S.C. § 457). On

recommendation of the Committee on Court Administration and Case Management, the Judicial Conference approved revisions to Records Disposition Schedule 2, items A(7)(b)(4) and A(7)(b)(6), to incorporate disposition times for cases falling within seven new nature of suit codes for civil cases and authorized the revised schedule to be transmitted to NARA for concurrence.

PROPOSED JUDGMENT FUND TRANSPARENCY ACT

The proposed “Judgment Fund Transparency Act of 2016,” H.R. 1669, 114th Congress, would have amended 31 U.S.C. § 1304 to require the Treasury Department to publish information about payments from the Judgment Fund (a fund available for payment of certain judgments against the United States) on a public website. The bill provided an exception for information prohibited from disclosure “by court order,” but a proposed amendment to that bill would have removed that exception and replaced it with language barring federal courts from issuing orders that prohibit the disclosure of information under the bill unless specifically authorized by statute. Although that amendment was withdrawn, it was done with the stated intent to work on a draft of a new amendment that might similarly impact judges’ inherent authority to seal information in courts records. Concerned that such legislation would present a separation of powers issue, raise privacy concerns, and result in extensive litigation to prevent dissemination of private information, the Committee recommended that the Judicial Conference oppose any legislation restricting the federal courts’ authority to issue orders making information confidential, as appropriate, in civil litigation. The Conference adopted the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it discussed the progress of its initiative to develop and evaluate organizational cost-containment proposals for the judiciary, as well as court reactions to its guidance aimed at protecting cooperator information in criminal cases. The Committee also discussed a number of its ongoing case management initiatives, including a comprehensive review of the Committee’s efforts to provide civil case management assistance to the courts, a major revision to, and update of, the *Civil Litigation Management Manual*, and ongoing collaboration with the Committee on Rules of Practice and Procedure on the Mandatory Initial Discovery Pilot and Expedited Procedure Pilot projects.

COMMITTEE ON CRIMINAL LAW

CAREER OFFENDERS SENTENCING

The Sentencing Reform Act of 1984 directs the United States Sentencing Commission to assure that defendants 18 years and older who have been convicted of a felony that is a crime of violence or a drug trafficking offense, and who previously have been convicted of two or more such offenses, serve terms of imprisonment at or near the maximum statutory term (28 U.S.C. § 994(h) (referred to as the “career offender directive”). Following a multi-year study of the statutory and sentencing guideline definitions related to career offender status, and career offenders’ sentencing and recidivism data, the Sentencing Commission, in a report entitled “*Report to Congress: Career Offender Sentencing Enhancements*,” concluded that career offenders who have committed a violent instant offense or a violent prior offense generally recidivate at a higher rate than drug trafficking-only career offenders and are more likely to commit another violent offense in the future.

The Sentencing Commission therefore recommended that Congress amend the career offender directive to focus on those offenders who have committed at least one crime of violence. The Sentencing Commission also concluded that a single definition of the term “crime of violence” in the sentencing guidelines and other federal recidivist provisions would avoid unnecessary confusion and inefficient use of court resources, and recommended that the Sentencing Commission’s recently adopted definition of “crime of violence” in its *Guidelines Manual* be used as the basis for a new statutory definition in several statutory provisions. The Committee on Criminal Law agreed that the Commission’s proposals would promote greater consistency and fairness in sentencing and therefore recommended that the Judicial Conference support the Sentencing Commission’s proposals related to sentencing career offenders and ask Congress to –

- a. Amend 28 U.S.C. § 994(h) to require that an offender have committed a felony “crime of violence” either as the instant offense of conviction or as one of the required predicate convictions in order to more effectively differentiate between career offenders with different types of criminal records; and
- b. Adopt the definition of “crime of violence” in section 4B1.2 of the *Guidelines Manual* (effective August 1, 2016) as a basis for a new statutory definition for the term “violent felony” in the Armed Career Criminal Act

(18 U.S.C. § 924(e)), and the definitions of “crime of violence” in 18 U.S.C. § 16 and 18 U.S.C. § 924(c) in order to avoid unnecessary complexity and inefficient use of resources by litigants and the courts.

The Conference approved the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it continued its review of the FJC’s study on federal reentry court programs, and discussed other judge-involved supervision programs, including programs that operate at the pretrial and presentence stages. The Committee agreed to release a paper prepared by Administrative Office staff that summarizes the history of these kinds of programs in the states and their recent emergence in the federal courts. The Committee will continue to study this issue and will consider whether any recommendations should be submitted to the Judicial Conference.

COMMITTEE ON DEFENDER SERVICES

REIMBURSEMENT FROM ASSET FORFEITURE FUND

In March 1993, the Judicial Conference agreed to seek legislation authorizing reimbursement to the judiciary from the Department of Justice’s asset forfeiture funds for Criminal Justice Act (CJA) and other expenses incurred by the judiciary in connection with proceedings where the forfeited assets could have been used to retain counsel (JCUS-MAR 93, p. 25). At this session, after considering the current status and use of the forfeiture fund and the likelihood of success of such legislation, the Committee recommended that the Conference rescind its March 1993 position. The Conference adopted the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it received a status update on the comprehensive, impartial review of the CJA program currently being conducted by the Ad Hoc Committee to Review the Criminal Justice Act Program. The Committee was briefed on planned cybersecurity initiatives that will ensure that the Defender Services program is aligned with the judiciary’s information technology security efforts. The Committee also received an update on the status of the implementation of eVoucher as a national electronic CJA panel management and

voucher processing system and emphasized the importance of the availability of national reporting data from the eVoucher application to enable the Committee to improve the administration of the Defender Services program.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it continued its discussion of proposed legislation that would increase the number of cases that could be filed in or removed to federal courts based on diversity jurisdiction, including changes in the manner in which courts review claims that non-diverse defendants have been joined for the sole purpose of defeating diversity jurisdiction. The Committee also reviewed legislation that would affect review of administrative decisions, including proposals that would reverse judicial doctrines that currently provide deference to certain agency decisions, and has begun work on its jurisdictional improvements project to identify proposals to amend title 28 of the United States Code to improve the clarity and workability of federal jurisdiction and venue statutes. The Committee was briefed on efforts to promote cooperation between state and federal courts and was provided a presentation on the work of the State Justice Institute, which provides grants to states to improve the administration of justice.

COMMITTEE ON FINANCIAL DISCLOSURE

REGULATIONS ON ACCESS TO FINANCIAL DISCLOSURE REPORTS

Currently, if a member of the public requests release of a financial disclosure report from the judiciary, the report is provided only in paper form and a fee of \$0.20 per page is charged. In order to expedite the release of requested financial disclosure reports and reduce the cost to the judiciary and the fees charged to requesters, the Committee on Financial Disclosure recommended that the mechanism for releasing a financial disclosure report be an electronic storage device, unless otherwise requested. It also recommended that all reports released on such devices be provided at no cost to the requester. The Judicial Conference agreed and approved the following amendment to § 450.30 of its Regulations on Access to Financial Disclosure Reports (new language underlined, deleted language struck through):

Unless otherwise requested, financial disclosure reports will be provided on an electronic storage device, at no charge. If a paper copy of a report is requested, the Requesters will be charged \$0.20 per page to cover reproduction and

mailing costs. A paper copy of ~~the~~ a requested report may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest. Requests for waiver must be presented in writing to the Committee on Financial Disclosure.

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it was updated on efforts to procure and implement a new electronic financial disclosure reporting system. It also modified its filing instructions with regard to the reporting of property held in a business or trade and minimum distributions from pension plans. The Committee reported that as of December 1, 2016, it had received 4,148 financial disclosure reports and certifications for calendar year 2015 (out of a total of 4,287 required), including 1,313 annual reports and certifications from Supreme Court justices and Article III judges; 344 annual reports from bankruptcy judges; 570 annual reports from magistrate judges; 1,592 annual reports from judicial employees; and 331 reports from nominee, initial, and final filers.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed a policy requiring court units, federal public defender organizations, and the Administrative Office to conduct annual security self-assessments as a judiciary-wide evaluative tool. Results from such assessments must be reported to the circuit chief judge and the Administrative Office, among others. The Committee also endorsed transitioning from a voluntary to a mandatory independent assessment program and identified parameters under which the program would be conducted. The independent assessments will be used to provide objective insight in areas outside the scope of the self-assessments and to validate whether the self-assessment program is operating effectively. The Committee was presented with preliminary findings regarding key architectural decisions required to support the judiciary's transition to a new suite of products for desktop applications, email, and collaboration tools.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that from July 1, 2016 to December 31, 2016, it recommended, and the Chief Justice approved, 105 intercircuit assignments for 87 judges. 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 reported on implementation of the judge-sharing pilot program approved by the Judicial Conference in September 2016 (JCUS-SEP 16, p. 21).

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported that its meeting focused on three subjects: the role of government in combatting corruption and the roles of government and business in promoting the rule of law; the role judges play in countering violent extremism; and how distinctions between civil and common law affect international rule of law efforts. The Committee also reported about its involvement in rule of law and judicial reform throughout the world and on hosting foreign delegations of jurists and judicial personnel for briefings at the Administrative Office. The Committee received briefing reports about international rule of law activities from the Department of State, the Department of Justice, the United States Agency for International Development, the United States Patent and Trademark Office, the Open World Leadership Center at the Library of Congress, the Federal Judicial Center, and the Administrative Office.

COMMITTEE ON THE JUDICIAL BRANCH

JUDICIAL COMPENSATION AND BENEFITS

The Committee on the Judicial Branch recommended that the Judicial Conference rescind two legislative positions. The first was to seek legislation to extend locality pay to all judges equally at the Washington, D.C. rate (JCUS-MAR 00, p. 7). The second was to seek legislation expanding the “Rule of 80” to permit an Article III judge with 20 years of service who has reached age 60 to take senior status (JCUS-SEP 79, p. 62). The Committee noted that the underlying objectives of the

proposed legislation have been achieved through non-legislative means or are no longer consistent with judgeship needs and that the positions are unlikely to succeed. The Conference adopted the Committee's recommendation.

JUDGES' TRAVEL REGULATIONS

Noting that the business of a court may require a chief judge to travel within his or her district or circuit for purposes other than conducting a hearing or holding an authorized judicial meeting, the Committee recommended that the Conference amend the Travel Regulations for United States Justices and Judges, *Guide to Judiciary Policy*, Vol. 19, Ch. 2, § 220.30.10 to add travel by chief judges within the geographic boundaries of their courts to perform administrative or supervisory responsibilities as reimbursable travel, and to provide in § 220.10.30 that prior authorization is not required for such travel. The Committee also recommended clarifying amendments to several other provisions of the regulations. The Conference adopted the Committee's recommendations.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it participated in the fifth Judicial-Congressional Dialogue, an initiative that began in 2014 with the goal of increasing understanding between the legislative and judicial branches. The event was a reception with staff from the House and Senate Judiciary Committees, with opening remarks provided by Senator Chuck Grassley, Chairman of the Senate Judiciary Committee.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it 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), including two petitions for review of circuit judicial council orders. The Committee and its staff have continued to address inquiries regarding the Act and the Rules, and to give other assistance as needed to chief judges and circuit judicial councils.

COMMITTEE ON JUDICIAL RESOURCES

ARTICLE III JUDGESHIPS

Additional Judgeships. The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2017 biennial survey of judgeship needs. Based on its review, and after considering the views of the courts and the circuit judicial councils, the Committee recommended that the Judicial Conference request from Congress the addition of 5 permanent Article III judgeships for the courts of appeals and 52 permanent Article III judgeships and the conversion to permanent status of 8 existing temporary Article III judgeships in the district courts. The Conference adopted the Committee’s recommendations, agreeing to transmit the following request to Congress (“P” denotes permanent; “T/P” denotes conversion of temporary to permanent):

Courts of Appeals

Ninth Circuit	5P
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District Courts

Puerto Rico	1P
New York-Eastern	2P
New York-Southern	1P
New York-Western	1P
Delaware	1P
New Jersey	3P
North Carolina-Western	1T/P
Texas-Eastern	2P, 1T/P
Texas-Southern	2P
Texas-Western	4P
Indiana-Southern	1P
Minnesota	1P
Missouri-Eastern	1T/P
Arizona	1T/P
California-Northern	2P
California-Eastern	5P
California-Central	7P, 1T/P
California-Southern	3P
Idaho	1P
Nevada	1P

Colorado	1P
Kansas	1T/P
New Mexico	2P, 1T/P
Florida-Northern	1P
Florida-Middle	6P
Florida-Southern	3P, 1T/P
Georgia-Northern	1P

Judgeship Vacancies. As part of the 2017 biennial survey of judgeship needs, the Committee also reviewed workloads in appellate and district courts with consistently low per-judgeship caseloads for the purpose of determining whether to recommend to the President and Senate that an existing or future judgeship vacancy not be filled. On recommendation of the Committee, the Conference agreed to recommend to the President and the Senate not filling the next judgeship vacancy in the Court of Appeals for the Tenth Circuit and the District of Wyoming.

SAVED PAY EXCEPTION

In September 2011, the Judicial Conference eliminated the courts' saved pay policy, which provided salary protection to court employees downgraded through no fault of their own (JCUS-SEP 11, p. 28). At this session, the Committee on Judicial Resources considered a request from the chief judge of the United States Court of Appeals for the Ninth Circuit for an exception to the September 2011 action eliminating saved pay, to allow that court to correct a pay inequity by moving its appellate commissioner to a senior attorney position in saved pay status for that employee's tenure in the position, to be funded by the court. The appellate commissioner is a unique position created by the Ninth Circuit. Because it is not an official position in the Judiciary Salary Plan, the Ninth Circuit appointed the individual serving as appellate commissioner to the senior staff attorney position in the court. When another employee was later hired to perform the duties of the senior staff attorney, that individual was appointed to a position classified at a lower, non-executive grade, but which, due to pay compression, was at the same salary level as the senior staff attorney position. Recent changes to pay caps and court unit executive pay tables have created a gap between these salaries. To correct the resulting pay inequity, the court sought approval to appoint the employee performing the duties of the senior staff attorney to that position so that individual could receive the commensurate salary, and transfer the appellate commissioner to a lower-graded senior attorney position in the Court of Appeals clerk's office, in saved pay status, to be funded by the court. On recommendation of the Committee, the Conference approved the court's request.

CHAMBERS STAFF FOR CHIEF DISTRICT JUDGES

The Judicial Conference has established guidelines on the number and type of authorized staff in judges' chambers. See *Guide to Judiciary Policy*, Vol. 12, § 615.50; JCUS-SEP 91, p. 66. District judges are generally allocated three staff positions, but chief district judges in courts with five or more authorized judgeships are allocated four positions. At the request of the chief district judge for the Northern District of Florida, the Committee considered a waiver from this policy to allow chief judges in courts with four authorized judgeships, but which have been recommended by the Conference for a fifth judgeship, to have a fourth chambers position. Noting that such courts may have similar administrative burdens as courts with five authorized judgeships, and may have fewer options for distributing that burden to other colleagues due to the court's smaller size, the Committee recommended, and the Conference approved, a waiver of its chambers staffing allocation policy to allow the current chief district judges in the District of Delaware, the Northern District of Florida, and the Western District of New York, who are in courts with four authorized judgeships, but were recommended for a fifth by the Conference (*see supra*, "Article III Judgeships," pp. 16-17), to have an additional staff position, with a term to expire at the conclusion of the current chief judge's term as chief judge.

DISTRICT COURT EXECUTIVE PILOT PROGRAM

In September 1981, the Judicial Conference approved a pilot program to provide supervisory administrative assistance to chief district judges in courts with enhanced non-judicial, managerial responsibilities (JCUS-SEP 81, p. 68). A district court executive (DCE) position and an assistant DCE position were created in six courts participating in the pilot program. In September 2002, the Conference terminated the pilot program, but allowed the existing staffing allocations for the DCE and DCE assistant positions for the courts participating in the pilot program to continue (JCUS-SEP 02, p. 51). Two courts retained the DCE position and four courts requested that their respective DCE positions be converted to second type II chief deputy clerk positions. No courts still have a DCE assistant position, but two courts, the Northern District of Georgia and the Southern District of Florida, continue to receive a staffing allocation additive for a DCE assistant position. Noting that providing additives based solely on previous participation in the DCE pilot program is inconsistent with current procedures for authorizing additives, and produces inequities in funding provided to courts of similar size, the Committee on Judicial Resources recommended, and the Conference approved, amending the Conference's September 2002 action position to no longer fund staffing allocations for positions in lieu of DCE assistant positions, effective fiscal year 2018.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that, at the recommendation of its Judicial Statistics Subcommittee, it would defer consideration of a legislative proposal that would authorize the Judicial Conference to transfer vacant Article III judgeships from district courts with low per-judge caseloads to districts with heavier caseloads until two pilot projects involving the use of existing judicial resources are completed (*see* JCUS-SEP 14, p. 7; JCUS-SEP 16, p. 21). The Committee received reports on voluntary separation incentives for Judiciary Salary Plan employees, judiciary benefits, and the judiciary's background checks and investigations program. Subsequent to the meeting, the Committee chair concurred, on behalf of the Committee, on proposed policy changes regarding fitness centers submitted by the Committee on Space and Facilities.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it continued to review the strategy being developed and pursued jointly by the Administrative Office and the U.S. Marshals Service to replace and/or upgrade physical access control systems used at judiciary facilities. The Committee was also updated on the improved management of the Home Intrusion Detections Systems program for judges since a new company assumed responsibility for the program's contract in 2016. In addition, the Committee discussed security issues related to access by General Services Administration contract workers to restricted court spaces.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

RECALL REGULATIONS

In September 2003, the Judicial Conference amended its regulations governing the ad hoc and extended service recall of retired magistrate judges to require that before beginning recall, a magistrate judge who has been separated from federal judicial service for more than one year, but no more than 10 years, be subject to a name and fingerprint check by the Federal Bureau of Investigation (FBI), a tax check by the Internal Revenue Service, and a credit check, and a judge who has been

separated for more than 10 years be subject to a full-field background investigation by the FBI with a 15-year scope (JCUS-SEP 03, pp. 31-33). To address a concern raised that delays in background investigations can impede immediate short-term service, the Committee recommended, and the Conference approved, amending the regulations governing the ad hoc recall of retired magistrate judges (*Guide to Judiciary Policy*, Vol. 3, Ch. 11) to authorize the chair of the Magistrate Judges Committee to waive the required background investigation, if requested by the chief judge, for a retired magistrate judge who has been separated from federal service for less than three years and is being recalled to perform non-ceremonial duties for a short period of time.

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 Court for the District of Wyoming, and the Tenth Circuit judicial council, the Judicial Conference authorized the District of Wyoming to (a) increase the salary of the full-time magistrate judge position at Yellowstone National Park from 80 percent of the salary of a full-time magistrate judge position to 100 percent, effective April 1, 2017; and (b) increase the salary of the part-time magistrate judge position at Casper from Level 7 to Level 6, effective April 1, 2017.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), for the period between its June 2016 and December 2016 meetings, the Committee chair approved filling six full-time magistrate judge position vacancies in five courts. At its December 2016 meeting, the full Committee considered and approved requests to fill one part-time and two full-time magistrate judge position vacancies. Since its June 2016 meeting, the Committee also considered requests from 15 courts for the recall or extension of recall of 18 retired magistrate judges. The Committee approved the requests, consistent with the respective circuit judicial council's approval, with the exception of one court's request for which the Committee declined to approve clerk's office support for two magistrate judges. The Committee discussed a report from its working group on part-time magistrate judge positions and requested an analysis of the impact of suggested changes to the part-time magistrate judge pay structure.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

FEDERAL RULES OF APPELLATE PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed technical amendment to Appellate Rule 4 (Appeal as of Right-When Taken) to restore subsection 4(a)(4)(B)(iii), which had been inadvertently deleted by a 2009 amendment to Rule 4. The Conference approved the proposed amendment and agreed to transmit it 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.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Bankruptcy Rules 2002 (Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustees), 3002 (Filing Proof of Claim or Interest), 3007 (Objections to Claims), 3012 (Valuation of Security), 3015 (Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer’s Debt Adjustment or a Chapter 13 Individual’s Debt Adjustment Case), 4003 (Exemptions), 5009 (Closing Chapter 7 Liquidation, Chapter 12 Family Farmer’s Debt Adjustment, Chapter 13 Individual’s Debt Adjustment, and Chapter 15 Ancillary and Cross Border Cases), 7001 (Scope of Rules of Part VII), and 9009 (Forms), and proposed new Rule 3015.1 (Requirements for a Local Form for Plans Filed in a Chapter 13 Case). The Conference approved the new and revised rules and agreed to transmit them 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.

In addition, the Committee submitted to the Conference proposed new Bankruptcy Official Form 113 (Chapter 13 Plan). The Judicial Conference approved the new form to take effect at the same time as the above listed rules.

FEDERAL RULES OF CIVIL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference a proposed technical amendment to Civil Rule 4(m) (Summons–Time Limit for Service) that would restore a December 1, 2015 amendment to the rule, which provided as an exemption to Rule 4(m)’s time limit for service, service of a

notice under Rule 71.1(d)(3)(A) (Condemning Real or Personal Property–Process). This exemption was erroneously omitted from the December 1, 2016 amendment to Rule 4(m). The Conference approved the proposed amendment and agreed to transmit it 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 that work continues on developing and finalizing the guidelines and procedures for implementation of two pilot projects—the Expedited Procedures Pilot Project and the Mandatory Initial Discovery Pilot Project. Both pilot projects were approved by the Judicial Conference in September 2016 and are aimed at reducing the cost and delay of civil litigation (JCUS-SEP 16, p. 30). Recruitment of districts to participate in these projects continues, with a goal of recruiting districts varying by size as well as geographic location.

COMMITTEE ON SPACE AND FACILITIES

U.S. COURTS DESIGN GUIDE

Noting that portions of the *U.S. Courts Design Guide* are outdated in terms of content, format, and organization, the Committee on Space and Facilities identified a two-phase approach to reviewing and revising the *Design Guide*. During Phase I, immediate amendments would be made to the *Design Guide* to address current problems. Phase II would consist of a comprehensive review to produce an updated, modernized, reorganized, and more user friendly document.

As part of Phase I, the Committee recommended amendments in the following two areas.

Design Guide Exceptions. Over the years, the Judicial Conference has adopted a number of policies regarding exceptions to the standards and planning assumptions in the *Design Guide* (see e.g. JCUS-SEP 05, p. 39; JCUS-MAR 07, pp. 31-32). In March 2008, the Conference also adopted a list of specific exceptions that were agreed to by both the judiciary and General Services Administration (GSA), which were included as an appendix to the *Design Guide* (JCUS-MAR 08, p. 27). At this session, noting that the list of exceptions has not been updated since its adoption and does not reflect current Conference policy, the Committee recommended that the Judicial Conference eliminate the *Exceptions Appendix*. Once the appendix is eliminated, any

item not identified in the program of requirements in the *Design Guide* would be an exception and require approval. The Conference adopted the Committee's recommendation.

Physical Fitness Centers. Pursuant to 5 U.S.C. § 7901, government agencies may establish health services programs to promote and maintain the physical and mental fitness of employees. Accordingly, in September 2001, on recommendation of the Committee on Judicial Resources, the Judicial Conference approved a policy on physical fitness centers that addressed matters such as liability, safety, and space concerns, and authorized local funds to be expended to allow court staff to participate in fitness center activities (JCUS-SEP 01, p. 62). The policy was included in the *Guide to Judiciary Policy* at Vol. 12, § 750.40. Some general considerations were also included in the *Guide to Judiciary Policy* regarding space issues related to reconfiguring existing space for use as a fitness center. However, no specific building or space criteria for fitness centers were included in the *U.S. Courts Design Guide*. See, *Guide to Judiciary Policy* Vol. 16, § 260. The absence of criteria in the *Design Guide* created confusion about whether fitness centers could be included in the planning of new courthouse construction, and whether they would be considered an exception to the *Design Guide* standards. To address this situation, at this session, the Committee recommended that the Conference amend the *Design Guide* to allow courts to plan for the construction of fitness centers in new courthouse construction projects by reconfiguring space within its space envelope for use as a fitness center, including appropriate shower facilities, so long as the fitness center does not increase the total square footage of the project. The Committee also recommended amendments to the provisions on fitness centers in the *Guide to Judiciary Policy* to reflect the policy incorporated in the *Design Guide*. The Conference adopted the Committee's recommendations.

With regard to Phase II, the Committee recommended, and the Conference approved, undertaking a comprehensive review and revision of the *Design Guide* to increase clarity and ease of use, as well as to ensure the inclusion of current policies, industry standards, and best practices in the design and construction of federal courthouses.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it discussed the progress of the space reduction program, including the annual rent cost avoidance achieved to date, and will continue to track national and circuit progress and assist circuits in reaching their space reduction goals by the end of FY 2018. The Committee also reviewed the savings expected to be achieved through its Service Validation Initiative and evaluated and supported a proposed Memorandum of Agreement (MOA) between

the GSA and the judiciary that would replace a 2008 MOA and would recalculate rent for the courthouses currently covered by Return on Investment (ROI) pricing using GSA's Fair Annual Rent (FAR) appraisal-based pricing methodology. In addition, the Committee considered and approved a project in Hato Rey, Puerto Rico for participation in the Capital Security Program in FY 2018.

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