

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

September 13, 2018

The Judicial Conference of the United States convened in Washington, D.C., on September 13, 2018, 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
Chief Judge Nancy Torresen,
District of Maine

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 Christopher C. Conner,
Middle District of Pennsylvania

Fourth Circuit:

Chief Judge Roger L. Gregory
Judge Robert James 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 Thomas B. Russell,
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

* Participated by teleconference due to a weather emergency.

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 C. Stanceu

The following Judicial Conference committee chairs also attended the Conference session: Circuit Judges Michael A. Chagares, Richard R. Clifton, Debra Ann Livingston, Raymond J. Lohier, Jr., and Anthony J. Scirica; District Judges John D. Bates, Susan R. Bolton, David G. Campbell, Kathleen Cardone, Audrey G. Fleissig (incoming), David R. Herndon, Royce C. Lamberth, John W. Lungstrum, Ricardo S. Martinez, Roslynn R. Mauskopf, Donald W. Molloy, Karen E. Schreier, Richard Seeborg, Rebecca Beach Smith, * and Anthony J. Trenga; and Bankruptcy Judge Helen E. Burris. Attending as the bankruptcy judge and magistrate judge observers, respectively, were Bankruptcy Judge Catherine Peek McEwen and Magistrate Judge Candy W. Dale. Susan J. Goldberg of the First 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, Deputy Director; Sheryl L. Walter, General Counsel; Katherine H. Simon, Secretariat Officer, and WonKee Moon, Supervisory Attorney Advisor, 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 Circuit Judge William H. 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 Jeffrey P. Minear, 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. Representatives Bob Goodlatte, Darrell

* Participated by teleconference due to a weather emergency.

Issa, and Hank Johnson spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. 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 H. Pryor, Jr. reported on United States Sentencing Commission activities. Judge Anthony J. Scirica, Chair of the Committee on Judicial Conduct and Disability, and Chief Judge Rebecca Beach Smith, Chair of the Committee on Codes of Conduct, presented special reports on their committees' efforts to amend the Rules of Judicial-Conduct and Judicial-Disability Proceedings and the codes of conduct for judges and for judicial employees, respectively, to address recommendations contained in the June 1, 2018, Report of the Federal Judiciary Workplace Conduct Working Group.

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 2018:

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

HONORABLE REBECCA BEACH SMITH

Committee on Codes of Conduct

HONORABLE Wm. TERRELL HODGES

Committee on Court Administration and Case Management

HONORABLE ROYCE C. LAMBERTH

Committee on Intercircuit Assignments

HONORABLE ALLYSON KAY DUNCAN
Committee on International Judicial Relations

HONORABLE LAWRENCE F. STENGEL
Committee on Judicial Resources

HONORABLE DAVID R. HERNDON
Committee on Judicial Security

HONORABLE RICHARD SEEBORG
Committee on the Administration of the Magistrate Judges System

HONORABLE SANDRA SEGAL IKUTA
Advisory Committee on Bankruptcy Rules

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.

**SALARY OF THE PRINCIPAL SECRETARY
TO A CHIEF CIRCUIT JUDGE**

In March 2018, the Executive Committee asked the Committee on Judicial Resources to reconsider a policy adopted by the Judicial Conference in March 2012, which made the promotion to Judiciary Salary Plan (JSP) grade 12 of a principal secretary to a chief circuit judge or chief judge of the Court of International Trade temporary rather than permanent (JCUS-MAR 12, pp. 19-20). Under the 2012 policy, the secretary's salary reverts to JSP grade 11 at the expiration of the judge's tenure as a chief judge or when the secretary leaves the position, except for secretaries who had attained grade 12 prior to the date of the policy change. Before the March 2012 change, the promotion became permanent after two years (JCUS-SEP 98, p. 80; JCUS-SEP 04, p. 24). In seeking reconsideration, the Executive Committee noted concern

that salary demotion could have a negative impact on the judiciary's ability to retain experienced and high-performing judicial assistants who might choose to retire rather than suffer the demotion at the end of their careers, and also noted that the cost savings were minimal. The Judicial Resources Committee considered the Executive Committee's request at its June 2018 meeting, but reported that the vote of its Committee was tied and, therefore, the Committee did not take a position.

After communicating with the chair of the Judicial Resources Committee, the Executive Committee recommended that the Conference rescind the policy adopted in March 2012 and reinstate the policy adopted in September 1998 (as modified in September 2004) providing that the promotion from JSP grade 11 to JSP grade 12 of a principal secretary to a chief circuit judge or chief judge of the Court of International Trade becomes permanent after two years. In so doing, the Executive Committee reiterated its initial concern about losing experienced staff, and noted further that the March 2012 policy results in inequities because it creates two classes of principal secretaries: those who happened to be working for a chief circuit judge in 2012 who can retain their increased salary, and those whose judges became chief circuit judges after the 2012 policy was adopted. The Conference adopted the Executive Committee's recommendation.

AD HOC COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT PROGRAM

The Executive Committee continued its consideration of the report and recommendations of the Ad Hoc Committee to Review the Criminal Justice Act Program (Cardone Committee). The Cardone Committee was created by Chief Justice John G. Roberts, Jr., in April 2015 to conduct a comprehensive and impartial review of the administration and operation of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and submitted its final report and recommendations to the Judicial Conference in November 2017. In February 2017, in anticipation of receipt of the report, the Executive Committee determined that all Conference committees whose jurisdictions were implicated by recommendations in the report would be provided an opportunity to comment, and that the Executive Committee would coordinate the presentation of those comments to the Judicial Conference. At its February 2018 meeting, the Executive Committee created a subcommittee to facilitate the Committee's consideration of the Cardone Committee recommendations that fell within the Executive Committee's primary jurisdiction and to recommend a process for coordinating the presentation of the views of the involved Conference committees to the Judicial Conference.

Coordination of Committee Views for Presentation to the Judicial Conference.

The Cardone Committee's report recommended the establishment of an independent Federal Defender Commission within the judicial branch, but outside the oversight of the Judicial Conference, with sole authority to set policy and practices related to the provision of federal defense. Recognizing that the creation of an independent commission would require an act of Congress and could not be implemented immediately, the Cardone Committee made 35 interim recommendations designed to give the defender services program more autonomy within the current structure. To ensure adequate time for a thorough review, the Executive Committee asked impacted committees to focus on the 35 interim recommendations for the September 2018 Judicial Conference session and defer consideration of the report's final recommendations regarding structural independence until a later Conference session.

At its August 2018 meeting, after reviewing the reports of the relevant committees on the interim recommendations, and considering the recommendations of its subcommittee, the Executive Committee determined to place on the Conference calendar for the September 2018 session only those interim recommendations on which there appeared to be consensus among the impacted committees and to defer for future consideration interim recommendations where additional deliberation was needed. For some interim recommendations, modifications had been suggested by another committee. Following its August 2018 meeting, after receiving further feedback from the committees, particularly with regard to proposed modifications, the Executive Committee determined to place on the Conference calendar for the September 2018 session interim recommendations 11, 15, 17-23, 25, and 28-34, as recommended by the Cardone Committee, and modified versions of interim recommendations 8 and 14, as recommended by the Defender Services Committee. It deferred for further deliberation interim recommendations 7, 9, 10, 12-13, 16, 24, 26-27, and 35, and any corresponding modifications proposed by other committees and the alternative recommendation proposed by the Committees on Defender Services and the Judicial Branch for interim recommendations 5 and 6. For ease of reference, the Committee also approved providing the Conference with a supplement to the report which compiles the views of all Conference committees commenting on the report in one document. As discussed below, the Executive Committee or the AO Director considered all or portions of recommendations 1, 2, 3, 4, 5, and 6.

Recommendations Within the Executive Committee's Jurisdiction. Interim recommendations 1, 2, and 3 fall within the jurisdiction of the Executive Committee. After considering the views of the affected committees, the Executive Committee considered and took the following actions with regard to the recommendations.

Interim Recommendation 1: The Defender Services Committee should have:

- a. Exclusive control over defender office staffing and compensation.
- b. The ability to request assistance of Judicial Resources Committee staff on work measurement formulas.
- c. Control over development and governance of eVoucher in order to collect data and better manage the CJA program.
- d. Management of the eVoucher program and the interface with the payment system.
- e. Exclusive control over the spending plan for the defender services program.

Interim Recommendations 1(a) and 1(b). The Executive Committee approved changes to the jurisdictional statements of the Committees on Defender Services and Judicial Resources in response to interim recommendation 1(a), which asked that exclusive control over defender office staffing and compensation be given to the Defender Services Committee. The Executive Committee agreed to transfer jurisdiction over defender office compensation, including classification and qualification standards, to the Committee on Defender Services, recognizing that committee's expertise and experience with the needs of the defender services program in these areas. However, it decided that the Committee on Judicial Resources should retain primary jurisdiction over defender office staffing formula development and requirements for personnel, recognizing that committee's expertise and experience with staffing formula development and requirements. In addition to the revisions made to the jurisdictional statements, the Executive Committee requested that the Administrative Office develop a written protocol that will provide the defender services program with the ability to allocate additional resources quickly to federal offices in response to changing needs such as new laws or prosecutorial initiatives that are beyond their control. The Executive Committee's decision to leave jurisdiction over staffing formula development with the Committee on Judicial Resources rendered interim recommendation 1(b) moot, as it was contingent on transfer of such jurisdiction to the Committee on Defender Services.

Interim Recommendations 1(c) and 1(d). Interim recommendations 1(c) and 1(d) request that control over development, governance and management of eVoucher be vested with the Defender Services Committee. The Executive Committee agreed to revise the jurisdictional statement of the Committee on Defender Services to give it primary jurisdiction over the eVoucher program and officially recognize its role in overseeing policy development for the program.

Interim Recommendation 1(e). The Executive Committee deferred consideration of interim recommendation 1(e), which asks that the Defender Services

Committee be given exclusive control of the defender services spending plan. This decision is consistent with the Committee on Defender Services' view that the recommendation fundamentally relates to the independence of the defense function and is better suited for discussion when the Conference considers the Cardone Committee report's final recommendation regarding structural independence.

Interim Recommendation 2: For any period during which the Administrative Office and Judicial Conference continue to have authority over the budget for the CJA program, when either the Budget or Executive Committee disagree with the budget request by the Defender Services Committee, the matter should be placed on the discussion calendar of the full Judicial Conference.

The Defender Services Committee recommended the following modification to interim recommendation 2:

For any period during which the Administrative Office and Judicial Conference continue to have authority over the budget for the CJA program, when the Budget Committee disagrees with the Defender Services Committee's budget request, at the request of the Defender Services Committee, the matter should be placed on the Executive Committee agenda.

The Executive Committee declined to adopt interim recommendation 2, noting that the Conference has delegated to the Executive Committee the authority to prepare and determine the consent and discussion calendars for Conference sessions. Pursuant to the procedures established by the Executive Committee for moving an item to the discussion calendar (set forth in *The Judicial Conference and Its Committees*, pp. 8-9), committee chairs, when filing their reports, may suggest to the Executive Committee that items be placed on the discussion calendar, and any judge or committee member may ask any Conference member to move an item from the consent to the discussion calendar. Adequate mechanisms are therefore already available for a chair to suggest that an item be placed on the discussion calendar, and the automatic placement of any item on the discussion calendar would effect a substantial change to current Conference procedure.

The Executive Committee similarly declined to adopt the Defender Services Committee's proposed modification to interim recommendation 2, noting that Judicial Conference procedures provide that chairs have "final approval over inclusion of items within the committee's jurisdiction on committee agendas, except that matters referred by the Chief Justice, the Conference, or the Executive Committee must be included." *The Judicial Conference and Its Committees*, p. 7. This proposed change

would bestow greater advantage and power upon one committee than is granted to other Conference committees. The Executive Committee also noted that Conference committees currently can request that an item be placed on the Executive Committee's agenda and such requests are given due consideration.

Interim Recommendation 3: The composition of the Defender Services Committee should include the co-chairs of the Defender Services Advisory Group, both as voting members.

Requests for changes to committee composition and membership typically emerge as a result of the Executive Committee's five-year review of Judicial Conference committees' jurisdiction and structure, which asks committees to provide input regarding committee composition. Noting that the Defender Services Committee plans to include its views on interim recommendation 3 in its pending response to the five-year review survey, the Executive Committee deferred consideration of this recommendation until receipt of that response.

Interim Recommendations within the Director's Jurisdiction. The Director of the Administrative Office (AO) reported on his consideration of interim recommendations 4, 5, and 6, which fall within his authority.¹ Those recommendations provide as follows:

Interim Recommendation 4: The Defender Services Office (DSO) must be restored to a level of independence and authority at least equal to what it possessed prior to the reorganization of the AO. In particular, DSO should be empowered to:

- a. Exclusively control hiring and staffing within DSO.
- b. Operate independently from the AO Department of Program Services or any other department that serves the courts.
- c. Retain exclusive control with the National Information Technology Operations and Application Development Branch (NITOAD) over defender IT programs.
- d. Retain ultimate discretion with DSC in setting the agenda for DSC meetings — no requirement of approval from other AO offices.

¹ Portions of interim recommendations 1(c) and 1(d) also implicate the AO Director's authority as they relate to the organization of the AO. The AO Director is still considering those aspects of 1(c) and 1(d). (See *supra*, pp. 8-9).

Interim Recommendation 5: DSO should be made a member of the AO Legislative Council to consult on federal legislation.

Interim Recommendation 6: Representatives from DSO should be involved in the Congressional appropriations process.

The AO Director informed the Executive Committee that, after considering the views of relevant Conference committees and AO staff, he had determined in response to interim recommendation 4 to make DSO an independent office within the AO outside the Department of Program Services reporting to the AO Director and Deputy Director.² He also made DSO a member of the AO Legislative Council in response to interim recommendations 5 and 6.³

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved final fiscal year (FY) 2018 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts.
- Denied, on behalf of the Judicial Conference on an expedited basis, a request for an exception to Judicial Conference policy on foreign depositions and section 220.30.10(d) of the Travel Regulations for Justices and Judges, *Guide to Judiciary Policy*, Vol. 19, Ch. 2, that would have allowed reimbursement of travel expenses for a judge from the Central District of California to travel to Israel and the Republic of Georgia to preside over depositions of witnesses in a criminal case.
- Approved, on behalf of the Judicial Conference on an expedited basis, imposing quarterly fees in chapter 11 cases filed in bankruptcy administrator districts in the amounts specified in 28 U.S.C. § 1930(a)(6)(B) for cases filed on or after October 1, 2018 for any fiscal year in which the U.S. Trustee

² The Director is still considering aspects of interim recommendation 4 as they relate to Defender IT programs.

³ The Committees on Defender Services and the Judicial Branch recommended an alternative recommendation to interim recommendations 5 and 6 for consideration by the Conference, as opposed to the AO Director, which the Executive Committee deferred for further consideration, as noted above.

Program exercises its authority under that statute, and pursuant to any future extensions of that or similar authority.

- Provided feedback to the Committee on Judicial Conduct and Disability and the Committee on Codes of Conduct on proposed amendments to the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the codes of conduct for judges and for judicial employees, respectively, to address recommendations contained in the June 1, 2018, Report of the Federal Judiciary Workplace Conduct Working Group.
- Approved interim FY 2019 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 Accountability reported that it was briefed on the results of audits of court units, federal public defender organizations, community defender organization grantees, and bankruptcy trustees in bankruptcy administrator districts. The Committee also considered those interim recommendations of the report of the Ad Hoc Committee to Review the Criminal Justice Act Program that implicate its jurisdiction.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

CONTINUING NEED FOR BANKRUPTCY JUDGESHIPS

In accordance with 28 U.S.C. § 152(b)(3), the Judicial Conference conducts a comprehensive review of all judicial districts every other year to assess the continuing need for authorized bankruptcy judgeships. By December 31 of each even-numbered year, the Conference reports to Congress its findings and any recommendations for the elimination of an authorized bankruptcy judgeship that can be eliminated when a

vacancy exists by reason of resignation, retirement, removal, or death. On recommendation of the Bankruptcy Committee, which relied on the results of the 2018 continuing needs survey, the Conference agreed to take the following actions:

- a. Recommend to Congress that no existing bankruptcy judgeship be statutorily eliminated; and
- b. Advise the appropriate circuit judicial councils to consider not filling vacancies that currently exist or may occur because of resignation, retirement, removal, or death, until there is a demonstrated need to do so in the following districts: Alaska, South Dakota, Iowa-Northern, California-Northern, Maine, Oklahoma-Northern, Oregon, California-Central, New York-Western, Iowa-Southern, Ohio-Southern, Illinois-Central, California-Eastern, Oklahoma-Western, Ohio-Northern, California-Southern, Virginia-Western, Michigan-Western, Washington-Western, Pennsylvania-Eastern, and Texas-Western.

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 the following requests with regard to bankruptcy judge official duty stations and places of holding court:

- a. A request from the Third Circuit Judicial Council to designate Wilmington as the official bankruptcy judge duty station for the two new temporary judgeships in the District of Delaware.
- b. A request from the Sixth Circuit Judicial Council to designate Flint as the official bankruptcy judge duty station for the new bankruptcy judgeship in the Eastern District of Michigan.
- c. A request from the Seventh Circuit Judicial Council to redesignate the official bankruptcy judge duty station in the Central District of Illinois from Urbana to Rock Island, and designate Urbana as a place of holding court.

RECALL REGULATIONS

On recommendation of the Committee, the Judicial Conference adopted revisions to the ad hoc and extended service bankruptcy judge recall regulations regarding the authorization of chambers staff for recalled judges. The revisions

- (a) specify the caseload standards for authorizing staff for a recalled bankruptcy judge;
- (b) make it clear that a circuit judicial council and the Committee may authorize a greater or lesser number of chambers staff for a recalled judge than provided in the caseload standards after consideration of all relevant factors (but no more than two full-time chambers staff per recalled bankruptcy judge); and
- (c) require that the Committee authorize chambers staff annually for recall appointments that are longer than a year and one day (extended service recall regulations only).

BANKRUPTCY JUDGESHIP VACANCY PILOT PROJECT

In September 2014, the Judicial Conference approved a pilot project that would allow a long-standing bankruptcy judgeship vacancy to be filled and the judge lent through an intercircuit assignment and an agreement between participating circuits to a district that had an emergency need for an additional bankruptcy judgeship. JCUS-SEP 14, p. 7. The pilot was to involve lending no more than two bankruptcy judges and the Federal Judicial Center (FJC) was asked to conduct a study to determine the efficacy of the pilot. Noting the positive feedback received by the Committee so far about the pilot and that the FJC study would benefit from additional courts participating, the Committee recommended that the Conference approve expanding the pilot to allow up to five long-standing vacancies to be filled and the judge lent to a district that has an emergency need for an additional judgeship through the use of an intercircuit assignment designation and an agreement between participating circuits. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System reported that it received an update on efforts to revise the application and disclosure statement for bankruptcy judge nominees to address concerns raised by chief circuit judges and circuit executives. The Committee was briefed by FJC staff on the progress of the FJC's study of bankruptcy judge time usage to aid development of new case weights. It also received a briefing on the work of a task force created at its December 2017 meeting to explore possible recommendations to improve the judiciary's management of unclaimed funds attributable to bankruptcy cases. In addition, the Committee received an update on the horizontal consolidation pilot that was approved by the Judicial Conference in March 2016 (JCUS-MAR 16, p. 8) and the two pairs of courts participating in the pilot.

COMMITTEE ON THE BUDGET

FISCAL YEAR 2020 BUDGET REQUEST

After considering the budget requests of the program committees, the Budget Committee recommended to the Judicial Conference a fiscal year 2020 budget request of \$7,204.7 million in discretionary appropriations, which is 3.2 percent above assumed discretionary appropriations for fiscal year 2019, but \$28.8 million below the funding levels requested by the program committees. The Judicial Conference approved the Budget Committee’s fiscal year 2020 budget request, subject to amendments necessary as a result of (a) new legislation, (b) actions of the Judicial Conference, or (c) any other reason the Executive Committee considers necessary and appropriate.

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the status of the fiscal year 2019 appropriations cycle, the continued importance of congressional outreach, and the status of various cost-containment initiatives. The Committee concurred with the Committee on the Administration of the Bankruptcy System that the Bankruptcy Administrator program should continue to exist as a judiciary responsibility. In addition, the Committee declined to make a recommendation on a request from the U.S. Court of Appeals for the Seventh Circuit and the District Court for the Northern District of Illinois that the Judicial Conference seek funding to demolish vacant properties adjacent to the Everett McKinley Dirksen U.S. Courthouse in Chicago, Illinois, noting that the committees with jurisdiction over judiciary space and security issues did not recommend seeking demolition funding from Congress. (See *infra*, pp. 30-31, 36-37, “Security at the Everett McKinley Dirksen U.S. Courthouse.”) The Committee also considered those interim recommendations of the report of the Ad Hoc Committee to Review the Criminal Justice Act Program that implicate its jurisdiction.

COMMITTEE ON CODES OF CONDUCT

CERTIFICATES OF DIVESTITURE REGULATIONS

The Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, Div. A, § 418, amending 26 U.S.C. (I.R.C.) § 1043 (2000), permits judges (and certain of their

relatives and trustees) who divest property in order to comply with conflict of interest requirements to elect to postpone the tax recognition of resulting capital gains by investing in qualified replacement property within a 60-day period. To qualify for the tax deferral, judges must first obtain a certificate of divestiture from the Judicial Conference or its designee. Judicial Conference regulations permit the Committee to issue a certificate of divestiture in certain situations involving a judge's proposed preemptive divestiture of an asset that may cause a conflict in future cases. See *Guide to Judiciary Policy*, Vol. 2, Pt. C, Ch. 2, § 220(b)(2). At this session, on recommendation of the Committee on Codes of Conduct, the Judicial Conference approved amendments to the certificates of divestiture regulations to provide a more objective standard for evaluating requests for a preemptive certificate of divestiture.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2018, the Committee received 23 new written inquiries and issued 20 written advisory responses. During this period, the average response time for requests was 16 days. In addition, the Committee chair responded to 73 informal inquiries, individual Committee members responded to 149 informal inquiries, and Committee counsel responded to 439 informal inquiries, for a total of 661 informal inquiries. In response to the recommendations of the June 1, 2018, Report of the Federal Judiciary Workplace Conduct Working Group, the Committee also drafted proposed amendments to the Code of Conduct for United States Judges and the Code of Conduct for Judicial Employees.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

RECORDS MANAGEMENT

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) (44 U.S.C. chapter 21; 28 U.S.C. § 457). At this session, the Committee on Court Administration and Case Management recommended several sets of amendments to these records schedules, as set forth below.

Electronic Case Files. The judiciary's records schedules currently apply only to paper files, rendering electronic case files unscheduled and ineligible for either transfer to NARA as permanent records or destruction as temporary records. The Committee recommended that the Conference amend Records Disposition Schedules 1 and 2 to apply the existing permanent and temporary designations used for paper case files to electronic case files, but to assign a 50-year rather than 15-year retention period prior to ultimate disposition. The longer retention period is based on the expressed preference of clerks of court for maintaining electronic case files for as long as possible, and the relative ease and modest cost of storing electronic, as opposed to paper, files. The Conference approved the Committee's recommendation and authorized the revised schedules to be transmitted to NARA for its concurrence.

Administrative Records. Noting that the judiciary's current records schedules do not provide uniform guidance applicable to all judiciary entities for the disposition of administrative records and also do not address fully all the records that courts and federal defender organizations (FDOs) create as part of their day-to-day operations, the Committee recommended that the administrative records schedule from NARA's General Records Schedule be incorporated into the judiciary's Records Disposition Schedules 1, 2, and 3. This would reduce the number of schedules that courts and FDOs would have to consult. The Conference approved the Committee's recommendation and authorized the revised schedules to be transmitted to NARA for its concurrence.

Retention Periods. The Committee recommended revisions to Records Disposition Schedules 1 and 2 to include a 25-year retention period (consistent with guidance from NARA) for some permanent records that do not currently have one, and to specify that electronic recordings (which may contain multiple hearings with different retention periods) should be retained for the longest period prescribed for the cases or proceedings included on the recording. The Conference approved the Committee's recommended revisions and authorized the revised schedules to be transmitted to NARA for its concurrence.

BANKRUPTCY JUDGE QUARTERLY REPORTING OF MATTERS UNDER ADVISEMENT

In 1985, the Judicial Conference approved a policy that required circuit executives to collect reports from district, bankruptcy, and magistrate judges on cases and motions held under advisement for more than 60 days, and to submit quarterly reports on these matters to the circuit judicial council, chief judges of the district

courts, district court executives, and the Administrative Office (JCUS-MAR 85, pp. 11-12). The Civil Justice Reform Act of 1990 (CJRA) later established similar reporting requirements for district and magistrate judges that required semiannual instead of quarterly reporting. In 1991, the Conference substituted the CJRA semiannual reporting requirements for its quarterly reporting requirements for district and magistrate judges, but not for bankruptcy judges because the CJRA did not apply to them (JCUS-SEP 91, pp. 45-46). Noting that synchronizing reporting requirements for bankruptcy judges with those for district and magistrate judges would create a more efficient and uniform reporting system, the Committee on Court Administration and Case Management, in consultation with the Committee on the Administration of the Bankruptcy System, recommended that the Conference amend its March 1985 policy requiring circuit executives to collect quarterly those matters held under advisement by bankruptcy judges for more than 60 days, to require the semiannual collection of reports, beginning with the semiannual period ending March 31, 2019. The Conference approved the Committee's recommendation.

PLACES OF HOLDING COURT

At the request of the Western District of Washington, and on recommendation of the Committee on Court Administration and Case Management, the Judicial Conference agreed to seek legislation to amend 28 U.S.C. § 128(b) to add Mount Vernon, Washington, as a place of holding court in the Western District of Washington. The district sought this change so that it could relocate its monthly Central Violations Bureau proceedings to Mount Vernon, which is closer to the vast majority of defendants, witnesses, agents, and attorneys involved in those proceedings.

COMMITTEE ACTIVITIES

The Court Administration and Case Management Committee reported that it considered its cost-containment subcommittee's efforts to develop and evaluate alternative organizational models that have the potential to reduce administrative costs, and unanimously endorsed the subcommittee's first report, titled "Vertical Consolidation of District and Bankruptcy Clerks' Offices: Commentary and Analysis." The Committee also discussed its ongoing efforts to limit dissemination of certain case information related to criminal defendants' cooperation with the government. It was apprised of the work of the Administrative Office's Task Force on Protecting Cooperators, which is evaluating potential solutions for addressing the problem. In addition, following a discussion of the current policy for measuring juror

utilization, the Committee asked its jury subcommittee to evaluate a proposal to measure juror utilization by encouraging judges to keep the size of a jury panel below certain benchmarks.

COMMITTEE ON CRIMINAL LAW

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that the Bureau of Prisons and the Committee have agreed to form an inter-agency working group to ensure effective communication and sharing of information on areas of mutual interest. The Committee was also briefed on the work of the AO's Task Force on Protecting Cooperators and on efforts to develop a replacement system for the Probation and Pretrial Services Automated Case Tracking System (PACTS). The Committee considered those interim recommendations of the report of the Ad Hoc Committee to Review the Criminal Justice Act Program that implicate its jurisdiction.

COMMITTEE ON DEFENDER SERVICES

AD HOC COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT PROGRAM

The Committee on Defender Services considered the report of the Ad Hoc Committee to Review the Criminal Justice Act Program and recommended to the Judicial Conference modifications or an alternative to interim recommendations 2, 5, 6, 8, 9, 14, 16, 27, and 35. As discussed *supra*, "Ad Hoc Committee to Review the Criminal Justice Act Program," pp. 6-11, the Executive Committee declined to adopt the proposed modifications to interim recommendation 2, and deferred consideration of proposed modifications to interim recommendations 9, 16, 27, and 35, as well the alternative recommendation proposed in lieu of interim recommendations 5 and 6. As discussed more fully *infra*, pp. 38-42, the Judicial Conference adopted the Defender Services Committee's modifications to interim recommendations 8 and 14.

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it met with Deputy Attorney General Rod J. Rosenstein during its June 2018 meeting and discussed issues

of mutual interest, including Department of Justice policies and practices that have a significant impact on defender services program costs. Support was expressed for establishing a joint task force on southwest border issues composed of representatives from the courts, relevant executive branch agencies, and the defender community to address issues relating to the surge in criminal immigration cases. The Committee reaffirmed its commitment to diversity within the defender program and added a strategic initiative in support of the *Strategic Plan for the Federal Judiciary* to increase diversity among federal defender organization attorneys and staff as well as among CJA panel attorneys. The Committee also approved revised litigation support strategies to reflect the current legal practice and the needs of the defender services program in the area of electronic discovery.

COMMITTEE ON FEDERAL-STATE JURISDICTION

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported on its continued discussion of proposals for inclusion in the Committee's ongoing jurisdictional improvements project, including proposals to address the practice of snap removal. Upon review of the judiciary-wide priorities of the *Strategic Plan for the Federal Judiciary*, the Committee also decided to expand one of its strategic initiatives to include efforts to study or address issues of racial fairness, implicit bias, and diversity. Recognizing that state courts have developed approaches to these issues that would be of interest and value to the federal courts, the Committee determined that it would begin a conversation with the state courts and identify opportunities for information sharing and cooperation. In addition, the Committee discussed its ongoing project with the Federal Judicial Center to update the 1997 *Manual for Cooperation Between State and Federal Courts*.

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 and that it provided input pertaining to the development of software for the system. In addition, the Committee approved clarifying amendments to the judiciary's financial disclosure regulations. As of May 7, 2018, the Committee had received 4,222

financial disclosure reports and certifications for calendar year 2016 (out of a total of 4,244 required to file), including 1,259 annual reports from Supreme Court justices and Article III judges; 338 annual reports from bankruptcy judges; 581 annual reports from magistrate judges; 1,555 annual reports from judicial employees; and 489 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 2019 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 endorsed a national policy on traveling internationally with electronic devices. It also endorsed discontinuing central funding for WordPress beginning in fiscal year 2020 with the AO to provide an appropriate contractual vehicle for courts wishing to continue purchasing WordPress licenses using local funds. In addition, it established a September 2019 deadline for courts to sign up for nationally provided hosting services after which time implementation costs would need to be paid for with local funds. To help ensure timely completion of email migration from Lotus Notes to Microsoft Outlook, the Committee determined that once a court has selected a migration timeframe, it needs to proceed within the allotted time or risk being moved to the end of the queue. The Committee considered those interim recommendations of the report of the Ad Hoc Committee to Review the Criminal Justice Act Program that implicate its jurisdiction.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 120 intercircuit assignments were undertaken by 98 Article III judges from January 1, 2018, to June 30, 2018. 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 two proposed intercircuit assignments of bankruptcy judges and one of a magistrate judge.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its international rule of law work in Europe and Eurasia, the Near East, East Asia and the Pacific, South and Central Asia, and the Western Hemisphere. The Committee received oral and written reports from the Department of State, the Department of Justice, the United States Agency for International Development, the United States Patent and Trademark Office, the Library of Congress' Open World Leadership Center, the Federal Judicial Center, and the Administrative Office, including its Defender Services Office. The Department of the Treasury's Financial Crimes Enforcement Network and the University of South Carolina's Rule of Law Collaborative provided substantive briefings relevant to the Committee's work.

COMMITTEE ON THE JUDICIAL BRANCH

AD HOC COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT PROGRAM

The Committee on the Judicial Branch considered the report of the Ad Hoc Committee to Review the Criminal Justice Act Program and recommended to the Judicial Conference modifications or an alternative to interim recommendations 5, 6, and 35. As discussed *supra*, "Ad Hoc Committee to Review the Criminal Justice Act

Program,” pp. 6-11, the Executive Committee deferred consideration of the alternative recommendation proposed in lieu of interim recommendations 5 and 6 as well as the proposed modifications to interim recommendation 35.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it participated in the eighth Judicial-Congressional Dialogue, an initiative that began in 2014 with the goal of increasing understanding between the legislative and judicial branches. The event was held May 9, 2018, in the Rayburn House Office Building and featured remarks by Dean William M. Treanor, Georgetown University Law Center, regarding the origins of judicial review at the time of the drafting of the Constitution. The Committee received a visit from Senator Orrin Hatch (R-UT) who spoke about his years in the Senate with a focus on his time as a member (and former chairman) of the Senate Judiciary Committee and heard a presentation from Judges Robin Rosenberg and Beth Bloom of the Southern District of Florida on their work on a national civics initiative for high school and college students to teach civility and decision-making in the context of jury deliberations.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that in response to the recommendations of the June 1, 2018, Report of the Federal Judiciary Workplace Conduct Working Group, the Committee drafted proposed amendments to its Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules). In addition, the Committee discussed and considered complaint-related matters under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364 (Act), and the Rules. The Committee and its staff have 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

PRO SE AND DEATH PENALTY LAW CLERK SUPERVISORY POSITIONS

The Committee on Judicial Resources has received requests from courts to establish a supervisory pro se law clerk position at the Judiciary Salary Plan (JSP) grade 15, to reflect the duties currently being performed by pro se law clerks in some districts. At its December 2015 meeting, the Committee asked the Administrative Office to analyze supervisory pro se law clerk and death penalty law clerk positions as part of the impending pro se law clerk and death penalty law clerk work measurement studies. Based on the duties identified, which included assigning work among the law clerks, training new hires, editing work product, and general office management, the Administrative Office developed a Lead Pro Se/Death Penalty Law Clerk position description at the JSP-14 grade. The Administrative Office determined that the position could not be classified at the JSP-15 grade because, although the duties included managing the work of other pro se and death penalty law clerks, they did not include requisite supervisory responsibilities, such as completing performance appraisals and approving leave requests. Pursuant to Judicial Conference policy, the chief judge of each district appoints and supervises pro se law clerks, and may only delegate this authority to another judge or to the clerk of court. JCUS-SEP 94, p. 48; JCUS-SEP 95, p. 90. On recommendation of the Committee on Judicial Resources, the Judicial Conference approved the Lead Pro Se/Death Penalty Law Clerk position description at the JSP-14 grade.

COURT REPORTER STAFFING FORMULA

In September 2017, the Judicial Conference adopted the first staffing formula for court reporters. The formula provides a credit of 1,569.6 hours per active, onboard Article III judge in a district court who elects to have proceedings recorded by a stenotype or stenomask method; a credit of 1,569.6 hours per senior Article III judge in a district court who is certified for a court reporter by his or her respective circuit judicial council and elects to have proceedings recorded by a stenotype or stenomask method; a credit of 1,569.6 hours per 650 aggregate in-court hours for senior Article III judges not certified for a court reporter by their respective circuit judicial council; and a two-year, phase-in period (through September 30, 2019) for courts where onboard staff exceeds formula results (JCUS-SEP 17, p. 18; JCUS-MAR 18, pp. 20-21). At its June 2018 meeting, the Committee on Judicial Resources considered proposed modifications to the number of aggregate in-court hours needed for a non-

certified senior judge to earn credit for court reporter staffing under the formula, and the establishment of a process for authorizing court reporter positions pursuant to 28 U.S.C. § 753(a) that would provide individual courts with the flexibility to hire court reporters above the number of positions allocated pursuant to the staffing formula, when needed.

Court Reporter Staffing Credit for Senior Judges Not Certified for a Court Reporter. The standard of 650 in-court hours as a basis for allocating court reporters for non-certified senior judges was adopted in March 1996 (JCUS-MAR 96, pp. 24-25) and was not reexamined in the work measurement study conducted prior to adoption of the staffing formula in September 2017. However, it was understood by the Committee that this standard would be reviewed at a later date. The Administrative Office conducted a review and proposed that the 650 in-court hours standard in the court reporter staffing formula be replaced with a standard based on the average number of in-court hours per year for active, Article III judges, to correlate more accurately with the amount of time judges spend in court. Using fiscal year 2017 data, the average number of in-court hours per year for an active Article III judge is 290. Upon recommendation of the Committee, the Conference approved this change. The formula, as amended, provides a credit of court reporter hours for senior Article III judges not certified for a court reporter by determining the average number of in-court hours per year for an active Article III judge, dividing the aggregate annual in-court hours reported by non-certified senior judges in the district by that average, and then multiplying the quotient by 1,569.6.

Process for Authorizing Court Reporter Positions. During the development of the initial court reporter staffing formula, the Committee anticipated that individual courts would have the flexibility to hire above their formula allocations, if needed, using local resources. However, it was subsequently determined that 28 U.S.C. §753(a) only permits courts to hire court reporters within the staffing levels authorized by the Judicial Conference. To provide courts with the flexibility to make staffing and resource decisions that best suit their individual needs, the Judicial Resources Committee recommended that the Conference authorize courts to hire a higher number of court reporters than the staffing formula would provide, but allocate court reporters based on the staffing formula. Courts could use decentralized funds to hire up to the authorized number if they determine that additional reporters were needed. The Conference approved the Committee's recommendation, and adopted the following process for authorizing and allocating court reporter positions pursuant to 28 U.S.C. § 753(a):

- (1) The number of court reporters authorized by the Judicial Conference in a district may not exceed the total of the number of authorized Article III judgeships, the number of senior judges certified for a court reporter, and for uncertified senior judges, the number of court reporters calculated by multiplying the quotient derived in the court reporter staffing formula by 1,763.04.
- (2) The number of court reporters allocated to a district will be determined by the Judicial Conference-approved staffing formula for court reporters.
- (3) Local courts will have the discretion to fund court reporters from decentralized local funds above the funding allocation if the number onboard does not exceed the Judicial Conference authorized total for the district as derived in (1).
- (4) If a court would like to exceed the Judicial Conference authorized total, the court must use the options available in 28 U.S.C. § 753, or request an exception from the Judicial Resources Committee and Judicial Conference.

DISTRICT CLERKS' OFFICES STAFFING FORMULA

On recommendation of the Committee on Judicial Resources, the Judicial Conference adopted a new district clerks' offices staffing formula to be applied starting in fiscal year 2019, which provides 6,525.64 full-time equivalent (FTE) positions based on statistical year 2017 workload data. The new formula includes three new modules to provide credit for work performed for naturalization ceremonies, CJA panel management, and electronic court recorder operator support; new workload drivers for appeals to circuits and organizational support for unpaid volunteers; and a single factor for prisoner and non-prisoner pro se case filings. The new formula also includes one FTE constant and a variable factor per district to provide needed information technology security support.

DEFENDER SERVICES NATIONAL POSITIONS

To address the staffing needs of the Defender Services National Information Technology Operations and Application Development Branch (NITOAD), both to support current operations and to meet the requirements of new judiciary-wide

cybersecurity initiatives, the Committee on Judicial Resources, at the request of the Committee on Defender Services, recommended that the Judicial Conference (a) include three new information technology position descriptions in the Defender Organization Classification System (an information technology security manager, information technology security specialist, and information technology training specialist); and (b) approve six additional FTE positions (one information technology security manager, two information technology security specialists, two operations administrators, and one information technology training specialist) for NITOAD, to be considered for inclusion in the judiciary's fiscal year 2020 budget request. The Judicial Conference approved the Committee's recommendations.

CHAMBERS PARALEGAL POSITION

The Committee on Judicial Resources was asked to consider whether term law clerks who have reached the four-year limit on employment in a term law clerk position (see JCUS-SEP 07, p. 26) should be allowed to assume a chambers paralegal position. The chambers paralegal position was established by the Judicial Conference in March 2015 to give judges greater flexibility in meeting their chambers' administrative and legal needs. JCUS-MAR 15, p. 20. A judge may substitute a paralegal for a secretary in many circumstances and the position may be occupied by a person with a law degree. The September 2007 Conference policy limiting term law clerks to four-year terms was adopted to continue the practice of appointing recent law school graduates as law clerks, reduce disparity in costs among chambers, promote diversity, and allow more young lawyers to experience service in the federal judiciary. In March 2011, the Conference reaffirmed that goal by providing that courts were not permitted to switch a term law clerk with a career law clerk or with incumbents of other attorney positions in order to prolong the term clerk's employment (the career law clerk would be returned to the permanent position at the end of a designated period). At this session, the Committee determined that former term law clerks should be allowed to accept a paralegal position, but expressed concern that the individual might continue to perform traditional law clerk duties at lower pay, creating equity issues. The Committee therefore recommended that the Judicial Conference affirm that former term law clerks can be hired to fill chambers paralegal positions, but clarify that a chambers paralegal should primarily perform only those duties outlined in the chambers paralegal position description. The Conference adopted the Committee's recommendation.

CHAMBERS CENTRALLY FUNDED TEMPORARY REPLACEMENTS

In September 2007, the Judicial Conference adopted a policy that limits judges to one FTE career law clerk per chambers and provides that any part-time career law clerk whose hours are subsequently increased, exceeding the one FTE limit, will revert to a term designation at that time. JCUS-SEP 07, p. 26; *Guide to Judiciary Policy*, Vol. 12, Ch. 6, § 615.50(h)(2). The Committee was asked to consider the impact of this limitation on a court that wishes to increase the hours of one of its part-time career law clerks to temporarily replace another part-time career law clerk in the same chambers who is on extended leave for reasons set forth in the *Guide*, Vol. 12, Ch. 6, § 615.50.10(a). That section authorizes central funding to temporarily replace chambers staff who are on extended leave due to (1) illness of the staff member; (2) maternity or paternity reasons (up to 20 weeks); (3) care for a family member with a serious health condition (up to 24 weeks); (4) active military duty; or (5) emergency situations or extraordinary circumstances. JCUS-SEP 87, p. 77; JCUS-MAR 04, pp. 20-21; JCUS-SEP 05, p. 30. The Committee recommended that the Judicial Conference revise the September 2007 policy to allow a part-time career law clerk to temporarily increase his or her hours without causing that career law clerk to revert to term status when replacing another part-time career law clerk in that chambers on extended leave for reasons described in the *Guide*, Vol. 12, § 615.50.10(a). The increased hours would be provided through an additional temporary appointment and continue to be funded at the same rate that would be available for a temporary law clerk, i.e., JSP-13 or lower if the one JSP-14 position per chambers is filled. The Conference approved the Committee's recommendation.

CLASSIFICATION OF SUPERVISORY AND MANAGERIAL POSITIONS

Generally, supervisors and managers (second level or higher supervisors) are classified from one level above the highest-level position they supervise to one level below the target grade of the chief deputy. *Guide to Judiciary Policy*, Vol. 12, Ch. 6, § 615.40.20 (j)(2). However, an exception to that policy allows supervisory and managerial positions to be filled at the same classification level as those supervised provided that the positions were established and advertised as having promotion potential to the higher level and the sole reason for filling the position at the lower level was due to the selectee's lack of qualifications for the higher classification level. *Guide*, Vol. 12, Ch. 6, § 615.40.20 (j)(2)(B). The Committee noted that this policy may have been developed at a time when recruitment practices were less robust, and jobs were hard to fill. Having determined that this is no longer the case, and that the practice is inconsistent with sound recruitment principles, the Committee

recommended that the Conference rescind the exception set forth in the *Guide*, Vol. 12, Ch. 6, § 615.40.20 (j)(2)(B), so that Court Personnel System supervisory and managerial positions are required to be classified from one level above the highest level supervised to one level below the target grade of the chief deputy in all cases, with only qualified individuals selected to fill such vacancies. The Conference adopted the Committee's recommendation.

EXCEPTION TO COURT PERSONNEL SYSTEM QUALIFICATIONS

In September 1997, the Judicial Conference approved a policy permitting courts that already had delegated authority with regard to certain Court Personnel System (CPS) actions to also make exceptions to CPS qualification standards (except for minimum educational requirements for professional line positions) on a case-by-case basis (a) for CPS positions subject to recruitment difficulties as evidenced by high turnover, lack of qualified applicants, etc., and (b) for CPS positions for which the applicant has legal, paralegal, or graduate education directly related to the position to be filled. JCUS-SEP 97, p. 76. Noting that there are presently no recruitment difficulties that would necessitate the use of the policy, no standards or criteria for granting exceptions, and that the use of such exceptions creates inequities in qualification requirements for positions, the Committee recommended that the Judicial Conference rescind the delegation set forth in *Guide to Judiciary Policy*, Vol. 12, Ch. 5, § 580.40.20 (a)(2), so that courts may no longer make exceptions to the CPS qualifications standards. The Conference approved the Committee's recommendation.

MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN

In January 2018, the Director of the Administrative Office established the Federal Judiciary Workplace Conduct Working Group (Working Group) to examine the sufficiency of the safeguards currently in place within the judiciary to protect court employees from wrongful conduct in the workplace. On June 1, 2018, the Working Group submitted its report, which includes recommendations to the Judicial Conference and its committees. While the Committee on Judicial Resources is continuing its consideration of the Working Group's recommendations, at this session, it addressed two recommendations for changes to the *Model Employment Dispute Resolution Plan* to: (a) cover all individuals in the judiciary, including paid and unpaid interns and externs and (b) extend the time for initiating an Employment Dispute Resolution complaint from 30 to 180 days. Noting that including interns and externs is consistent with human resources industry best practices, and that providing 180 days to file a

complaint is consistent with the time frame applicable to private sector employees under federal antidiscrimination laws, the Committee recommended, and the Conference adopted, the proposed changes.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it submitted to the Committee on the Budget a FY 2020 budget request for programs under the Judicial Resources Committee’s jurisdiction that is equivalent to a 2.3 percent increase over FY 2019 assumed obligations and would result in 12,059 FTE positions for court staff under its jurisdiction. The Committee also considered the interim recommendations of the report of the Ad Hoc Committee to Review the Criminal Justice Act Program that implicate its jurisdiction.

COMMITTEE ON JUDICIAL SECURITY

SECURITY AT THE EVERETT MCKINLEY DIRKSEN U.S. COURTHOUSE

The General Services Administration currently owns properties (the State Street properties) adjacent to the Everett McKinley Dirksen U.S. Courthouse (Dirksen Courthouse) but has been unable to find federal tenants to occupy the buildings. It intends to sell the properties to the City of Chicago, which in turn intends to sell them to a private developer for construction of approximately 490 residential micro-apartments. The U.S. Court of Appeals for the Seventh Circuit and the District Court for the Northern District of Illinois, which both occupy space in the Dirksen Courthouse, have stated that the proposed construction would create significant and unacceptable security risks to the Dirksen Courthouse and its occupants. They have asked that the Conference seek legislation to fund demolishing the State Street properties; endorse making the demolition a priority security project for the judiciary; and oppose the General Services Administration’s planned development of the properties. The Committees on the Budget and Space and Facilities also considered the courts’ request. The Committee declined to recommend seeking funding for the demolition, but recommended that the Judicial Conference oppose the sale and proposed redevelopment of the State Street properties, based on articulated security concerns that this redevelopment would pose. The Committee on Space and Facilities joined in this recommendation, see *infra* “Security at the Everett McKinley Dirksen

U.S. Courthouse,” pp. 36-37. See also *supra* “Committee Activities,” p. 15. The Conference adopted the recommendation.

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it approved, via mail ballot following its June 2018 meeting, an Eleventh Circuit request for funding to construct a security pavilion at the C. Clyde Atkins U.S. Courthouse in Miami, Florida, and forwarded its decision to the Committee on Space and Facilities for its consideration (see *infra*, “Security Pavilion,” p. 37). The Committee also recommended that the Committee on Space and Facilities approve two locations for Capital Security Program studies: 1) Burlington, Vermont; and 2) Hattiesburg, Mississippi. See also *infra* “Committee Activities,” p. 38. In addition, the Committee discussed the information technology security policy for international travelers and reaffirmed its preference for a mandatory national policy and the importance of ensuring that loaner devices for judiciary travelers are compatible with current technology and applications.

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 an additional magistrate judge position at Wilmington in the District of Delaware; (b) authorize two additional magistrate judge positions in the District of New Jersey, one at Newark or Camden or Trenton and one at Trenton or Camden; (c) redesignate a magistrate judge position at Philadelphia in the Eastern District of Pennsylvania as Philadelphia or Reading; (d) authorize the filling of the magistrate judge position vacancy at Pittsburgh in the Western District of Pennsylvania; (e) authorize an additional magistrate judge position at Austin in the Western District of Texas; and (f) authorize two additional magistrate judge positions in the Northern District of Illinois, one each at Rockford and Chicago.

ACCELERATED FUNDING

On recommendation of the Committee on the Administration of the Magistrate Judges System, the Judicial Conference agreed to designate the new magistrate judge positions in the District of Delaware at Wilmington, the District of New Jersey at Newark or Camden or Trenton and Trenton or Camden, the Western District of Texas at Austin, and the Northern District of Illinois at Rockford and Chicago for accelerated funding effective April 1, 2019, subject to available funding.

DIRECTOR’S REGULATIONS GOVERNING THE REIMBURSEMENT OF EXPENSES FOR PART-TIME MAGISTRATE JUDGES

On recommendation of the Committee, the Judicial Conference amended the Director’s Regulations Governing the Reimbursement of Expenses for Part-Time Magistrate Judges to substitute a five-level chart for the current eight-level chart that sets forth reimbursable staff hours for part-time magistrate judges (*Guide to Judiciary Policy*, Vol. 3, Ch. 13, § 1320). This change reflects the adoption by the Conference of the new five-level salary structure for those judges (JCUS-SEP 17, pp. 19-20). Also on the Committee’s recommendation, the Conference made a minor non-substantive change to § 1320 and agreed to delegate to the Committee authority to make non-substantive, technical, and conforming changes to these regulations in the future.

COMMITTEE ACTIVITIES

The Committee reported that it considered seven cyclical district-wide magistrate judge utilization reviews prepared by the Administrative Office and determined not to recommend any changes in the magistrate judge positions in those district courts. Pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), for the period between its December 2017 and June 2018 meetings, the Committee, through its chair, approved filling 20 full-time magistrate judge position vacancies in 16 district courts. At its June 2018 meeting, the full Committee approved a request from one court to fill a magistrate judge position vacancy. The Committee also considered requests from 13 courts for the recall, extension of recall, approval of staff, or extension of staff, for 17 retired magistrate judges. At its meeting, the Committee voted to approve all but two requests consistent with the respective circuit judicial council’s approval, and it approved one of those two requests upon reconsideration after its meeting. In

addition, the Committee established a minimum time period of one year before a district may request review of a part-time magistrate judge position salary after it is approved by the Judicial Conference.

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 3 (Appeal as of Right—How Taken), 5 (Appeal by Permission), 13 (Appeals from the Tax Court), 21 (Writs of Mandamus and Prohibition, and Other Extraordinary Writs), 25 (Filing and Service), 26 (Computing and Extending Time), 26.1 (Corporate Disclosure Statement), 28 (Briefs), 32 (Form of Briefs, Appendices, and Other Papers), and 39 (Costs), 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 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements), 6007 (Abandonment or Disposition of Property), 9036 (Notice by Electronic Transmission), and 9037 (Privacy Protections for Filings Made with the Court), 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, converting Director's Forms 4011A and 4011B to Bankruptcy Official Forms 411A (General Power of Attorney) and 411B (Special Power of Attorney), effective December 1, 2018, 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 CRIMINAL PROCEDURE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed new Criminal Rule 16.1 (Pretrial Discovery Conference; Request for Court Action), and proposed amendments to Rule 5 (The Answer and the Reply) of the Rules Governing Section 2254 Cases in the United States District Courts and the Rules Governing Section 2255 Proceedings for the United States District Courts, together with committee notes explaining their purpose and intent. The Judicial Conference approved the proposed new rule and 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 EVIDENCE

The Committee on Rules of Practice and Procedure submitted to the Judicial Conference proposed amendments to Evidence Rule 807 (Residual Exception), 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.

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that the Advisory Committee on Bankruptcy Rules formed a subcommittee to explore whether to restyle the Federal Rules of Bankruptcy Procedure. The project would be similar to the restyling projects that produced comprehensive amendments to the Federal Rules of Appellate Procedure in 1998, the Federal Rules of Criminal Procedure in 2002, the Federal Rules of Civil Procedure in 2005, and the Federal Rules of Evidence in 2011.

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. 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 08, p. 26).

At this session, the Committee on Space and Facilities recommended a FY 2020 *CPP* for consideration by the Judicial Conference. As all projects on Part I of the FY 2019 *CPP* were fully funded in the Consolidated Appropriations Act of 2018, the Committee recommended carrying forward the four projects on Part II of the FY 2019 *CPP*: Chattanooga, Tennessee; Hato Rey, Puerto Rico; McAllen, Texas; and Norfolk, Virginia. In addition, after considering feasibility studies conducted by the General Services Administration, the Committee recommended adding two new projects: Hartford, Connecticut, and Greensboro/Winston-Salem, North Carolina. Basing priority order on urgency evaluation scores, the Committee recommended, and the Judicial Conference agreed to adopt, a FY 2020 *CPP* as set forth below.

- a. Part I: (1) Hartford, Connecticut; and (2) Chattanooga, Tennessee; and
- b. Part II: (1) Greensboro/Winston-Salem, North Carolina; (2) Hato Rey, Puerto Rico; (3) McAllen, Texas; and (4) 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 08, p. 26). After considering the space, security, and building needs at the courthouses in Rochester, New York, and Macon, Georgia, the Committee on Space and Facilities recommended that the Judicial Conference request that the GSA perform feasibility studies for both courthouses. The Conference adopted the Committee's recommendation.

JUDICIARY SPACE REDUCTION PROGRAM

No Net New Policy. In September 2013, the Judicial Conference adopted several policies to reduce the judiciary's space footprint, including a No Net New policy that provides that any increase in square footage within a circuit needs to be

offset by an equivalent reduction in square footage identified within the same fiscal year (JCUS-SEP 13, p. 32; JCUS-SEP 14, p. 29). Since adoption of this policy, the Committee on Space and Facilities has evaluated requests from circuits for funding to support space reduction projects. On recommendation of the Committee on Space and Facilities, the Conference agreed to adopt a set of No Net New business rules to govern future project funding requests. These rules will provide local courts, circuits, the Administrative Office, and the Committee with a set of standards regarding the types of projects that are eligible for funding, evaluation criteria, and information required for each request. The Conference also agreed to delegate to the Committee the authority to amend the business rules.

Allocation of Transferred GSA Space to Circuit Space Banks. A second space reduction policy adopted in September 2013 established a judiciary-wide three percent space reduction target to be met by the close of fiscal year 2018, prorated among the circuits based on the square footage occupied by each, subject to certain conditions and exclusions (JCUS-SEP 13, p. 32). To encourage circuits to release space as soon as practicable, the Conference also adopted a policy allowing a circuit to “bank” space released in excess of its prorated space reduction target for use in fiscal years beyond 2018 to offset acquisition of new space in compliance with the No Net New policy (JCUS-MAR 16, pp. 24-25). In calculating each circuit’s space reduction goal, the Committee excluded 76,598 square feet of vacant space located in buildings leased from GSA pursuant to a Return-on-Investment (ROI) pricing agreement because under that agreement, such space could not be removed from the judiciary’s rent bill until GSA was able to find another tenant to take over rent payments. In 2016, this agreement was discontinued, resulting in the transfer of the vacant space to GSA on October 1, 2017. Since that space was not part of the original space reduction calculation, at its June 2018 meeting, the Committee considered a methodology for allocating the released ROI space to the circuits’ space banks for use in compliance with the No Net New policy in the future. On recommendation of the Committee, the Judicial Conference reallocated the 76,598 usable square feet of vacant ROI space to the circuit space banks by recalculating the original space reduction goals to include ROI space, and then crediting the vacant space to the circuits’ space banks based on the original proration methodology.

**SECURITY AT THE EVERETT MCKINLEY DIRKSEN
U.S. COURTHOUSE**

The Committee on Space and Facilities joined in the recommendation of the Committee on Judicial Security to oppose the sale and proposed redevelopment of the properties owned by the General Services Administration adjacent to the Everett

McKinley Dirksen U.S. Courthouse, based on articulated security concerns that this redevelopment would pose. The Conference approved the recommendation as more fully explained, *supra*, “Security at the Everett McKinley Dirksen U.S. Courthouse,” pp. 30-31. See also *supra*, “Committee Activities,” p. 15.

SECURITY PAVILION

Requests for security pavilions are considered Component B projects under the Circuit Rent Budget program and require review by the Committee on Judicial Security and then approval by the Committee on Space and Facilities and the Judicial Conference (JCUS-MAR 13, pp. 23-24). The Eleventh Circuit Judicial Council, on behalf of the Southern District of Florida, requested funding to construct a security pavilion at the C. Clyde Atkins U.S. Courthouse in Miami, Florida. In consultation with the Committee on Judicial Security, see *supra*, “Committee Activities,” p. 31, the Committee on Space and Facilities recommended the approval of Component B funding in fiscal year 2019 for constructing a security pavilion at the C. Clyde Atkins U.S. Courthouse in Miami, Florida. The Conference approved the Committee’s recommendation.

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

A special proceedings courtroom is considered an exception to the *U.S. Courts Design Guide* if (a) it is provided at a location other than the district headquarters; (b) there are fewer than four district judge courtrooms (even at a headquarters location); or (c) more than one such courtroom is provided in a facility (JCUS-MAR 08, p. 28). The Eleventh Circuit Judicial Council, on behalf of the Southern District of Florida, requested an exception to the *Design Guide* to include a special proceedings courtroom in the program of requirements for a new courthouse construction project in Fort Lauderdale, which is not a headquarters location. The Circuit Judicial Council noted that the court in Fort Lauderdale has a large and complex caseload and regularly holds special proceedings in courtrooms that are inadequate in size and condition, creating administrative burdens and security hazards. On recommendation of the Committee on Space and Facilities, the Conference approved an exception to the *U.S. Courts Design Guide* to include a special proceedings courtroom in the program of requirements for a new courthouse construction project in Fort Lauderdale, Florida.

COMMITTEE ACTIVITIES

The Committee reported that it discussed the progress of the judiciary’s space reduction program, including the annual rent cost avoidance achieved to date, noting that the judiciary exceeded its national three percent space reduction goal six months ahead of the deadline. In addition, the Committee was informed of efforts undertaken by the Committee on Court Administration and Case Management, at the request of this Committee, to help develop objective criteria by which this Committee can evaluate requests for replacement of non-resident facilities. The Committee was also updated on the progress that the *U.S. Courts Design Guide* Working Group has made on the comprehensive update and revision of the *Design Guide*, which is anticipated to be completed in 2020. The Committee, in consultation with the Committee on Judicial Security, approved Burlington, Vermont, and Hattiesburg, Mississippi, for Capital Security Program studies in FY 2018 (see *supra*, “Committee Activities,” p. 31).

AD HOC COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT PROGRAM

REPORT AND RECOMMENDATIONS

In April 2015, the Chief Justice created the Ad Hoc Committee to Review the Criminal Justice Act Program (Cardone Committee) to conduct a comprehensive and impartial review of the administration and operation of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A. In November 2017, the Cardone Committee submitted its report and recommendations to the Judicial Conference. The Cardone Committee recommended the establishment of an independent Federal Defender Commission within the judicial branch, but outside the oversight of the Judicial Conference, with sole authority to set policy and practices related to the provision of federal defense. Recognizing that the creation of an independent commission would require an act of Congress and could not be implemented immediately, the Cardone Committee made 35 interim recommendations designed to give the defender services program more autonomy within the current structure.

The Executive Committee referred the report to the Committees on Audits and Administrative Office Accountability, the Budget, Criminal Law, Defender Services, Information Technology, the Judicial Branch, and Judicial Resources to review and provide their views on the 35 interim recommendations for consideration at the Conference’s September 2018 session, with consideration of the Cardone Committee’s

final recommendation regarding structural independence to be deferred to a future Conference session to ensure adequate time for a thorough review. The Executive Committee and the Director of the Administrative Office also reviewed those interim recommendations that fell within their respective jurisdictions.

As discussed more fully *supra*, “Ad Hoc Committee to Review the Criminal Justice Act Program,” pp. 6-11, after consideration of the final report of the Cardone Committee and the views of relevant committees on the report, the Executive Committee placed interim recommendations 11, 15, 17-23, 25, and 28-34 on the calendar for Conference consideration at this session, as recommended by the Cardone Committee, and modified versions of 8 and 14, as recommended by the Defender Services Committee. As also discussed *supra*, pp. 6-11, the Executive Committee and the Director took action on several recommendations within their respective jurisdictions and the Executive Committee deferred the remainder for further consideration.

The Judicial Conference approved the following interim recommendations of the Cardone Committee without modification:

Interim Recommendation 11: A federal public or community defender should be established in every district which has 200 or more appointments each year. If a district does not have a sufficient number of cases, then a defender office adjacent to the district should be considered for co-designation to provide representation in that district.

Interim Recommendation 15: Every district should form a committee or designate a CJA supervisory or administrative attorney or a defender office, to manage the selection, appointment, retention, and removal of panel attorneys. The process must incorporate judicial input into panel administration.

Interim Recommendation 17: The Defender Services Office (DSO) should regularly update and disseminate best practices.

Interim Recommendation 18: DSO should compile and share best practices for recruiting, interviewing, and hiring staff, as well as the selection of panel members, to assist in creating a diversified workforce.

Interim Recommendation 19: All districts must develop, regularly review and update, and adhere to a CJA plan as per Judicial Conference policy. Reference should be made to the most recent model plan and best practices. The plan should include:

- a. Provision for appointing CJA panel attorneys to a sufficient number of cases per year so that these attorneys remain proficient in criminal defense work.
- b. A training requirement to be appointed to and then remain on the panel.
- c. A mentoring program to increase the pool of qualified candidates.

Interim Recommendation 20: The Federal Judicial Center (FJC) and DSO should provide training for judges and CJA panel attorneys concerning the need for experts, investigators and other service providers.

Interim Recommendation 21: FJC and DSO should provide increased and more hands-on training for CJA attorneys, defenders, and judges on e-discovery. The training should be mandatory for private attorneys who wish to be appointed to and then remain on a CJA panel.

Interim Recommendation 22: While judges retain the authority to approve all vouchers, FJC should provide training to them and their administrative staff on defense best practices, electronic discovery needs, and other relevant issues.

Interim Recommendation 23: Criminal e-Discovery: A Pocket Guide for Judges, which explains how judges can assist in managing e-discovery should be provided to every federal judge.

Interim Recommendation 25: Circuit courts should encourage the establishment of Capital Habeas Units (CHUs) where they do not already exist and make Federal Death Penalty Resource Counsel and other resources as well as training opportunities more widely available to attorneys who take these cases.

Interim Recommendation 28: Modify work measurement formulas to:

- a. Dedicate funding — that does not diminish funding otherwise available for capital representation — to create mentorship programs to increase the number of counsel qualified to provide representation in direct capital and habeas cases.
- b. Reflect the considerable resources capital or habeas cases require for federal defender offices without CHUs.
- c. Fund CHUs to handle a greater percentage of their jurisdictions' capital habeas cases.

Interim Recommendation 29: FJC should provide additional judicial training on:

- a. The requirements of § 2254 and § 2255 appeals, the need to generate extra-record information, and the role of experts, investigators, and mitigation specialists.
- b. Best practices on the funding of mitigation, investigation, and expert services in death-eligible cases at the earliest possible moment, allowing for the presentation of mitigating information to the Attorney General.

Interim Recommendation 30: Adequately fund and staff the National Information Technology Operations and Applications Development Branch to control and protect defender IT client information, operations, contracts, and management.

Interim Recommendation 31: Increase staff and funding for the National Litigation Support Team, as well as increased funding for contracts for Coordinating Discovery Attorneys to be made available throughout the United States.

Interim Recommendation 32: Create new litigation support position(s) in each district or at the circuit level, as needed, to assist panel attorneys with discovery, evaluation of forensic evidence and other aspects of litigation.

Interim Recommendation 33: Develop a national policy requiring the use of qualified interpreters whenever necessary to ensure defendants' understanding of the process.

Interim Recommendation 34: Amend 18 U.S.C. § 4285 to permit courts to order payment of costs in the limited circumstances where the defendant is unable to bear the costs and the court finds that the interests of justice would be served by paying necessary expenses.

In addition, the Judicial Conference considered modifications to interim recommendations 8 and 14, recommended by the Committee on Defender Services. The Cardone Committee did not oppose substituting these modifications for the original recommendations. The Judicial Conference approved the modified recommendations as set forth below, with changes to the Cardone Committee's original recommendation in redline (additions underlined, deletions struck through):

Interim Recommendation 8: ~~To provide consistency and discourage inappropriate voucher cutting, the~~ The Cardone Committee has identified a number of problems relating to voucher cutting. The Judicial Conference should:

- a. Adopt the following standard for voucher review—
~~vouchers should be considered presumptively reasonable, and~~ vouchers cuts should be limited to mathematical errors, instances in which work billed was not compensable, was not undertaken or completed, and instances in which the hours billed are clearly in excess of what was reasonably required to complete the task.
- b. Provide, in consultation with the Defender Services Committee, comprehensive guidance concerning what constitutes a compensable service under the CJA.

Interim Recommendation 14: Modify the work measurement formulas, or otherwise provide funding, to:

- ~~a. Reflect the staff needed for defender offices to provide more training for defenders and panel attorneys, and~~
- ~~b. Support defender offices in hiring attorneys directly out of law school or in their first years of practice, so that the offices may draw from a more diverse pool of candidates.~~

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