

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

**March 12, 2019**

The Judicial Conference of the United States convened in Washington, D.C., on March 12, 2019, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Jeffrey R. Howard  
Judge 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.

Seventh Circuit:

Chief Judge Diane P. Wood  
Judge Rebecca R. Pallmeyer,  
Northern 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 Rosanna Malouf Peterson,  
Eastern District of Washington

Tenth Circuit:

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

Eleventh Circuit:

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

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Sharon Prost

Court of International Trade:

Chief Judge Timothy Stanceu

The following Judicial Conference committee chairs also attended the Conference session: Circuit Judges Michael A. Chagares, Richard R. Clifton, Ralph R. Erickson, Thomas M. Hardiman, Debra Ann Livingston, Raymond J. Lohier, Jr., David W. McKeague, and Anthony J. Scirica; District Judges John D. Bates, Susan R. Bolton, David G. Campbell, Audrey G. Fleissig, Nancy Freudenthal, Nicholas G. Garaufis, John W. Lungstrum, Ricardo S. Martinez, Roslynn R. Mauskopf, Donald W. Molloy, Karen E. Schreier, Rodney W. Sippel, Sidney H. Stein, and Anthony J. Trenga; and Bankruptcy Judges Helen E. Burris and Dennis Dow. Attending as the bankruptcy judge and magistrate judge observers, respectively, were Bankruptcy Judge Catherine Peek McEwen and Magistrate Judge Candy W. Dale. Collins Fitzpatrick of the Seventh 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; David Best, Legislative Affairs Officer; Cordia A. Strom, former Legislative Affairs Officer; David A. Sellers, Public Affairs Officer, and Jill B. Langley, Judicial Integrity Officer. John S. Cooke, Director, and Clara J. Altman, Deputy Director, Federal Judicial Center, and Judge Charles R. Breyer, Commissioner, 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.

Solicitor General Noel John Francisco addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Representatives Doug Collins, Hank Johnson, and Martha Roby 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. Mr. Cooke spoke to the Conference about Federal Judicial Center programs and Judge Breyer reported on United States Sentencing Commission activities. Judge Susan R. Bolton, Chair of the Committee on Space and Facilities, presented a special report on the achievement of the judiciary's three percent national space reduction target and continuing space reduction initiatives.

## **ELECTION**

The Judicial Conference elected to the Board of the Federal Judicial Center, for a term of four years, Judge Nancy Freudenthal, United States District Court for the District of Wyoming, and Judge Raymond Alvin Jackson, United States District Court for the Eastern District of Virginia, to succeed Judge Curtis Lynn Collier, United States District Court for the Eastern District of Tennessee, and Judge Kimberly J. Mueller, United States District Court for the Eastern District of California.

## **EXECUTIVE COMMITTEE**

### **JUDICIARY ROOM ACT**

The Executive Committee was asked by the Committee on Codes of Conduct and the Committee on the Judicial Branch to act on an expedited basis on behalf of the Judicial Conference to oppose section 201 and section 203, respectively, of H.R. 6755, the "Judiciary Reforms, Organization and Operational Modernization (ROOM) Act of 2018." The ROOM Act was passed by the U.S. House of Representatives Committee on the Judiciary in September 2018 and there was potential for imminent action by the full chamber before the end of the 115<sup>th</sup> Congress. The Committee on Codes of Conduct recommended that the Conference oppose section 201 of the Judiciary ROOM Act, or similar legislation, to the extent it requires the Judicial Conference to establish a code of conduct for each justice and judge of the United States, because it is inappropriate for the Judicial Conference to design or administer such a code for justices and redundant to authorize such a code for judges. The Committee on the Judicial Branch recommended that the Conference oppose section 203 of the Act, or similar legislation requiring Article III judges to undergo medical examinations whose results are required to be disclosed, because it would undermine judicial self-governance (particularly with respect to existing health and wellness efforts),

discourage service by senior judges, and undermine existing law addressing judicial disability. By email ballot, the Executive Committee approved the committees' recommendations.

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## **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. The Cardone Committee's report recommended the establishment of an independent 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.

At its February 2018 meeting, the Executive Committee created a subcommittee to coordinate the presentation to the Judicial Conference of the views of Conference committees implicated by the report's recommendations. The subcommittee was also charged with facilitating the Committee's consideration of the recommendations that fell within its own primary jurisdiction. To ensure adequate time for a thorough review, the Executive Committee later asked relevant Conference committees to focus on the 35 interim recommendations for the September 2018 Judicial Conference session and defer consideration of the reports' final recommendation regarding structural independence until a later Conference session.

At its August 2018 meeting, after reviewing the reports of the relevant committees concerning the Cardone Committee's 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. It therefore placed on the Conference

calendar for the September 2018 session 19 of the 35 interim recommendations, including certain recommendations for which modifications had been suggested by another committee, all of which the Conference approved (JCUS-SEP 18, pp. 38-42). The Executive Committee and the Director of the Administrative Office (AO) also took action on several interim recommendations within their respective jurisdictions and the Executive Committee deferred the remainder (JCUS-SEP 18, pp. 6-11).

At its February 2019 meeting, the Executive Committee continued its consideration of the Cardone Committee's recommendations:

Coordination of Committee Views on the Remaining Interim Recommendations for Presentation to the Judicial Conference. At its February 2019 meeting, the Executive Committee determined to continue to follow the approach it had established in August 2018 with respect to presentation of the remaining Cardone Committee interim recommendations to the March 2019 session of the Judicial Conference. After reviewing the reports of the relevant committees, and considering the recommendations of its subcommittee, the Executive Committee placed the recommendations of the Defender Services Committee addressing interim recommendations 7, 9, 12, 13, 16, 24, 26, and 27 that were agreed upon by the relevant committees, as well as the joint recommendation of the Judicial Branch and Defender Services Committees addressing interim recommendations 5 and 6, on the calendar for the March 2019 session (see *infra*, pp. 18-20). On the recommendation of the Defender Services Committee, the Executive Committee deferred consideration of interim recommendation 35 until the Conference considers the Cardone Committee's final recommendation to create an independent defender commission.

Recommendations Within the Executive Committee's Jurisdiction. Interim recommendation 3 recommends that the co-chairs of the AO's Defender Services Advisory Group serve as ex officio voting members of the Committee on Defender Services. While the Chief Justice retains all appointment authority for Conference committees, 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. Noting that the Defender Services Committee planned to include its views on interim recommendation 3 in its pending response to the five-year review survey, the Executive Committee at its August 2018 meeting deferred consideration of this recommendation until receipt of that response. At its February 2019 meeting, the Executive Committee reviewed the Defender Services Committee's response to the survey, in which the Defender Services Committee stated its support for interim recommendation 3, and sought the inclusion of the co-chairs of the Defender Services Advisory Group as voting members of the

Committee. The Executive Committee determined not to make any recommendation on the request, as the decision rests solely within the Chief Justice's discretion.

Recommendations Within the Director's Jurisdiction. The Director of the AO reported on his consideration of the two remaining interim recommendations within his authority.<sup>1</sup> In response to interim recommendation 4(c), recommending that the AO's Defender Services Office (DSO) retain exclusive control with the National Information Technology Operations and Application Development Branch (NITOAD) over defender IT programs, the Director reported that he had returned to DSO two of its former staff positions supporting defender IT programs that had been reassigned to the AO's Case Management Systems Office (CMSO) when DSO was moved under the Department of Program Services in 2013. The Director also reported that the Memoranda of Understanding governing the relationship among DSO, CMSO, and NITOAD (which assigns CMSO operational oversight of NITOAD) will be reevaluated in light of DSO's new status as an independent office within the AO and the ongoing need to ensure efficiency, confidentiality, and security of defender IT operations, but that the current relationship between NITOAD and the AO will retain its existing structure during this review.

In response to interim recommendation 1(d), recommending that management of the e-Voucher program be transferred to DSO from CMSO, the Director determined that AO staff working on day-to-day support of the e-Voucher program should remain in CMSO because of e-Voucher's interaction with the judiciary's broader payment system and its unique interrelationship with non-DSO stakeholders (including judges and clerks' offices) in addition to defenders and CJA panel attorneys.

Other Matters. In response to concerns expressed in the Cardone Committee's report about the need for flexibility to allocate resources quickly to defender offices (including national positions) to respond to increased work resulting from new laws, prosecutorial initiatives, or Supreme Court rulings, the Executive Committee at its September 2018 meeting requested that the AO develop a written protocol to provide the defender services program with such flexibility. At its March 2019 meeting, the Executive Committee approved a strategy proposed by the AO to reallocate surplus resources in the fiscal year 2019 final financial plan to fund additional positions for the defender services program in fiscal year 2019 if caseload demands. It also expressed its support for the potential creation of a staffing reserve in the Defender Services appropriation account to provide the defender services program with staffing

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<sup>1</sup> In September 2018, the Director reported, among other things, that he had determined in response to interim recommendation 4 to make the AO's Defender Services Office an independent office within the AO outside the Department of Program Services, reporting to the AO Director and Deputy Director (JCUS-SEP 18, pp. 10-11).

flexibility in years when surplus funding is unavailable or insufficient. The creation of a staffing reserve would need to be part of the judiciary's budget request to Congress.

With respect to the Cardone Committee's final recommendation for the establishment of an independent defender commission, the Executive Committee determined that it would not be possible for the Conference to consider the final recommendation at its September 2019 session given the Defender Services Committee's interest in studying alternative organizational models to this commission before the Conference considers the final recommendation.

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## MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved final fiscal year (FY) 2019 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts.
- Approved an adjustment to the FY 2020 budget request to reflect changes in the FY 2019 and FY 2020 funding assumptions.
- Agreed with the determination of the Judicial Branch Committee that an inflationary adjustment to judges' maximum daily travel subsistence allowance should be allowed to go into effect, but that an inflationary adjustment to the maximum reimbursement for the actual cost of meals was not warranted at this time (*see Guide to Judiciary Policy*, Vol. 19, Ch. 2, § 250.20.20(b)(1) and § 250.20.30).
- Approved, on behalf of the Judicial Conference on an expedited basis, a request from the Committee on the Administration of the Bankruptcy System on behalf of the Ninth Circuit Judicial Council to designate Everett, and remove Marysville, as a place of holding court in the Western District of Washington.
- Approved costs related to the Ninth Circuit's 2020 judicial conference, pursuant to § 230(a)(2) of the Judicial Conference regulations on meeting planning and administration, *Guide to Judiciary Policy*, Vol. 24, Ch. 2.

- Reviewed the determinations of Conference committees as to whether the judiciary should pursue in the 116<sup>th</sup> Congress, or defer pursuit of, Conference-approved legislative proposals within those committees' jurisdictions.

## **COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY**

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### **COMMITTEE ACTIVITIES**

The Committee on Audits and Administrative Office Accountability reported that it was briefed on the results of various audits, including financial statement audits of the judiciary's appropriations for fiscal years 2016 and 2017 and preliminary findings from an audit of AO contract management. The Committee also discussed future changes to the judiciary's financial reporting model, and the need for improvements in internal controls to support these changes. In addition, the Committee considered the remaining interim recommendations of the report of the Ad Hoc Committee to Review the Criminal Justice Act Program that implicate its jurisdiction and were not addressed by the Conference at its September 2018 session.

## **COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM**

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### **BANKRUPTCY JUDGESHIPS**

The Judicial Conference conducts a biennial survey to evaluate requests for additional bankruptcy judgeships and conversion of temporary judgeships to permanent status, and transmits its recommendations to Congress, which establishes the number of bankruptcy judgeships in each judicial district (28 U.S.C. § 152(b)(2)). Based on the results of the 2018 biennial survey of additional judgeship needs, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference ask Congress to convert 10 temporary judgeships to permanent status: five in the District of Delaware, two in the District of Puerto Rico, and one each in the District of Maryland, the Eastern District of Michigan, and the Southern District of Florida. The Conference adopted the Committee's recommendation.

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## **TARGETED BANKRUPTCY JUDGESHIP RECOMMENDATIONS**

In 2013, at the request of the Executive Committee, the Committee on the Administration of the Bankruptcy System developed a methodology to prioritize judgeship requests from within the full Judicial Conference-approved judgeship recommendations to seek in Congress in the event that a opportunity arises to pursue a portion, but not all, of the Conference’s recommended bankruptcy judgeships. Based on this methodology, the Judicial Conference in September 2013 authorized the Director of the Administrative Office to seek legislation to convert to permanent status any or all of the temporary judgeships that were included in the 2013 Judicial Conference bankruptcy judgeship recommendations (JCUS-SEP 13, p. 9), and later expanded this authorization to allow the Director to seek legislation for any or all of the additional judgeships included in the 2013 recommendations (JCUS-MAR 14, p. 8). In March 2016, the Conference again authorized the Director to seek separate legislation to convert to permanent status any or all of the temporary bankruptcy judgeships that were included in the Conference’s March 2015 bankruptcy judgeship recommendations (JCUS-MAR 16, p. 7). In each case, the Director’s authorization to seek targeted bankruptcy judgeship requests was to be executed after consultation with the Bankruptcy Committee, and subject to the approval of the Executive Committee.

Recognizing that prioritization of judgeship recommendations may again be necessary in the future depending on the legislative environment, the Committee noted the prudence of extending similar authority to the Director for the four-year period covering the 2019 and 2021 Judicial Conference judgeship recommendations, to ensure that the judiciary is able to take advantage of every legislative opportunity to preserve and convert temporary judgeships and obtain additional judgeships in districts with a demonstrated emergency, while continuing to pursue more comprehensive bankruptcy judgeship legislation. It therefore recommended that the Conference authorize the Director, after consultation with the Bankruptcy Committee and subject to approval of the Executive Committee, to seek separate legislation for less than the full 2019 and 2021 Judicial Conference bankruptcy judgeship recommendations in effect at that time. The Conference approved the Committee’s recommendation.

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## **OFFICIAL DUTY STATIONS**

On recommendation of the Bankruptcy Committee, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request from the Ninth

Circuit Judicial Council to reduce the number of official bankruptcy judge duty stations in Sacramento in the Eastern District of California from five to four to reflect the lapse of a temporary judgeship in that district.

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## **STATUTE OF LIMITATIONS FOR WITHDRAWAL OF UNCLAIMED FUNDS**

In 2017, the Committee established an Unclaimed Funds Task Force to explore options for improving the judiciary's management of unclaimed funds attributable to bankruptcy courts, with the goals of reducing the balance and future deposits of unclaimed funds, and mitigating the liability borne in perpetuity by clerks of court in connection with tracking and paying claims against unclaimed funds. In furtherance of these goals, the Task Force proposed, and the Committee recommended that the Judicial Conference approve, seeking legislation that would set a five-year statute of limitations for the filing of an application to withdraw unclaimed funds attributable to bankruptcy courts and expressly eliminate any liability borne by the United States or any officer or employee of the United States for failure to make payment on a request for payment of unclaimed funds after the statute of limitations has run. The Conference adopted the Committee's recommendation.

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Bankruptcy System reported that, after seeking the views of the Committees on Audits and Administrative Office Accountability, the Budget, and Judicial Resources, it informed the Executive Committee that it believed the bankruptcy administrator program should remain within the judiciary. It further considered whether horizontal restructuring of bankruptcy administrator offices may produce cost savings, and shared its findings and conclusion with the Budget Committee's Economy Subcommittee. The Committee chair created a working group to further review draft revisions to the application and preliminary disclosure statement for bankruptcy judge nominees requested by the chief circuit judges and circuit executives. In addition, the Committee asked the Federal Judicial Center to study the recent increase to quarterly fees in large chapter 11 cases and its potential consequences.

## **COMMITTEE ON THE BUDGET**

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### **COMMITTEE ACTIVITIES**

The Committee on the Budget reported that it discussed the judiciary’s overall budget outlook, as well as the status of the judiciary’s cost-containment efforts. The Committee considered initial suggestions from the Budget and Finance Advisory Council (BFAC) on possible financial incentives for court and office consolidations and requested that its staff work with the BFAC to develop a formal package of possible financial incentives for discussion at the Committee’s July 2019 meeting. In addition, the Committee approved standard definitions and guidelines for calculating cost savings and cost avoidance and reporting progress on the judiciary’s major cost-containment initiatives. Finally, the Committee considered the remaining interim recommendations of the report of the Ad Hoc Committee to Review the Criminal Justice Act Program that implicate its jurisdiction and were not addressed by the Conference at its September 2018 session.

## **COMMITTEE ON CODES OF CONDUCT**

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### **CODE OF CONDUCT FOR UNITED STATES JUDGES AND CODE OF CONDUCT FOR JUDICIAL EMPLOYEES**

At the request of Chief Justice John G. Roberts, Jr., in January 2018, the Director of the Administrative Office established the Federal Judiciary Workplace Conduct Working Group to examine the safeguards currently in place within the judiciary to protect all court employees from inappropriate conduct in the workplace. In June 2018, the Federal Judiciary Workplace Conduct Working Group issued a report recommending improvements to these safeguards, including recommendations for the judiciary to “revise its codes and other published guidance in key respects to state clear and consistent standards, delineate responsibilities, and promote appropriate workplace behavior.” In response to these recommendations, the Committee on Codes of Conduct proposed amendments to both the Code of Conduct for United States Judges and the Code of Conduct for Judicial Employees, in consultation with the Committee on Judicial Conduct and Disability, to ensure consistency between the proposed amendments to the codes and that Committee’s proposed amendments to the Rules for Judicial-Conduct and Judicial-Disability Proceedings (see *infra*, pp. 25-26). After taking into consideration comments and testimony received during a 60-day public comment period and a joint public hearing with the Judicial Conduct and Disability Committee on the proposed amendments to the Code of Conduct for United

States Judges and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, comments received during a 60-day internal comment period on the proposed amendments to the Code of Conduct for Judicial Employees, as well as feedback from the Executive Committee, the Committee developed a set of final proposed amendments to both codes.

These amendments clarify, among other things, that judges should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct; that harassment of court employees includes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct; that a judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge's or judicial employee's conduct contravened the applicable Code; and that a judicial employee's duty of confidentiality does not prevent him or her from reporting or disclosing misconduct, including sexual or other forms of harassment, by a judge, supervisor, or other person.

On recommendation of the Committee on Codes of Conduct, the Conference adopted the amended Code of Conduct for United States Judges and the amended Code of Conduct for Judicial Employees, and delegated to the Committee the authority to make such non-substantive changes or technical amendments that the Committee may later determine to be necessary.

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## **COMMITTEE ACTIVITIES**

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2018, the Committee received 22 new written inquiries and issued 18 written advisory responses. During this period, the average response time for requests was 17 days. In addition, the Committee chair responded to 16 informal inquiries, individual Committee members responded to 188 informal inquiries, and Committee counsel responded to 539 informal inquiries, for a total of 743 informal inquiries.

## **COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT**

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### **MISCELLANEOUS FEE SCHEDULES**

An apostille authenticates official documents for use in countries that participate in the 1961 Hague Convention. To clarify the fee to be charged by courts for issuing an apostille, the Committee recommended that the Conference amend the Court of Appeals Miscellaneous Fee Schedule, the District Court Miscellaneous Fee Schedule, and the Court of Federal Claims Fee Schedule, to add the following new language at the end of Item 3 on each fee schedule: “For the issuance of an apostille, \$47.” The Conference adopted the Committee’s recommendation.

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### **RECORDS DISPOSITION SCHEDULE FOR CIVIL CASE FILES**

The retention and disposition of court case files are controlled by records disposition schedules jointly established by the Judicial Conference and the National Archives and Records Administration (NARA) (28 U.S.C. § 457). In March 2017, the Judicial Conference approved revisions to Records Disposition Schedule 2 to incorporate case disposition times for cases falling within seven new nature of suit codes for civil cases, and authorized the revised schedule to be transmitted to NARA for concurrence (JCUS-MAR 17, pp. 8-9). One of the new codes – code 899, pertaining to cases under the Administrative Procedure Act or an appeal of an agency decision – was scheduled under the March 2017 revisions as temporary. However, NARA recommended, based upon public comments it received, that a case under the 899 nature of suit code be classified as permanent if the case reaches the “issue joined” stage. The Committee therefore recommended, and the Conference approved, a revision to Records Disposition Schedule 2, Item 7(b)(4) to designate cases classified under the 899 nature of suit code as permanent if the case has reached the “issue joined” stage.

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### **JUROR UTILIZATION**

In March 1984, the Judicial Conference adopted as a goal that all district courts limit the percentage of jurors not selected, serving, or challenged on voir dire or orientation day to 30 percent of those appearing at the courthouse (JCUS-MAR 84, pp. 34-35). The Committee on Court Administration and Case Management considered

whether an alternative method of measuring juror utilization, in which the number of jurors used in a particular trial would be compared against an established panel-size benchmark, would be a more effective or accurate way to measure juror utilization. Benchmarks were proposed for routine civil trials, routine criminal trials, complex civil trials, complex criminal trials, and capital cases. Because the use of benchmarks would be a significant departure from the current juror utilization metric, and because the proposed benchmarks were untested, the Committee recommended that the Judicial Conference approve a two-year pilot project to test the effectiveness of measuring juror utilization through panel-size benchmarks. The Conference approved the Committee's recommendation.

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## **SUPERVISION OF PRO SE AND DEATH PENALTY LAW CLERKS**

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). Death penalty law clerks are appointed and supervised in the same manner.

Over the past few years, courts have requested that the Committee on Judicial Resources establish a supervisory pro se law clerk position. Upon recommendation of that Committee, at its September 2018 session, the Judicial Conference approved a new Lead Pro Se/Death Penalty Law Clerk position description, which included responsibility for managing the work of other pro se and death penalty law clerks. However, the Judicial Resources Committee noted that the position could not be classified as "supervisory" because the 1994 Judicial Conference policy provides that only the chief judge (or a judicial officer or clerk of court designated by the chief judge) may supervise pro se law clerks. Because the 1994 policy had been recommended to the Conference by the Court Administration and Case Management Committee, the Judicial Resources Committee asked this Committee to consider modifying the policy on pro se law clerk supervision.

The Committee noted that some courts have established a pro se law clerk or combined pro se/death penalty law clerk position responsible for overseeing the work of other such law clerks, and that as the pro se and death penalty law clerk programs have grown within the court system, many courts have come to rely on senior pro se law clerks to perform many of the day-to-day oversight functions essential to the efficient operation of the programs. The Committee therefore determined that the 1994 policy should be amended to vest chief district judges with the discretion to delegate supervisory responsibilities over pro se and death penalty law clerks to a pro se/death penalty law clerk, and to recognize that chief district judges appoint and

supervise death penalty law clerks in addition to pro se law clerks. On recommendation of the Committee, the Conference amended its 1994 policy regarding a chief judge's authority to appoint and supervise pro se law clerks to include death penalty law clerks and to allow a chief judge to delegate supervisory authority to another judicial officer, the clerk of court, or a pro se/death penalty law clerk, as follows (new language underlined, deleted language struck through):

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

The chief judge may delegate supervisory responsibilities for the district's pro se law clerk program and/or death penalty law clerk program to another judicial officer, the clerk of court, or to a pro se/death penalty law clerk, who will report to the chief judge or to the chief judge's designee.

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## COMMITTEE ACTIVITIES

The Court Administration and Case Management Committee reported that it endorsed its cost-containment subcommittee's report on shared administrative services, which discusses various ways that court units have used flexible service arrangements to deliver administrative services, and includes materials to guide courts interested in implementing similar sharing arrangements. With respect to the library program, the Committee also reviewed the results of a survey soliciting input on the essential research resources required for chambers researchers to do their jobs effectively; endorsed sending a report summarizing the survey's findings to the Budget and Executive Committees in light of their prior communications with the Committee regarding judiciary spending on legal resources; and authorized the distribution of circuit-level survey data to each circuit librarian for independent analysis of the extent to which circuits' expenditures on research resources correspond to chambers researchers' needs at the local level. In addition, the Committee discussed the ongoing efforts of its privacy subcommittee and the Administrative Office, in response to recommendations from the Task Force on Protecting Cooperators, to develop software "change requirements" documents for introducing plea and sentencing folders into criminal case dockets in CM/ECF, to assist the Committee in evaluating policy implications of the recommendations.

## COMMITTEE ON CRIMINAL LAW

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### ORDERS REGARDING MOTIONS FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2) (AO FORM 247)

Pursuant to 18 U.S.C. § 3582(c)(2), a court may reduce a defendant’s sentence when the defendant was sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the United States Sentencing Commission, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission, and after considering the factors set forth in 18 U.S.C. § 3553(a) to the extent that they are applicable. On recommendation of the Committee on Criminal Law, the Judicial Conference approved changes to AO Form 247 (“Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)”). The form was revised to address a concern raised in *Chavez-Meza v. United States*, 138 S.Ct. 1959 (2018), that a district court’s decision regarding the motion for sentence reduction may in some cases require a detailed explanation. Section III of the form was revised to prompt courts to provide a more detailed discussion of sentencing factors considered, and to reference *Chavez-Meza* for context.

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### COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that several of its members have participated in two meetings of the Judiciary-Bureau of Prisons (BOP) Working Group. The group offers a forum to exchange information contributing to improvements in the administration of criminal justice; to promote the effective and efficient management of public resources; and to ensure inmates’ successful transition to the community. Topics for discussion by the members have included implementation of the First Step Act of 2018, Pub. L. 115-391, the availability of Residential Reentry Centers, and implementation of the BOP-related recommendations of the Task Force on Protecting Cooperators.

## COMMITTEE ON DEFENDER SERVICES

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### AD HOC COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT PROGRAM

At its September 2018 session, the Judicial Conference considered and adopted 19 of the 35 interim recommendations of the Ad Hoc Committee to Review the Criminal Justice Act Program (Cardone Committee): 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 Committee on Defender Services in consultation with the Cardone Committee (JCUS-SEP 18, pp. 38-42). The Executive Committee and the Director of the Administrative Office also took action on several interim recommendations within their respective jurisdictions, and the Executive Committee deferred the remainder (JCUS-SEP 18, pp. 6-11).

The Committee on Defender Services, in consultation with other relevant Conference committees, recommended that the Judicial Conference take action at this session related to interim recommendations 7, 9, 12, 13, 16, 24, 26, and 27. The Committees on Defender Services and the Judicial Branch also asked the Judicial Conference to take action on a joint recommendation related to interim recommendations 5 and 6.<sup>2</sup> The Executive Committee and the Director of the Administrative Office took action on the other remaining interim recommendations (see *supra*, pp. 5-8).

At this session, on the recommendation of the Defender Services Committee, the Judicial Conference approved the following interim recommendation of the Cardone Committee without modification:

**Interim Recommendation 26:** Eliminate any formal or informal non-statutory budgetary caps on capital cases, whether in a death, direct appeal, or collateral appeal matter. All capital cases should be budgeted with the assistance of case budgeting attorneys (CBAs) and/or resource counsel where appropriate.

The Judicial Conference also considered modifications to interim recommendations 7, 9, 16, 24, and 27, recommended by the Committee on Defender Services. The Cardone Committee supported these modifications. The Judicial

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<sup>2</sup> The AO Director previously, in response to interim recommendations 5 and 6, made the Defender Services Office a member of the AO Legislative Council (JCUS-SEP 18, pp. 10-11).

Conference approved the modified recommendations as set forth below (additions underlined, deletions struck through):

**Interim Recommendation 7:** The annual budget request ~~must~~ should reflect the highest statutorily ~~available~~ authorized rate for Criminal Justice Act panel attorneys, ~~unless adverse fiscal conditions require the Defender Services budget request to reflect less than the highest statutorily available rate.~~

**Interim Recommendation 9:** Every circuit should have available at least one case budgeting attorney and reviewing judges should ~~defer~~ give due weight to their recommendations in reviewing vouchers and requests for expert services, and must articulate their reasons for departing from the case budgeting attorney's recommendations.

**Interim Recommendation 16:** Every district or division should ~~have~~ implement an ~~appeal~~ independent review process for panel attorneys who wish to challenge any ~~non-mathematical voucher~~ reductions to vouchers that have been made by the presiding judge.

- a. ~~Every district should designate a CJA Committee that will determine how to process appeals.~~
- b. Any ~~proposed reasonableness~~ challenged reduction ~~shall~~ should be subject to review by the ~~designated CJA review committee that will issue a recommendation to the judge in accordance with this independent review process.~~

All processes implemented by a district or division must be consistent with the statutory requirements for fixing compensation and reimbursement to be paid pursuant to 18 U.S.C. § 3006A(d).

**Interim Recommendation 24:** ~~Remove any~~ Local or circuit restrictions prohibiting Capital Habeas Units (CHUs) from engaging in cross-district or cross-circuit representation should not be imposed without good cause. Every district should have access to a CHU.

**Interim Recommendation 27:** In appointing counsel in capital cases, judges should ~~defer~~ consider and give due weight to the recommendations by federal defenders and resource counsel ~~absent compelling reasons to do otherwise~~ and articulate reasons for not doing so.

In addition, on the recommendation of the Committee on Defender Services (with the support of the Cardone Committee), the Judicial Conference adopted, as an

alternative to interim recommendations 12 and 13,<sup>3</sup> a policy that circuit court judges should give due weight to Defender Services Office recommendations and Judicial Conference-approved Judicial Resources Committee staffing formulas when approving the number of assistant federal defenders in a district.

Finally, on the joint recommendation of the Committees on Defender Services and the Judicial Branch (see *infra*, p. 24) with respect to interim recommendations 5 and 6 (and with the support of the Cardone Committee), the Judicial Conference endorsed the involvement of representatives of the Defender Services program in pursuing Defender Services-related legislative and appropriations priorities, provided such involvement is consistent with the judiciary's overall legislative and appropriations strategies and is a coordinated effort with Administrative Office legislation and appropriations liaison staffs and not a separate approach to Congress.

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## COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it met with Judge Robert James Conrad, Jr. (NC-W) to discuss parity of training resources between federal prosecutors and CJA counsel and agreed to continue consideration of this issue. The Committee also received a briefing on the activities of the Southwest Border Task Force, which includes judiciary and executive branch representatives, and is tasked with identifying and collaborating on issues arising from the increased volume of immigration-related prosecutions along the southwest border with Mexico. In addition, the Committee discussed Defender Services cybersecurity and other information technology initiatives, as well as litigation support initiatives, including future resource needs in light of the Judicial Conference's adoption of several Cardone Committee interim recommendations relating to enhanced e-discovery training and litigation support staffing. Finally, the Committee received an update on the current state of the eVoucher system and reiterated its support for the ongoing need for improved reporting on CJA panel operations.

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<sup>3</sup> Interim recommendation 12 states: "The Judicial Conference should develop a policy in which judges defer to DSO recommendations and accepted staffing formulas when setting staffing levels." Interim recommendation 13 states: "Circuit court judges should implement DSO staffing formulas when approving the number of assistant federal defenders in a district."

## **COMMITTEE ON FEDERAL-STATE JURISDICTION**

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### **REMOVAL OF ERISA CLAIMS**

At this session, the Committee on Federal-State Jurisdiction recommended that the Judicial Conference rescind its the March 1994 position seeking an amendment to 28 U.S.C. § 1445 to bar the removal of claims under 29 U.S.C. § 1132(a)(1)(B) of the Employment Retirement Income Security Act of 1974 (ERISA) (JCUS-MAR 94, p. 19). The judiciary has not pursued this position since 2000. Noting that the number of cases arising from ERISA had not grown to a burdensome level, as was anticipated at the time this policy was adopted, the Committee recommended that the position be rescinded. The Conference approved the Committee’s recommendation.

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### **COMMITTEE ACTIVITIES**

The Committee on Federal-State Jurisdiction reported that it discussed several initiatives in its role as the communication conduit between state and federal judiciaries, including the activities of state-federal judicial councils and the status of updates to the *Manual for Cooperation Between State and Federal Courts* (1997). The Committee also continued consideration of legislative proposals for possible inclusion in its ongoing jurisdictional improvements project that would address issues raised by the removal of state actions to federal court prior to service of a forum-defendant. Finally, the Committee continued its review of legislation that would create a federal court process to enjoin individuals posing a risk of injury to themselves or others from purchasing or possessing firearms or ammunition.

## **COMMITTEE ON FINANCIAL DISCLOSURE**

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### **FINANCIAL DISCLOSURE REPORT PREPARATION**

The judiciary has authorized the reimbursement of judges and judiciary employees for the cost of professional fees, not to exceed \$1,000, for the preparation of financial disclosure reports required by the Ethics in Government Act (JCUS-SEP/OCT 01, p. 59), with the exception of nomination reports (*Guide to Judiciary Policy*, Vol. 2D, Ch. 2, § 230(a)). At the request of a filer, the Committee on Financial Disclosure considered whether to recommend an increase to the maximum reimbursement amount to account for the increase in costs incurred by report filers since the maximum reimbursement amount was established in 2001. The Committee

recommended, and the Judicial Conference approved, an increase to the reimbursement of judges and judiciary employees for professional fees, not to exceed \$1,370, for the preparation of financial disclosure reports, with the exception of nomination reports. The Committee recommended the \$370 increase to align with the increase to the minimal value threshold for reporting gifts under the Act, which is set by the General Services Administration based on changes to the Consumer Price Index. The Committee also asked its Subcommittee on Forms and Instructions to study whether an additional increase may be appropriate.

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## 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 an amendment to the judiciary’s financial disclosure regulations permitting filers to submit final financial disclosure reports no more than 15 days prior to the end of the reporting period, so long as the filer amends the report if any of the information in the report changes between the date of filing and the end of the reporting period. As of December 3, 2018, the Committee had received 4,131 financial disclosure reports and certifications for calendar year 2017 (out of a total of 4,170 required to file), including 1,225 annual reports from Supreme Court justices and Article III judges; 340 annual reports from bankruptcy judges; 575 annual reports from magistrate judges; 1,584 annual reports from judicial employees; and 407 reports from nominee, initial, and final filers.

## COMMITTEE ON INFORMATION TECHNOLOGY

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### COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed revisions to the *Guide to Judiciary Policy* clarifying roles and responsibilities for administering the annual IT security self-assessment, and addressing streaming recreational video. It also endorsed a “Judge’s Checklist for a Secure Judiciary,” a brief, one-page summary of IT security actions judges should follow. In addition, the Committee determined that security tool standardization as an industry best practice is a compelling factor that should drive the judiciary’s actions.

## **COMMITTEE ON INTERCIRCUIT ASSIGNMENTS**

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### **COMMITTEE ACTIVITIES**

The Committee on Intercircuit Assignments reported that 100 intercircuit assignments were undertaken by 85 Article III judges from July 1, 2018, to December 31, 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 three proposed intercircuit assignments of bankruptcy judges and four of magistrate judges.

## **COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS**

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### **COMMITTEE ACTIVITIES**

The Committee on International Judicial Relations reported on its international rule of law work in the regions of the Western Hemisphere, Africa, Europe and Eurasia, the Near East, East Asia and the Pacific, and South and Central Asia. The Committee received oral and written reports on international rule of law and justice sector development programs from the U.S. Department of State, U.S. Department of Justice, U.S. Agency for International Development, U.S. Department of Commerce, U.S. Patent and Trademark Office, Open World Leadership Center, Federal Judicial Center, Federal Court Clerks Association, and Administrative Office, including its Defender Services Office. The World Justice Project also made a presentation on the challenges and progress in international Rule of Law assistance programs.

## **COMMITTEE ON THE JUDICIAL BRANCH**

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### **JUDGES' TRAVEL REGULATIONS**

On recommendation of the Committee on the Judicial Branch, the Judicial Conference adopted amendments to the Travel Regulations for Justices and Judges, *Guide to Judiciary Policy (Guide)*, Vol. 19, Ch. 2, to add a reference to a new *Guide* chapter regarding meals and light refreshments, clarify limitations on reimbursement of subsistence expenses when a judge rents or owns a home in a place where the judge

performs temporary duty, and remove references to tax-related guidance that is outside the purview of Judicial Conference policy-making, in addition to several non-substantive changes.

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## **AD HOC COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT PROGRAM**

As discussed more fully *supra*, pp. 18-20, on the joint recommendation of the Committees on the Judicial Branch and Defender Services related to interim recommendations 5 and 6 of the Ad Hoc Committee to Review the Criminal Justice Act Program, the Judicial Conference endorsed the involvement of representatives of the Defender Services program in pursuing Defender Services-related legislative and appropriations priorities, provided such involvement is consistent with the judiciary's overall legislative and appropriations strategies and is a coordinated effort with Administrative Office legislation and appropriations liaison staffs and not a separate approach to Congress.

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## **COMMITTEE ACTIVITIES**

The Committee on the Judicial Branch reported that it considered other remaining interim recommendations of the report of the Ad Hoc Committee to Review the Criminal Justice Act Program that implicate its jurisdiction and were not addressed by the Conference at its September 2018 session. In addition, the Committee reported that its chair, along with a representative from the Budget Committee and the Director of the Administrative Office, provided a briefing about the federal judiciary as part of the U.S. House of Representatives New Member Orientation in November 2018. The Committee discussed changes to leadership in both the House and Senate Judiciary Committees in the 116<sup>th</sup> Congress, as well as substantial changes to the membership of the House Judiciary Committee. The Committee also discussed civic education activities occurring in courts as well as recent judicial health and wellness efforts initiated at the circuit level.

## COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

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### RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

At the request of Chief Justice John G. Roberts, Jr., in January 2018, the Director of the Administrative Office established the Federal Judiciary Workplace Conduct Working Group to examine the safeguards currently in place within the judiciary to protect all court employees from inappropriate conduct in the workplace. In June 2018, the Working Group issued a report recommending improvements to these safeguards, including recommendations for the judiciary to “improve its procedures for identifying and correcting misconduct, strengthening, streamlining, and making more uniform existing processes” set out in the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules). In response to these recommendations, the Committee on Judicial Conduct and Disability proposed amendments to the Rules, in consultation with the Committee on Codes of Conduct to ensure consistency between the proposed Rules amendments and that Committee’s proposed amendments to the Codes of Conduct for judges and judicial employees (see *supra*, pp. 12-13). After taking into consideration comments and testimony received during a 60-day public comment period and a joint public hearing with the Codes of Conduct Committee on the proposed amendments to the Rules and the Code of Conduct for United States Judges, as well as feedback from the Executive Committee, the Committee developed a set of final proposed amendments to the Rules.

These amendments clarify, among other things, that traditional judicial “standing” rules do not apply to the complaint process under the Judicial Conduct and Disability Act (i.e., that individuals or organizations may file a complaint even if they have not been directly injured or aggrieved); that cognizable misconduct under the Rules includes engaging in unwanted, offensive, or abusive sexual conduct (including sexual harassment or assault), creating a hostile work environment for judicial employees, intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability, as well as retaliation against individuals for reporting or disclosing judicial misconduct or disability; that nothing in the Rules concerning the confidentiality of the complaint process or in the Code of Conduct for Judicial Employees concerning the use or disclosure of confidential information received in the course of official duties prevents a judicial employee from reporting or disclosing misconduct or disability; and that judges have a duty to bring to the attention of the relevant chief district judge or chief circuit judge reliable information reasonably likely to constitute judicial misconduct or disability.

On recommendation of the Committee on Judicial Conduct and Disability, the Conference, after discussion, adopted the amended Rules for Judicial-Conduct and Judicial-Disability Proceedings, and delegated to the Committee the authority to make such non-substantive changes or technical amendments that the Committee may later determine to be necessary.

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## COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it discussed and considered complaint-related matters under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364 (Act), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules). The Committee 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

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### ARTICLE III JUDGESHIPS

Additional Judgeships. The Committee on Judicial Resources considered requests and justifications for additional judgeships in the courts of appeals and the district courts as part of its 2019 biennial survey of judgeship needs. Based on its review, and after considering the views of the courts and circuit judicial councils, the Committee recommended that the Judicial Conference request from Congress the addition of 5 permanent Article III judgeships for the courts of appeals, and the addition of 65 permanent Article III judgeships and the conversion to permanent status of 8 existing temporary Article III judgeships in the district courts. The Conference adopted the Committee’s recommendations, agreeing to transmit the following request to Congress (“P” denotes permanent; “T/P” denotes conversion of temporary to permanent):

#### Courts of Appeals

Ninth Circuit	5P
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District Courts

Puerto Rico	1P
New York-Eastern	2P
New York-Southern	1P
New York-Western	1P
Delaware	1P
New Jersey	4P
North Carolina-Western	1T/P
Texas-Eastern	2P, 1T/P
Texas-Southern	2P
Texas-Western	6P
Indiana-Southern	2P
Iowa-Northern	1P
Missouri-Eastern	1T/P
Arizona	4P, 1T/P
California-Northern	4P
California-Eastern	5P
California-Central	9P, 1T/P
California-Southern	4P
Idaho	1P
Nevada	1P
Colorado	2P
Kansas	1T/P
New Mexico	1P, 1T/P
Florida-Northern	1P
Florida-Middle	6P
Florida-Southern	3P, 1T/P
Georgia-Northern	1P

Judgeship Vacancies. As part of the 2019 biennial survey of judgeship needs, the Committee also reviewed workloads in appellate and district courts with consistently low per-judgeship caseloads for the purpose of determining whether to recommend to the President and Senate that an existing or future judgeship vacancy not be filled. On recommendation of the Committee, the Conference agreed to recommend to the President and the Senate not filling the next judgeship vacancy in the Court of Appeals for the Tenth Circuit and the District of Wyoming, and the most recent vacancy in the Western District of Oklahoma, based on consistently low per-judgeship caseload.

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## **COURT LAW CLERK PILOT PROGRAM**

The Judicial Conference has approved three phases of a pilot program to evaluate whether providing additional law clerks in courts with extremely heavy caseloads could expedite case resolution (JCUS-MAR 11, p. 23; JCUS-MAR 14, p. 21; JCUS-SEP 15, p. 21; JCUS-MAR 16, pp. 19-20). While the program had been scheduled to sunset on September 30, 2018, the Judicial Resources Committee in March 2018 recommended, and the Conference approved, extending the program for one year to September 30, 2019. This extension would allow the Committee to evaluate information to be gathered by the Administrative Office (AO) by December 2018 on the possible parameters for a national program before deciding whether the pilot should be made a permanent national program or allowed to end (JCUS-MAR 18, p. 20). At its December 2018 meeting, the Committee reviewed potential parameters developed by the AO and asked the AO to continue refining them for the Committee's consideration in June 2019. The Committee therefore recommended that the Judicial Conference extend the court law clerk pilot program for one additional year, from September 30, 2019 to September 30, 2020. The Conference approved the Committee's recommendation.

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## **DEFENDER SERVICES NATIONAL POSITIONS**

The Committee on Judicial Resources, at the request of the Committee on Defender Services, recommended that the Judicial Conference approve two additional full-time equivalent paralegal positions for the Defender Services National Litigation Support Team, to be considered for inclusion in the judiciary's fiscal year 2021 budget request. These additional resources address the staffing requirements of the Defender Services National Litigation Support Team to support e-discovery needs of CJA panel attorneys and federal defender organizations. The Judicial Conference approved the Committee's recommendation.

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## **COURT PERSONNEL SYSTEM BENCHMARKS**

In September 2007, the Judicial Conference approved new Court Personnel System (CPS) benchmarks to more accurately reflect job duties and responsibilities. In January 2017, the AO launched a comprehensive review of the CPS benchmarks, beginning with the benchmarks for information technology (IT) positions. In conducting its review of the IT benchmarks, the AO solicited input from court unit

executives and, with the assistance of its Court IT Operations Working Group, analyzed the benchmarks in relation to comparable positions in the executive branch and private sector. On recommendation of the Judicial Resources Committee, the Judicial Conference approved changes to the CPS benchmarks for IT positions, including updates to representative duties, classification levels, and compensation.

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## **COMMITTEE ACTIVITIES**

The Committee on Judicial Resources reported that it endorsed a recommendation from the Federal Judiciary Workplace Conduct Working Group regarding the training and qualifications of Employment Dispute Resolution (EDR) Coordinators, and asked the AO to develop minimum qualification requirements for EDR Coordinators and establish a program for regular training and certification. The Judicial Resources Committee also considered and approved a proposal for a new judiciary-wide work measurement study of support services.

## **COMMITTEE ON JUDICIAL SECURITY**

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### **COMMITTEE ACTIVITIES**

The Committee on Judicial Security reported that it concurred with the Committee on Space and Facilities' approval of a Capital Security Program study in Yakima, Washington. The Committee also discussed the facility security review initiative being piloted in the Northern District of New York to enhance the oversight of security services provided by the Federal Protective Service, U.S. Marshals Service, and General Services Administration. In addition, the Committee reviewed suggested revisions to the *U.S. Courts Design Guide* relating to judicial security that will be considered by the *Design Guide* Working Group.

## **COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM**

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### **CHANGES IN MAGISTRATE JUDGE POSITIONS**

After considering the recommendations of the Committee on the Administration of the Magistrate Judges System and the views of the Administrative Office, the district courts, and the judicial councils of the circuits, the Judicial

Conference agreed to (a) authorize the filling of the magistrate judge position vacancy at Baton Rouge in the Middle District of Louisiana; and (b) redesignate the locations of both the full-time magistrate judge position at Harrisonburg and the part-time magistrate judge position at Charlottesville as “Harrisonburg or Charlottesville” in the Western District of Virginia.

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## **COMMITTEE ACTIVITIES**

The Committee on the Administration of the Magistrate Judges System reported that it considered nine 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, with the exceptions of changes in the locations of two positions in one district court as recommended to the Judicial Conference. Pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), for the period between its June 2018 and December 2018 meetings, the Committee, through its chair, approved filling 19 full-time magistrate judge position vacancies in 14 district courts. The Committee approved requests from seven courts for the recall, extension of recall, approval of staff, or extension of staff, for seven retired magistrate judges, except that the Committee voted in one instance against funding clerk’s office support for a recalled magistrate judge. The Committee agreed to communicate to courts its new policy that it will not recommend more than one new magistrate judge position in a yearly cycle for any one court absent unusually compelling or extraordinary circumstances.

## **COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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### **COMMITTEE ACTIVITIES**

The Committee on Rules of Practice and Procedure reported that two of the advisory rules committees are considering amendments to their rules related to expert testimony. The Advisory Committee on Criminal Rules is considering whether to expand the pretrial disclosure requirements in Criminal Rule 16. A mini-conference is scheduled for May 6, 2019; participants will include prosecutors, private practitioners, and federal defenders. The Advisory Committee on Evidence Rules is considering an amendment to Evidence Rule 702 that would focus on one important aspect of forensic (and other) expert testimony: the problem of overstating results (for example, by

stating an opinion as having a “zero error rate” when that conclusion is not supportable by the methodology).

## **COMMITTEE ON SPACE AND FACILITIES**

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### **CRITERIA FOR REPLACEMENT OF NON-RESIDENT COURTHOUSES**

In recent years, several districts have requested new space to replace existing facilities that do not have a full-time judge in residence. While the Judicial Conference established criteria for determining whether and which courtroom facilities that do not have a full-time judge in residence should be closed (JCUS-MAR 06, p. 28), no clear criteria existed to evaluate when it might be appropriate to acquire replacement space for a non-resident facility. After obtaining the views of the Committee on Court Administration and Case Management, the Space and Security Advisory Council, and the Administrative Office on the information needed from courts in order to determine whether replacement space is justifiable based on bona fide business needs, the Committee recommended that the Conference approve proposed non-exhaustive criteria to be used by courts to justify a request for replacement space for an existing non-resident courthouse. The proposed criteria include, among other things, the travel time and distance to the closest alternative facility; travel costs for all participants in the proceedings; caseload handled at the facility; judge time at the facility; and the economic and other benefit the facility has to the community. The Conference adopted the Committee’s recommendation.

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### **COMMITTEE ACTIVITIES**

The Committee on Space and Facilities reported that it approved the reallocation of fiscal year 2017 Capital Security Program (CSP) funding that had originally been reserved for a project in Paducah, Kentucky, to address funding shortfalls for six previously-approved CSP projects. The Committee also discussed the status of the comprehensive review and revision of the *U.S. Courts Design Guide* and the progress of the working group established to oversee this process. In addition, the Committee approved funding for two No Net New projects and discussed ways to incentivize judges to improve their space utilization in order to assist the circuits in complying with the No Net New policy.

## **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