

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

March 14, 2023

The Judicial Conference of the United States convened on March 14, 2023, 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 David Jeremiah Barron
Judge Aida M. Delgado-Colón,
District of Puerto Rico

Second Circuit:

Chief Judge Debra Ann Livingston
Chief Judge Margo K. Brodie,
Eastern District of New York

Third Circuit:

Chief Judge Michael A. Chagares
Chief Judge Renee Marie Bumb,
District of New Jersey

Fourth Circuit:

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

Fifth Circuit:

Chief Judge Priscilla Richman
Chief Judge Debra M. Brown,
Northern District of Mississippi

Sixth Circuit:

Chief Judge Jeffrey S. Sutton
Judge S. Thomas Anderson,
Western District of Tennessee

Seventh Circuit:

Chief Judge Diane S. Sykes
Chief Judge Jon DeGuilio,
Northern District of Indiana

Eighth Circuit:

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

Ninth Circuit:

Chief Judge Mary H. Murguia
Judge Leslie E. Kobayashi,
District of Hawaii

Tenth Circuit:

Chief Judge Jerome A. Holmes
Chief Judge William Paul Johnson,
District of New Mexico

Eleventh Circuit:

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

District of Columbia Circuit:

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

Federal Circuit:

Chief Judge Kimberly A. Moore

Court of International Trade:

Chief Judge Mark Barnett

Also participating in this session of the Conference were the following Judicial Conference committee chairs: Circuit Judges Jay S. Bybee, Jennifer Walker Elrod, D. Michael Fisher, Amy J. St. Eve, Michael Y. Scudder, Richard J. Sullivan, and William B. Traxler, Jr.; District Judges Micaela Alvarez, John D. Bates, David G. Campbell, Sara Darrow, James C. Dever III, Nicholas G. Garaufis, Marcia Howard, Brian Stacy Miller, Kevin Michael Moore, Randolph D. Moss, Robin L. Rosenberg, Patrick J. Schiltz, and Gregory F. Van Tatenhove; and Bankruptcy Judge Rebecca Buehler Connelly. Attending as the bankruptcy judge and magistrate judge observers, respectively, were Bankruptcy Judge Margaret M. Mann and Magistrate Judge Patricia D. Barksdale. Susan Y. Soong of the Ninth Circuit represented the circuit executives.

Participating from the Administrative Office of the United States Courts were Judge Roslynn R. Mauskopf, Director; Lee Ann Bennett, Deputy Director; William S. Meyers, General Counsel; Katherine H. Simon, Judicial Conference Secretariat Officer, and WonKee Moon, Supervisory Attorney Advisor, Judicial Conference Secretariat; David T. Best, Legislative Affairs Officer; and David A. Sellers, Public Affairs Officer. John S. Cooke, Director, and Clara J. Altman, Deputy Director, Federal Judicial Center, as well as Judge Carlton W. Reeves, chair, and Kenneth P. Cohen, Staff Director, United States Sentencing Commission, also participated, as did Judge Robert M. Dow, Jr., Counselor to the Chief Justice and Ethan V. Torrey, Supreme Court Legal Counsel.

Attorney General Merrick B. Garland addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Senator Sheldon Whitehouse and Representatives Darrell Issa and Henry C. “Hank” Johnson spoke on matters pending in Congress of interest to the Conference.

REPORTS

Judge Mauskopf reported to the Judicial Conference on the judicial business of the courts and on matters relating to the Administrative Office. Mr. Cooke spoke to the

Conference about Federal Judicial Center programs, and Judge Reeves reported on United States Sentencing Commission activities.

ELECTION

The Judicial Conference elected to the Board of the Federal Judicial Center for a term of four years, Judge Sara Lee Ellis, United States District Court for the Northern District of Illinois, and Judge Lynn Winmill, United States District Court for the District of Idaho, to succeed 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.

EXECUTIVE COMMITTEE

RESOLUTION

The Judicial Conference approved a recommendation of the Executive Committee to adopt the following resolution recognizing the substantial contributions made by the outgoing chair of the Judicial Conference Advisory Committee on Civil Rules, whose term of service ended in October 2022:

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

HONORABLE ROBERT M. DOW, JR.
Advisory Committee on Civil Rules

Appointed as committee chair by the Chief Justice of the United States, this outstanding jurist has played a vital role in the administration of the federal court system. He served with distinction as leader of his Judicial Conference committee while, at the same time, continuing to perform his duties as a judge in his own courts. He has set a standard of skilled leadership and earned our deep respect and sincere gratitude for his innumerable contributions. We acknowledge with appreciation his commitment and

dedicated service to the Judicial Conference and to the entire federal judiciary.

JUDICIARY STRATEGIC PLANNING

Strategic Plan Priorities. The *Strategic Plan for the Federal Judiciary (Plan)*, updated by the Judicial Conference in September 2020, identifies strategies and goals to enable the federal judiciary to continue as a model in providing fair and impartial justice (JCUS-SEP 2020, pp. 13-14). The approach to strategic planning, approved by the Conference when the *Plan* was first adopted in 2010, provides for the identification, every two years, of strategies and goals from the *Plan* that should receive priority attention. These priorities are identified by the Executive Committee, with suggestions from Conference committees (JCUS-SEP 2010, pp. 5-6).

At its February 2023 meeting, the Executive Committee considered suggestions from Conference committees regarding which strategies and goals should receive priority attention in the next two years. After reviewing the suggestions from Judicial Conference committees, the Executive Committee added one new goal (Goal 3.1c) and affirmed eleven strategies and one goal previously identified, to establish the following thirteen priorities for the next two years:

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|---------------------|--|
| Strategy 1.1 | Pursue improvements in the delivery of fair and impartial justice on a nationwide basis. |
| Strategy 1.2 | Secure resources that are sufficient to enable the judiciary to accomplish its mission in a manner consistent with judiciary core values. |
| Strategy 1.3 | Strengthen the protection of judges, court employees, and the public at court facilities, and of judges and their families at other locations. |
| Strategy 2.1 | Assure high standards of conduct and integrity for judges and employees. |
| Strategy 2.4 | Encourage involvement in civics education activities by judges and judiciary employees. |
| Strategy 3.1 | Allocate and manage resources more efficiently and effectively. |

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| Goal 3.1c | Manage the judiciary’s infrastructure in a manner that supports effective and efficient operations and provides for a safe and secure environment. |
| Strategy 4.1 | Recruit, develop, and retain a talented, dedicated, and diverse workforce, while defining the judiciary’s future workforce requirements. |
| Strategy 4.3 | Ensure an exemplary workplace free from discrimination, harassment, retaliation, and abusive conduct. |
| Strategy 5.1 | Harness the potential of technology to identify and meet the needs of judiciary users for information, service, and access to the courts. |
| Goal 5.1d | Continuously improve security practices to ensure the confidentiality, integrity, and availability of judiciary-related records and information. In addition, raise awareness of the threat of cyberattacks and improve defenses to secure the integrity of judiciary IT systems. |
| Strategy 6.3 | Promote effective administration of the criminal defense function in the federal courts. |
| Strategy 7.1 | Develop and implement a comprehensive approach to enhancing relations between the judiciary and Congress. |

The Executive Committee also determined that committees should give special consideration to Strategies 3.1 and 5.1.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved final fiscal year 2023 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts.

- Agreed with the determination of the Judicial Branch Committee that inflationary adjustments to judges' maximum daily travel subsistence allowance and maximum reimbursement for the actual cost of meals should be allowed to go into effect (*see Guide to Judiciary Policy*, Vol. 19, Ch. 2, § 250.20.20(b)(1) and § 250.20.30).
- At the request of the Committee on the Budget, provided input on and endorsed for continued exploration and development a subset of potential initiatives suggested by various Conference committees to help limit the growth of the judiciary's budget.
- Reviewed the determinations of Conference committees as to whether any outstanding Conference-approved legislative proposals within their respective jurisdictions may warrant modification or rescission.

COMMITTEE ON AUDITS AND ADMINISTRATIVE OFFICE ACCOUNTABILITY

COMMITTEE ACTIVITIES

The Committee on Audits and Administrative Office (AO) Accountability reported that it was updated on the status and results of various audits and engagements, including audits of the judiciary's retirement funds as well as cyclical financial audits of court units and federal public defender organizations. The Committee was briefed on the AO's progress in addressing corrective actions relating to the AO's contracts management and AO disbursements. The Committee was also updated on the planning and timeline for implementing changes to the judiciary's financial reporting model. Finally, the Committee responded to the request of the judiciary planning coordinator to provide recommendations regarding strategies and goals in the *Strategic Plan for the Federal Judiciary* that should receive priority attention over the next two years, and the Committee recommended prioritizing those issues and strategies that emphasize accountability and oversight.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

BANKRUPTCY JUDGESHIPS

The Judicial Conference conducts a biennial assessment to evaluate requests for additional bankruptcy judgeships and conversion to permanent status or extension of existing temporary judgeships, 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 2022 biennial assessment of additional judgeship needs, the Committee on the Administration of the Bankruptcy System recommended that the Judicial Conference ask Congress to convert seven temporary bankruptcy judgeships in the District of Delaware to permanent status. The Conference approved the Committee's recommendation.

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 an opportunity arises to pursue a portion, but not all, of the Conference's recommended bankruptcy judgeships. Since 2013, and based on this methodology, the Judicial Conference has periodically authorized the Director of the Administrative Office to seek separate legislation for less than the full Conference bankruptcy judgeship recommendations in effect at the time (JCUS-SEP 2013, p. 9; JCUS-MAR 2014, p. 8; JCUS-MAR 2016, p. 7; JCUS-MAR 2019, p. 10). 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 the unpredictable legislative environment, the difficulties in securing bankruptcy judgeship resources, and the likelihood that prioritization of judgeship recommendations would continue to be necessary for the foreseeable future, the Committee determined that the Director should be granted similar authority on a permanent basis. In making this determination, it also noted that the Conference had previously granted similar authority to the Director to pursue separate legislation for prioritized Article III judgeship requests (JCUS-SEP 2014, p. 20). It therefore recommended that the Judicial Conference delegate to the Director authority, after consultation with the Bankruptcy Committee and subject to approval of the Executive

Committee, to seek separate legislation for less than the full Judicial Conference bankruptcy judgeship recommendation in effect at that time. The Conference approved the Committee's recommendation.

CASE WEIGHTS FOR CHAPTER 9 CASES

Under Judicial Conference policy, the evaluation of bankruptcy judge resources rests primarily on a district's per-authorized judgeship weighted caseload. The Conference first adopted bankruptcy case weights in 1991 based on a 1988-1989 Federal Judicial Center (FJC) study (JCUS-MAR 1991, pp. 12-13). The Conference in 2010 adopted new case weights based on a study conducted by the FJC in 2008-2009 (JCUS-SEP 2010, pp. 8-9), and in 2014 adjusted the weights to take into account the higher level of activity in chapter 11 mega cases as well as the number of jointly administered cases comprising a mega case (JCUS-SEP 2014, p. 6). At the request of the Bankruptcy Committee, the FJC designed a study to develop updated bankruptcy case weights, but commencement of the study was postponed due to uncertainty regarding the impact of the COVID-19 pandemic on bankruptcy court operations. The FJC suggested interim measures that might be taken to improve the weighting for certain types of cases while a full study was delayed. On recommendation of the Bankruptcy Committee, the Judicial Conference adjusted the bankruptcy case weights to weight chapter 9 cases according to estimated assets the same as chapter 11 cases, on an interim basis pending the results of a comprehensive time-based case weight study.

COMMITTEE ACTIVITIES

The Bankruptcy Committee reported that it requested that the FJC prepare to start in or around October 2023 its planned study to develop new bankruptcy case weights. The Committee also reported that it continued to defer consideration of whether to identify additional courts to participate in the bankruptcy judgeship vacancy pilot, approved by the Conference in September 2014 (JCUS-SEP 2014, p. 7), until bankruptcy filings increase. The Committee discussed the ongoing impact of reduced filing levels on bankruptcy court budgets and staffing and how to employ existing bankruptcy judicial and technological resources more efficiently. Finally, the Committee reported on its work, in partnership with the Committee on the Administration of the Magistrate Judges System, planning a second national diversity event on April 3, 2023, "Roadways to the Bench: Who Me? A Bankruptcy or Magistrate Judge?"

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the judiciary’s overall budget outlook, the status of fiscal year (FY) 2023 and 2024 appropriations, and long-range budget estimates for FYs 2025 through 2029. It also discussed the continued importance of congressional outreach with recent changes to the membership of the House and Senate appropriations committees for the 118th Congress. The Committee also discussed potential initiatives suggested by various Conference committees to help limit the growth of the judiciary’s budget, in response to a request from the Executive Committee, and recommended a subset of these initiatives for further exploration and development to the Executive Committee. Finally, the Committee approved a methodology for updating the salary funding formula for court units for use in FY 2024.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Conference in September 2022, the Committee received 12 confidential advisory opinion requests and issued 12 such opinions. During this period, the average response time to a request for a confidential advisory opinion was 9.5 days. In addition, the chair responded to 52 informal inquiries, individual Committee members responded to 173, and Committee staff counsel responded to 859, for a total of 1,084 responses to informal inquiries during the past six months.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

MISCELLANEOUS FEE SCHEDULES

The Judicial Conference prescribes miscellaneous fees for the courts of appeals, district courts, bankruptcy courts, United States Court of Federal Claims, and Judicial Panel on Multidistrict Litigation, pursuant to 28 U.S.C. §§ 1913, 1914, 1926, 1930, and 1932, respectively. On recommendation of the Court Administration and

Case Management Committee, the Conference amended the miscellaneous fee schedules for these courts to increase certain fees for inflation, as set forth below, effective December 1, 2023. The last time miscellaneous fees were adjusted for inflation was in March 2020 (JCUS-MAR 2020, pp. 9-12).

Court of Appeals Miscellaneous Fee Schedule

| <u>Item</u> | <u>Current Fee</u> | <u>New Fee</u> |
|--|--------------------|----------------|
| 2. Record search | \$32 | \$34 |
| 3-A. Certification of document | \$11 | \$12 |
| 3-B. Issuance of apostille | \$47 | \$50 |
| 4b. Record reproduction (electronic) | \$31 | \$33 |
| 5. Audio recording | \$32 | \$34 |
| 6. Record reproduction (no appendix) | \$89 | \$94 |
| 7-A. Retrieval of one records box | \$64 | \$70 |
| 7-B. Retrieval of multiple records boxes | \$39 | \$43 |
| 7-C. Electronic retrieval | \$10 | \$11 |
| 13-A. Original attorney admission | \$188 | \$199 |
| 13-B. Duplicate certificate of admission | \$20 | \$21 |

District Court Miscellaneous Fee Schedule

| <u>Item</u> | <u>Current Fee</u> | <u>New Fee</u> |
|--|--------------------|----------------|
| 1. Filing document unrelated to pending case | \$49 | \$52 |
| 2. Record search | \$32 | \$34 |
| 3-A. Certification | \$11 | \$12 |
| 3-B. Exemplification | \$23 | \$24 |

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|-------|-------------------------------------|---------|---------|
| 3-C. | Issuance of apostille | \$47 | \$50 |
| 4b. | Record reproduction (electronic) | \$31 | \$33 |
| 5. | Audio recording | \$32 | \$34 |
| 6. | Microfilm/microfiche | \$6 | \$7 |
| 7-A. | Retrieval of one records box | \$64 | \$70 |
| 7-B. | Retrieval of multiple records boxes | \$39 | \$43 |
| 7-C. | Electronic retrieval | \$10 | \$11 |
| 9. | Misdemeanor appeal | \$39 | \$41 |
| 10-A. | Original attorney admission | \$188 | \$199 |
| 10-B. | Duplicate certificate of admission | \$20 | \$21 |
| 13. | Cuban LIBERTAD Act filing | \$6,800 | \$7,202 |
| 14. | Administrative civil filing fee | \$52 | \$55 |

Bankruptcy Court Miscellaneous Fee Schedule

| <u>Item</u> | | <u>Current Fee</u> | <u>New Fee</u> |
|-------------|---|--------------------|----------------|
| 1b. | Record reproduction (electronic) | \$31 | \$33 |
| 2-A. | Certification | \$11 | \$12 |
| 2-B. | Exemplification | \$23 | \$24 |
| 3. | Audio recording | \$32 | \$34 |
| 4. | Amended schedules | \$32 | \$34 |
| 5. | Record search | \$32 | \$34 |
| 7. | Filing document unrelated to pending case | \$49 | \$52 |

| | | | |
|-------|--------------------------------------|-------|-------|
| 12-A. | Retrieval of one records box | \$64 | \$70 |
| 12-B. | Retrieval of multiple records boxes | \$39 | \$43 |
| 12-C. | Electronic retrieval | \$10 | \$11 |
| 19. | Filing specific motions ¹ | \$188 | \$199 |
| 20. | Claims transfer | \$26 | \$28 |
| 21. | Motion to redact | \$26 | \$28 |

Court of Federal Claims Miscellaneous Fee Schedule

| <u>Item</u> | | <u>Current Fee</u> | <u>New Fee</u> |
|-------------|--|--------------------|----------------|
| 2b. | Record reproduction (electronic) | \$31 | \$33 |
| 3-A. | Certification | \$11 | \$12 |
| 3-B. | Exemplification | \$23 | \$24 |
| 3-C. | Issuance of apostille | \$47 | \$50 |
| 4-A. | Original attorney admission | \$188 | \$199 |
| 4-B. | Duplicate certificate of admission | \$20 | \$21 |
| 5. | Monthly listing of court orders and opinions | \$24 | \$25 |
| 8. | Record search | \$32 | \$34 |
| 9. | Audio recording | \$32 | \$34 |
| 10. | Filing document not in case with paid filing fee | \$49 | \$52 |

¹ This includes motions to: terminate, annul, modify, or condition the automatic stay; compel estate property abandonment pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure; withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d); or sell estate property free and clear of liens under 11 U.S.C. § 363(f).

| | | |
|---|------|------|
| 11-A. Retrieval of one records box | \$64 | \$70 |
| 11-B. Retrieval of multiple records boxes | \$39 | \$43 |
| 11-C. Electronic retrieval | \$10 | \$11 |
| 12. Administrative civil filing fee | \$52 | \$55 |

Judicial Panel on Multidistrict Litigation Miscellaneous Fee Schedule

| <u>Item</u> | <u>Current Fee</u> | <u>New Fee</u> |
|--|--------------------|----------------|
| 1. Record search | \$32 | \$34 |
| 2. Certification | \$11 | \$12 |
| 3b. Record reproduction (electronic) | \$31 | \$33 |
| 4-A. Retrieval of one records box | \$64 | \$70 |
| 4-B. Retrieval of multiple records boxes | \$39 | \$43 |
| 4-C. Electronic retrieval | \$10 | \$11 |

IMPLEMENTATION OF FIX NICS ACT

The Fix NICS Act of 2018, Division S, Title VI of the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141), requires the judiciary to share with the Department of Justice (DOJ) any criminal case records that would assist the DOJ in performing firearm purchaser background checks. In March 2020, the Judicial Conference approved a pilot program for providing criminal case judgment forms and certain associated case data to the DOJ via an electronic data feed to satisfy the judiciary’s obligations under this law (JCUS-MAR 2020, pp. 12-13). Noting the need revealed by pilot testing for supplemental records to be shared in order to facilitate more timely and accurate integration with DOJ databases, and the efficiencies that could be achieved should the Committee be authorized to make corresponding modifications to the pilot as it progresses, the Committee on Court Administration and Case Management recommended that the Judicial Conference amend its March 2020 data feed pilot to expand the scope of information to be provided to the DOJ to satisfy federal courts’ obligations under the Fix NICS Act of 2018 and delegate to the Committee the authority to determine the information to be provided. The Conference

approved the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on Court Administration and Case Management reported that it discussed and is continuing to finalize a draft report on patent case assignment in district courts. The Committee also discussed ongoing efforts—in collaboration with the committees on the Administration of the Bankruptcy System, the Administration of the Magistrate Judges System, and the Rules of Practice and Procedure—to evaluate judiciary policy with respect to providing remote public audio access to certain civil and bankruptcy court proceedings post-pandemic. Additionally, the Committee discussed whether existing judiciary guidance for protecting Highly Sensitive Documents (HSDs) should be augmented or standardized and reported that it intends to finalize a definition of, and further guidance regarding, HSDs in the near future. In response to concerns recently raised by Congress that court filings sometimes include unredacted personal information in violation of privacy provisions contained in the Federal Rules of Procedure, and that published opinions in Social Security and immigration cases sometimes include sensitive personal information, the Committee agreed to pursue a series of educational, outreach, and research initiatives to ensure that personal information is sufficiently protected. Finally, the Committee was updated on the status of the project to modernize CM/ECF and PACER, including establishment of a Case Management Modernization Board to provide leadership on the project.

COMMITTEE ON CRIMINAL LAW

PRETRIAL SERVICES SUPERVISION

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to the *Supervision of Federal Defendants* (Monograph 111), *Guide to Judiciary Policy*, Vol. 8, Pt. C, to expand eligibility, where appropriate, for low-intensity pretrial supervision to a defendant on location monitoring, a defendant who has been charged with a drug offense under 18 U.S.C. § 3142(e), and a defendant who has ties to a foreign country.

POST-CONVICTION SUPERVISION

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to the *Guide to Judiciary Policy*, Vol. 8, Pt. E, to expand eligibility for low-risk supervision standards to supervisees on the low end of the Post-Conviction Risk Assessment (PCRA)'s low/moderate risk category (i.e., PCRA raw scores of 6 or 7) who also demonstrate low probability of committing violent crimes, no manifestation of high levels of criminal thinking, no sex offenses among the instant convictions, and no increase in overall risk classification by the second PCRA assessment.

PRESENTENCE INVESTIGATION REPORTS

On recommendation of the Committee on Criminal Law, the Judicial Conference approved revisions to the *Presentence Investigation Report* (Monograph 107), *Guide to Judiciary Policy*, Vol. 8, Pt. D, to remove procedural and operational guidance that will be migrated to a new procedures manual.

PRESENTENCE NOTICE TO VICTIMS

The Mandatory Victims Restitution Act of 1996, Pub. L. 104-132, requires probation officers to provide the victims of an offense with notice of the defendant's conviction, the sentence date, and the victim's opportunity to submit an impact statement, while the Crime Victims' Rights Act, Pub. L. 108-405, places similar requirements on officers and employees of the Department of Justice and certain other executive branch agencies. To avoid duplication of effort and provide victims with a single source of contact, the Criminal Law Committee recommended, and the Judicial Conference in March 2012 approved, seeking an amendment to 18 U.S.C. § 3664(d)(2) to waive the requirement that a probation officer provide the above-described notice if a representative of an executive branch agency has already provided such notice (JCUS-MAR 2012, p. 13).

The Criminal Law Committee noted that the probation system continues to operate during a period of fiscal challenges, and that entirely removing the responsibility of a probation office to provide notice would assist the system in conserving resources as well as eliminate the problem of victims receiving duplicate notifications, which is both wasteful and potentially stressful to victims. It therefore

recommended that the Judicial Conference amend its March 2012 position to instead seek amendments to 18 U.S.C. § 3664(d)(2) and any other relevant provisions of title 18 to transfer responsibility for providing all such notice from the probation system to relevant executive branch agencies. The Conference approved the Committee’s recommendation.

ACCESS TO BUREAU OF PRISONS MEDICAL RECORDS FOR COMPASSIONATE RELEASE MOTIONS

The First Step Act of 2018, Pub. L. 115-391, amended 18 U.S.C. § 3582(c)(1)(A) to permit a defendant to make a motion for compassionate release directly to a court—rather than through the Bureau of Prisons (BOP)—after the defendant has fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion on the defendant’s behalf, or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier. Noting that these expanded procedures as well as the COVID-19 pandemic increased requests for compassionate release made to the BOP and the courts, which in turn led to a lag in obtaining inmate medical records from the BOP to assess whether an inmate may qualify for compassionate release based on medical needs, the Criminal Law Committee recommended, and the Judicial Conference in 2020 approved, seeking legislation amending 18 U.S.C. § 3582(c)(1)(A) to add that if a motion for reduction of the imprisonment term includes as a basis for relief that the defendant’s medical condition warrants a reduction, the BOP shall promptly produce the defendant’s BOP medical records to the court, the probation office, the attorney for the government, and the attorney for the inmate; and if additional time is required by the BOP to produce such records, they shall be produced in a time frame ordered by the court (JCUS-SEP 2020, p. 7).

Because the rate of compassionate release motions has since subsided and the BOP has implemented internal procedures to prevent lag time in producing medical records, the Criminal Law Committee recommended that the Judicial Conference rescind its September 2020 position on this issue. The Conference approved the Committee’s recommendation.

INTERACTION OF MULTIPLE TERMS OF SUPERVISED RELEASE

When modifying an imposed term of imprisonment based on a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A), a court may impose a term of

probation or supervised release equal to or less than the portion of unserved time remaining on the original term of imprisonment. Expressing concern that the statute, which is silent as to how a newly imposed term of probation or supervised release interacts with a previously imposed term of supervised release, could be read together with 18 U.S.C. § 3624(e) to yield a conclusion that the terms must run consecutively rather than concurrently, the Criminal Law Committee recommended, and the Judicial Conference in September 2020 approved, seeking legislation to clarify how an original term of supervised release interacts with an additional term of supervised release imposed under 18 U.S.C. § 3582(c)(1)(A) (JCUS-SEP 2020, p. 23).

Noting that this proposal had been recommended when there was an increase in compassionate release motions under 18 U.S.C. § 3582(c)(1)(A) due to implementation of the First Step Act of 2018 as well as the COVID-19 pandemic, and that the mass simultaneous filing of compassionate release motions has since subsided and that courts have been able to navigate the imposition of supervised release under that statute, the Criminal Law Committee recommended that the Judicial Conference rescind its September 2020 position on this issue. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported on its work sponsoring, in collaboration with the Federal Judicial Center, the October 2022 National Sentencing Policy Institute in Detroit, Michigan. The goal of the 2022 Institute was to engage the federal judiciary in a dialogue about pretrial and sentencing decisions and the impact they have on incarceration, reentry, and supervision. The Committee also discussed plans to review and provide feedback on potential guideline amendments expected to be proposed by the United States Sentencing Commission during the 2022-2023 cycle. The Committee expressed support for proposed revisions to firearms regulations promulgated by the AO Director, intended to resolve ambiguity, remove obsolete language, and add safety protections for probation and pretrial services officers. Finally, the Committee was briefed on widespread reports of and personal experiences with delays during the competency and restoration evaluation processes set forth in 18 U.S.C. §§ 4241-4248, and heard from Bureau of Prisons (BOP) officials about recent BOP efforts to ameliorate such delays.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that it discussed efforts to promote Judicial Conference policies in areas such as ensuring that all judicial districts are served by a federal defender organization (FDO) and modernizing Criminal Justice Act (CJA) panel attorney payment practices to aid with the retention and recruitment of highly qualified and experienced private attorneys to accept CJA appointments. The Committee reviewed outstanding Judicial Conference legislative proposals relating to these issues—including proposals to amend the CJA (1) to require the establishment of FDOs in qualifying judicial districts and (2) to authorize direct payment of CJA compensation and expenses to an attorney’s law firm to facilitate the transition from paper checks to more cost-efficient electronic payments—and advised the Executive Committee that the judiciary should prioritize both legislative proposals. The Committee also discussed IT security issues that impact FDOs and received a status update on the Defender Services Diversity Fellowship Program, which launched in 2022. In addition, the Committee voted to revise the recruitment and retention strategy in the Defender Services program’s strategic plan to expressly incorporate diversity and to include non-attorneys (e.g., investigators, paralegals, mitigation specialists, and other service providers) in recognition of the critical role they play in contemporary federal criminal defense practice. Finally, the Committee reported that its study on the implementation of the Judicial Conference-adopted interim recommendations of the Ad Hoc Committee to Review the CJA Program, conducted at the request of the Executive Committee and with the assistance of the FJC, is nearing its conclusion. The Committee will consider at its spring 2023 meeting the FJC’s final report, which is expected to help identify areas in which the judiciary can promote further implementation of these policies.

COMMITTEE ON FEDERAL-STATE JURISDICTION

DIVISIONAL TRANSFER OF CASES

In September 2006, on recommendation of the Committee on Federal-State Jurisdiction, the Judicial Conference approved seeking an amendment to 28 U.S.C. § 1404 to authorize the district court, in its discretion, to transfer a civil action or other proceeding of a civil nature anywhere within the district for trial or for any other phase of the litigation (JCUS-SEP 2006, p. 20). The Committee noted that section 1404 may cause confusion in that divisional transfer of whole actions is addressed in both

subsections (a) and (b), with only the latter containing a requirement for party consent, and that the proposed amendment should be expanded to eliminate not only the party consent requirement but also the duplicative treatment in these two subsections of the divisional transfer of whole actions. It therefore recommended that the Judicial Conference amend its September 2006 position regarding divisional transfer of cases to instead seek amendments to 28 U.S.C. § 1404 to: (1) authorize the district court, in its discretion, to transfer a civil action or other proceeding of a civil nature anywhere within the district for trial or for any other phase of the litigation; and (2) eliminate the duplicative language in subsections (a) and (b) regarding transfer of the whole action to another division within the district. The Conference approved the Committee's recommendation.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it discussed recent developments and pending legislation relating to immigration policy and the creation of a new immigration court. The Committee began its analysis of the citizenship of non-corporate entities, such as limited liability corporations, for the purpose of diversity jurisdiction and began examination of a congressional proposal, developed in response to recent recommendations by the Administrative Conference of the United States, to clarify the statutes governing judicial review of agency action. It also received a report on behalf of the state chief justice members of the Committee on continuing efforts to adapt to changes caused by the pandemic, hybrid hearings, security challenges, declining public trust and confidence in state judicial systems, and state legislative efforts to alter the structure of state judiciaries.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it was updated on efforts to develop and implement a new electronic financial disclosure system, including the estimated timeline and cost for completion of the filing, redaction, and remaining release features to meet judiciary-specific business requirements. The Committee authorized an update to the form used by the public to request copies of financial disclosure reports to account for the recent establishment of a new online database for access to judges' reports pursuant to the Courthouse Ethics and Transparency Act, Pub. L. No. 117-125 (2022), and agreed to implement an update to this database that

would allow the public to sort filings by pre-defined data elements. The Committee also authorized the assessment of late filing fees for periodic transaction reports and determined that—consistent with reporting in the executive branch and the U.S. Senate—transactions involving U.S. Treasury bills, notes, and bonds need not be reported on periodic transaction reports, nor in annual or final financial disclosure reports (though ownership, value, and income remain reportable on nomination, initial, annual, and final reports). In addition, the Committee approved clarifying revisions to the Filing Instructions for Judicial Officers and Judicial Employees and the financial disclosure regulations in the *Guide to Judiciary Policy*, Vol. 2, Pt. D, regarding gifts that do not fall within the personal hospitality reporting exemption, reporting requirements for senior and recalled judges, and procedures for requesting and documenting approvals of waivers for reporting certain gifts.

As of November 30, 2022, the Committee had received 4,495 financial disclosure reports and certifications for calendar year 2021 (out of a total of 4,560 required to file), including 1,318 annual reports and certifications from Supreme Court justices and Article III judges; 321 annual reports from bankruptcy judges; 575 annual reports from magistrate judges; 1,761 annual reports from judicial employees; and 520 reports from nominee, initial, and final filers.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it approved a policy prohibiting student volunteers or work training program participants from accessing any non-public judiciary networks, systems, or electronically stored data unless they meet certain requirements. The Committee also approved policies setting out national requirements for the use of multi-factor authentication and mandating the annual completion and submission of data security categorization workbooks by court units. In addition, the Committee endorsed posting as exposure drafts for judiciary-wide comment two proposed policies that would (1) generally prohibit access to non-public judiciary networks, systems, and data from outside the United States and its territories; and (2) mandate certain cybersecurity training for judiciary IT professionals. Finally, the Committee received an update on efforts underway to move the judiciary's internet data center to a new location.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 43 Article III judges undertook 58 intercircuit assignments from July 1, 2022, to December 31, 2022. During this time, the Committee continued to disseminate information about intercircuit assignments and aided courts requesting assistance by identifying and obtaining judges willing to take assignments. The Committee also reviewed and concurred with eight proposed intercircuit assignments of bankruptcy judges and 13 of magistrate judges.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on international rule of law work by federal judges since the Committee's last report to the Judicial Conference. The Committee considered reports addressing such work from the Supreme Court of the United States; Administrative Office; Federal Judicial Center; Federal Court Clerks Association; Congressional Office for International Leadership; U.S. Agency for International Development (USAID); U.S. Patent and Trademark Office; and the U.S. Departments of Commerce, Justice, and State. Two USAID Rule of Law Advisors, two U.S. Embassy/Ankara Political Officers, and a Washington Institute for Near East Policy Fellow spoke with the Committee about the state of the rule of law in Europe and Turkey.

COMMITTEE ON THE JUDICIAL BRANCH

JUDGES' TRAVEL REGULATIONS

On recommendation of the Committee on the Judicial Branch, the Judicial Conference approved amendments to the Travel Regulations for Justices and Judges, *Guide to Judiciary Policy*, Vol. 19, Ch. 2. The substantive changes include clarifications to the description of meetings to which a judge may self-authorize travel, the examples of travel that need not be reported under the governance and education travel policy, and several provisions of the home-to-work transportation policy related

to reporting and reimbursement. The amendments also make several non-substantive and formatting changes.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it discussed recent legislative items of interest to the judiciary, including those related to judicial security, judgeships, workplace conduct, ethics and transparency, and modernization of the judiciary’s case management system, as well as the organization of the next Congress. The Committee met with retiring Senator Roy Blunt, Ranking Member of the Senate Rules Committee and member of the Senate Appropriations Committee. The Committee received a briefing from the Deputy Chief of the Administrative Office’s Information Technology Security Office on IT security matters and the efforts of the Judiciary IT Security Task Force. In addition, the Committee was briefed on civics education activities across the judiciary.

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

COMMITTEE ACTIVITIES

The Committee on Judicial Conduct and Disability reported that it discussed and considered complaint-related matters under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351–364 (Act), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules). The Committee discussed and approved a process for making selected illustrative orders available on the judiciary’s public website in accordance with Rule 24(b); and also agreed to update and maintain a Digest of Authorities on the Act to assist chief judges and court staff administering the Act. 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

ARTICLE III 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 2023 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 two permanent Article III judgeships for the courts of appeals and the addition of 66 permanent Article III judgeships, the conversion to permanent status of seven existing temporary Article III judgeships, and the extension of two existing temporary Article III judgeships for an additional five years 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; “T/E” denotes extension of temporary):

Courts of Appeals

| | |
|---------------|----|
| Ninth Circuit | 2P |
|---------------|----|

District Courts

| | |
|------------------------|----------|
| New York-Eastern | 2P |
| New York-Southern | 2P |
| New York-Western | 1P |
| Delaware | 2P |
| New Jersey | 3P |
| North Carolina-Western | 1T/P |
| Texas-Northern | 1P |
| Texas-Eastern | 2P, 1T/P |
| Texas-Southern | 4P |
| Texas-Western | 6P |
| Indiana-Southern | 1P |
| Iowa-Northern | 1P |
| Missouri-Eastern | 1T/P |
| Nebraska | 1P |
| Arizona | 2P, 1T/P |
| California-Northern | 6P |
| California-Eastern | 4P |

| | |
|---------------------|----------|
| California-Central | 9P, 1T/P |
| California-Southern | 2P |
| Idaho | 1P |
| Colorado | 2P |
| Kansas | 1T/E |
| New Mexico | 1T/P |
| Oklahoma-Northern | 1P |
| Oklahoma-Eastern | 2P |
| Alabama-Northern | 1T/E |
| Florida-Northern | 1P |
| Florida-Middle | 5P |
| Florida-Southern | 3P, 1T/P |
| Georgia-Northern | 2P |

Judgeship Vacancies. As part of the 2023 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, the Southern District of West Virginia, and the Western District of Oklahoma, the current vacancy in the District of Wyoming, and either of the two most recent vacancies in the Eastern District of Michigan, based on consistently low per-judgeship caseload.

TEMPORARY EXCEPTIONS TO HUMAN RESOURCES POLICIES

In 2020, the Judicial Conference approved three temporary exceptions to human resources policies to address the impact of the COVID-19 pandemic on the federal judiciary (JCUS-SEP 2020, pp. 10-12). It subsequently extended those temporary exceptions twice due to continued issues related to the pandemic (JCUS-MAR 2021, pp. 4-5; JCUS-SEP 2021, p. 5), and two of these exceptions remain in effect and are slated to expire six months after the end of the national emergency declared by the President with respect to COVID-19 under the National Emergencies Act (50 U.S.C. § 1622(d)). Noting the declining need for these policy exceptions as the impact of the pandemic on judiciary recruitment efforts has abated, along with the uncertainty at that time regarding the prospective end date of the national emergency, the Committee on Judicial Resources recommended that the Judicial Conference amend the expiration periods for these two temporary exceptions to incorporate a more

definite expiration date. Approving the Committee’s recommendations, the Conference:

Time Limits for Term and Temporary Appointments. Extended the authorization of a waiver of the four-year limitation on term and temporary appointments under September 2007 and March 2011 Judicial Conference policies for employees whose appointments have expired or will expire during the COVID-19 pandemic, to allow extensions of their term or temporary appointments not to exceed September 30, 2023, or six months after the end of the national emergency (whichever occurs first), upon a finding by the appointing officer that hiring a replacement prior to this date is not feasible due to COVID-19.

Limitation on Law Enforcement Officer Reemployed Annuitants. Authorized an additional one-year reemployment period for law enforcement officers serving as reemployed annuitants under March 2009 Judicial Conference policy whose appointments expire on or before September 30, 2023, or six months after the end of the national emergency (whichever occurs first), upon a finding by the chief district judge that a robust recruitment process cannot be conducted due to COVID-19.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it approved the allocation of court law clerk positions for fiscal year 2023 under Track III of the court law clerk program established by the Judicial Conference in September 2021 (JCUS-SEP 2021, pp. 20-21). It also approved, on recommendation of its Subcommittee on Workplace Conduct, a request for a temporary exception to Judicial Conference policy limiting chief district judges to the employment of four term law clerks (JCUS-SEP 1979, p. 16; *Guide to Judiciary Policy*, Vol. 12, Ch. 6, § 615.50(c)), to allow two additional term law clerks to be assigned to a chief district judge’s chambers through August 2023 in order to address a workplace conduct matter. Additionally, the Committee asked the Administrative Office to study options to provide all law clerks (including those exempt from Annual and Sick Leave Act of 1951) with flexibilities comparable to the paid parental leave and parental bereavement benefits available to other judiciary employees and present them for the Committee’s consideration in June 2023.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that it was updated on the successful passage of the Daniel Anderl Judicial Security and Privacy Act of 2022 (Daniel Anderl Act), which was included in the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. 117-263, signed into law on December 23, 2022. The Daniel Anderl Act is intended to improve the safety of judges and their family members through protection of their personally identifiable information (PII) online. The Committee also received an update on the status of the \$112.5 million appropriated for courthouse hardening in the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023. The Committee discussed the latest Vulnerability Management Program developments; almost all 16 Judiciary Security Officer positions have been filled and the Threat Management Branch is actively enrolling judges for PII removal services. Finally, the Committee was updated on the status of the Home Intrusion Detection System reimbursement program.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

CHANGES IN MAGISTRATE JUDGE POSITIONS

After considering the recommendation of the Committee on the Administration of the Magistrate Judges System and the views of the Administrative Office and the affected district court and circuit judicial council, the Judicial Conference increased the salary of the part-time magistrate judge position at Salisbury in the District of Maryland from Level 4 (currently \$42,798 per annum) to Level 3 (currently \$64,198 per annum), effective April 1, 2023.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it considered ten district-wide surveys and, where appropriate, endorsed suggestions regarding magistrate judge utilization in those districts. Between its June 2022 and December 2022 meetings, the Committee, through its chair, approved filling

26 magistrate judge position vacancies in 21 district courts (JCUS-SEP 2004, p. 26), and the Committee approved four recall requests and one request to modify the recall of a magistrate judge serving with staff in one district, to allow that judge to assist another district in a different circuit. At its December 2022 meeting, the Committee also approved requests from 11 courts for the recall, extension of recall, or extension of staff or clerk’s office support, for 15 retired magistrate judges. The Committee continued to discuss the development of a standardized model for evaluating the utilization of magistrate judges, providing feedback on a prototype model previously selected, and referred the matter to its Utilization Subcommittee. The Committee received an update on the Federal Judicial Center (FJC)’s survey of chief district judges on their courts’ efforts to address diversity in the magistrate judge selection process and asked the FJC to gather additional anecdotal information about successful practices. The Committee also received an update on the April 3, 2023 “Roadways to the Bench: Who Me? A Bankruptcy or Magistrate Judge?” national diversity event, planned in partnership with the Committee on the Administration of the Bankruptcy System.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it received an update on the progress of the coordinated work among the Appellate, Bankruptcy, Civil, and Criminal Rules Advisory Committees to consider suggestions to allow expanded access to electronic filing by pro se litigants. The Committee approved publication of a proposed amendment to Bankruptcy Rules Official Form 410 (Proof of Claim) that eliminates the language on the form restricting the use of a uniform claim identifier (UCI). The amendment allows the UCI to be used in cases filed under all chapters of the Bankruptcy Code and for all payments, whether or not electronic. The public comment period for the proposed amendment will be open from August 2023 until February 2024.

COMMITTEE ON SPACE AND FACILITIES

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

A multi-party courtroom is considered an exception to the *U.S. Courts Design Guide (Design Guide)* if (1) there are fewer than four planned district courtrooms; or

(2) more than one such courtroom is provided in a facility (JCUS-MAR 2021, p. 30). The Second Circuit Judicial Council, on behalf of the Western District of New York, requested an exception to the *Design Guide* to include a multi-party courtroom in the program of requirements for a new courthouse construction project in Rochester, New York, which is projected to have only three district courtrooms. The Committee on Space and Facilities noted that the distance between the court in Rochester and the district's only multi-party courtroom in Buffalo creates unnecessary logistical and administrative burdens for case participants and the court in Rochester. On recommendation of the Committee, the Judicial Conference approved an exception to the *Design Guide* to include a multi-party courtroom in the program of requirements for the new courthouse construction project in Rochester, New York.

CLOSURE OF NON-RESIDENT FACILITIES

The Judicial Conference considers recommendations for closure of non-resident court facilities based on criteria established in 2006 (JCUS-MAR 06, p. 28), and upon the recommendation of the appropriate circuit judicial council (28 U.S.C. § 462(b) and (f)). After receiving notice that the Fourth Circuit Judicial Council had approved ceasing district court operations in the non-resident courthouse in Big Stone Gap, Virginia, the Committee recommended, and the Conference approved, the closure of that facility.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it approved three requests for funding for No Net New projects in support of the Judicial Conference's No Net New policy adopted in September 2013 (JCUS-SEP 2013, p. 32), all subject to funding availability. The Committee also approved amendments to the Asset Management Planning Business Rules to further clarify space allocations and reflect current business practices and procedures. Finally, the Committee approved adjustments to the maximum amounts per item that courts may expend on appliances, furniture, carpet, and other furnishings, to take effect in fiscal year 2023, and approved the updating of these cost ceilings annually for inflation for a five-year period, with the next comprehensive review of the cost ceilings to be conducted in 2027.

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