

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

March 17, 2020

The Judicial Conference of the United States convened by teleconference on March 17, 2020, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference participated:

First Circuit:

Chief Judge Jeffrey R. Howard
Judge Nancy Torresen,
District of Maine

Second Circuit:

Chief Judge Robert A. Katzmann
Chief Judge Stefan R. Underhill,
District of Connecticut

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

Sixth Circuit:

Chief Judge Ransey Guy Cole, Jr.
Judge Michael H. Watson,
Southern District of Ohio

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 L. 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 Sharon Prost

Court of International Trade:

Chief Judge Timothy Stanceu

Also participating in this session of the Conference were Judge John W. Lungstrum, chair of the Judicial Conference Committee on the Budget, and Bankruptcy Judge Jeffery P. Hopkins and Magistrate Judge Nannette A. Baker, as the bankruptcy judge and magistrate judge observers, respectively.

Participating from the Administrative Office of the United States Courts were James C. Duff, Director; Lee Ann Bennett, Deputy Director; Sheryl L. Walter, General Counsel; Katherine H. Simon, Secretariat Officer, and WonKee Moon, Supervisory Attorney Advisor, Judicial Conference Secretariat; David Best, Legislative Affairs Officer; and David A. Sellers, Public Affairs 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, also participated, as did Jeffrey P. Minear, Counselor to the Chief Justice, and Ethan V. Torrey, Supreme Court Legal Counsel.

Attorney General William P. Barr addressed the Conference on matters of mutual interest to the judiciary and the Department of Justice. Representative Hank Johnson spoke on matters pending in Congress of interest to the Conference.

REPORTS

Mr. Duff reported to the Judicial Conference on the judicial business of the courts and on matters relating to the Administrative Office. Mr. Cooke spoke to the Conference about Federal Judicial Center programs, and Judge Breyer 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 Thomas M. Hardiman, United States Court of Appeals for the Third Circuit, and Judge Carol Bagley Amon, United States District Court for the Eastern District of New York, to succeed Judge David S. Tatel, United States Court of Appeals for the District of Columbia Circuit, and Judge George Z. Singal, United States District Court for the District of Maine.

EXECUTIVE COMMITTEE

NEW BANKRUPTCY LEGISLATION

The Executive Committee was asked to approve on behalf of the Judicial Conference two measures required to facilitate timely implementation of the Small Business Reorganization Act of 2019, Pub. L. No. 116-54, which took effect on February 19, 2020. On recommendation of the Committee on Rules of Practice and Procedure, the Executive Committee authorized the distribution of Interim Rules of Bankruptcy Procedure 1007, 1020, 2009, 2012, 2015, 3010, 3011, 3014, 3016, 3017.1, 3017.2, 3018, and 3019 to the courts so they could be adopted locally to facilitate uniformity of practice until the Federal Rules of Bankruptcy Procedure can be revised in accordance with the Rules Enabling Act. On recommendation of the Committee on the Administration of the Bankruptcy System, the Executive Committee also approved amendments to the *Judicial Conference Bankruptcy Administrator Regulations, Guide to Judiciary Policy*, Vol. 9, Ch. 2, to provide necessary guidance to bankruptcy administrators and promote national consistency and uniformity of practice between bankruptcy administrator and U.S. trustee districts in implementing the legislation with respect to the selection, appointment, and supervision of trustees in the bankruptcy administrator program.

MISCELLANEOUS ACTIONS

The Executive Committee—

- Approved final fiscal year (FY) 2020 financial plans for the Salaries and Expenses, Defender Services, Court Security, and Fees of Jurors and Commissioners accounts.
- Approved an adjustment to the FY 2021 budget request to conform to the FY 2020 interim financial plans and reflect technical adjustments.
- 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).
- Approved, on behalf of the Judicial Conference on an expedited basis, a recommendation of the Committee on the Administration of the Bankruptcy System to grant a request from the judicial councils of the Fourth Circuit and District of Columbia Circuit for the multi-district designation of a bankruptcy judge in the District of Maryland to serve in the Bankruptcy Court for the District of Columbia through December 31, 2029, *Guide to Judiciary Policy*, Vol. 3, Ch. 14.
- Approved costs related to the Ninth Circuit's 2021 judicial conference, pursuant to the Judicial Conference regulations on meeting planning and administration, *Guide to Judiciary Policy*, Vol. 24, Ch. 2, § 230(a)(2).
- Determined, with respect to the Defender Services Committee's consideration of the remaining recommendations of the Report of the Ad Hoc Committee to Review the Criminal Justice Act Program (Cardone Report), that it would not be appropriate at this time for the Defender Services Committee to engage an outside vendor to study alternative organizational models for the independent defender commission recommended by the Cardone Report's final recommendation, or to commit to any other activities that would require the expenditure of additional resources.

- Approved, on behalf of the Judicial Conference on an expedited basis, a recommendation from the Committee on Judicial Resources to grant an exception to Conference policy that allows a judge to employ only one chambers law clerk at Judiciary Salary Plan (JSP)-14 or above (JCUS-SEP 94, pp. 57-59; *Guide to Judiciary Policy*, Vol. 12, Ch. 6, § 615.50(h)(1))), in order to permit a judge to employ a second law clerk at JSP-14 to address a workplace misconduct matter.
- Requested that the Chief Justice consider conducting the business of the March 2020 Judicial Conference session by conference call or mail ballot, in light of public health concerns regarding the spread of Coronavirus Disease 2019 throughout the country and the fact that no recommendations had been moved to the discussion calendar.
- Recommended that the Chief Justice approve a request from the Committee on International Judicial Relations to include the Director of the Federal Judicial Center as a permanent, non-voting, ex-officio member of the Committee on International Judicial Relations.

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 results of various audits and engagements, including audits of bankruptcy debtors, the Judiciary Integrated Financial Management System, the Judiciary Electronic Travel System, the AO's contracts management and purchase card programs, the Central Violations Bureau (CVB) and Public Access to Court Electronic Records (PACER) Service Center, and judiciary retirement funds. The Committee was also briefed on the ongoing effort to develop consolidated judiciary financial reporting and a more integrated approach to internal controls to support consolidated financial statements. In addition, the Committee was briefed on the AO's responses to allegations of fraud, waste, or abuse, including the use of standard responses to inform complainants when the AO completes an investigation concerning the AO, a court unit, or federal public defender organization.

COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

OFFICIAL DUTY STATIONS

On recommendation of the Committee on the Administration of the Bankruptcy System, and in accordance with 28 U.S.C. § 152(b)(1), the Judicial Conference approved a request from the Third Circuit Judicial Council to reduce the number of approved official bankruptcy judge duty stations in Philadelphia in the Eastern District of Pennsylvania from five to four to reflect the lapse of a temporary judgeship in that district.

SELECTION AND APPOINTMENT REGULATIONS

On recommendation of the Bankruptcy Committee, the Conference approved revisions to the *Judicial Regulations for the Selection, Appointment, and Reappointment of United States Bankruptcy Judges*. In response to concerns that the current preliminary disclosure statement for bankruptcy judge applicants did not elicit relevant information early enough in the selection and appointment process to permit proper consideration prior to selection of a candidate for appointment, the revised regulations allow for earlier submission of preliminary disclosure statements, while also requiring confidentiality and submission of such statements only to the circuit judicial council or court of appeals. The revised regulations also add sexual orientation, gender identity, and pregnancy to the regulation's anti-discrimination provision.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Bankruptcy System presented to the Conference an interim report on the horizontal consolidation pilot of bankruptcy clerks' offices, prepared by the Federal Judicial Center in consultation with the Committee. The Committee reported that it continues to work to improve bankruptcy courts' management of unclaimed funds through the implementation of various recommendations of its Unclaimed Funds Task Force. Also, the Committee again deferred consideration of whether to identify additional courts to participate in the bankruptcy judgeship vacancy pilot approved by the Conference in September 2014 until its June 2020 meeting, when it will reevaluate needs for bankruptcy judge resources. Finally, on October 24, 2019, the Committee hosted a national diversity

event titled *Roadways to the Federal Bench: Who Me? A Bankruptcy Judge?* The event began with a live broadcast panel discussion followed by local roundtable discussions in 19 cities across the United States.

COMMITTEE ON THE BUDGET

COMMITTEE ACTIVITIES

The Committee on the Budget reported that it discussed the judiciary’s overall budget outlook and the status of the judiciary’s cost-containment efforts. In addition, the Committee considered feedback from five Judicial Conference committees and consolidated courts on the effectiveness and impact of potential financial incentives developed by the Budget and Finance Advisory Council to encourage court unit consolidation and flexible sharing arrangements. The Committee requested that the Administrative Office develop a proposed structure and guidelines for a separate fund from which courts could request support for consolidation-related costs, and develop proposals for establishing formal support at the AO to provide guidance to courts considering consolidation.

COMMITTEE ON CODES OF CONDUCT

CODE OF CONDUCT FOR FEDERAL PUBLIC DEFENDER EMPLOYEES

In March 2019, the Judicial Conference adopted an amended Code of Conduct for Judges and an amended Code of Conduct for Judicial Employees, recommended by the Committee on Codes of Conduct in response to a recommendation of the Federal Judiciary Workplace Conduct Working Group that the judiciary “revise its codes and other published guidance in key respects to state clear and consistent standards, delineate responsibilities, and promote appropriate workplace behavior” (JCUS-MAR 19, pp. 12-13). At this session, the Committee proposed amendments to the Code of Conduct for Federal Public Defender Employees consistent with the amendments approved for the Code for Judicial Employees. On the Committee’s recommendation, the Conference adopted the amended Code of Conduct for Federal Public Defender Employees and delegated to the Committee the authority to make non-substantive or technical amendments.

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in September 2019, the Committee received 15 new written inquiries and issued 14 written advisory responses. During this period, the average response time for requests was 21 days. In addition, the Committee chair responded to 10 informal inquiries, individual Committee members responded to 216 informal inquiries, and Committee counsel responded to 698 informal inquiries, for a total of 924 responses to informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

AUDIO STREAMING PILOT PROGRAM

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference authorized a two-year pilot program to evaluate district court streaming of live audio of oral arguments in civil cases of public interest, and delegated to the Committee on Court Administration and Case Management the authority to issue and amend guidelines consistent with the parameters of the pilot. Under the pilot, to run in a limited number of district courts of varying size, audio streaming of motion hearings would be subject to the discretion of the presiding judge, would require the consent of the parties, and would be prohibited in cases involving jurors, witnesses, or sealed, confidential, or classified materials.

MISCELLANEOUS FEE SCHEDULES

Inflationary Fee Increases. 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, 2020. The last time miscellaneous fees were adjusted for inflation was in September 2016 (JCUS-SEP 16, p. 10).

Court of Appeals Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
2. Record Search	\$31	\$32
5. Audio Recording	\$31	\$32
6. Record Reproduction	\$86	\$89
13. Attorney Admission Fee	\$181	\$188
Duplicate Certification of Admission or Certificate of Good Standing	\$19	\$20

District Court Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
1. Filing Document Unrelated to a Case or Proceeding	\$47	\$49
2. Record Search	\$31	\$32
3. Exemplification	\$22	\$23
5. Audio Recording	\$31	\$32
9. Misdemeanor Appeal	\$38	\$39
10. Attorney Admission Fee	\$181	\$188
Duplicate Certification of Admission or Certificate of Good Standing	\$19	\$20
13. Cuban LIBERTAD Act Filing	\$6,548	\$6,800
14. Administrative Civil Filing Fee	\$50	\$52

Bankruptcy Court Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
2. Exemplification	\$22	\$23
3. Audio Recording	\$31	\$32

4. Amended Schedules	\$31	\$32
5. Record Search	\$31	\$32
7. Filing Document Unrelated to a Case or Proceeding	\$47	\$49
8. Chapter 7, 12, or 13 Petition	\$75	\$78
Chapter 9, 11, or 15 Petition	\$550	\$571
Motion to Divide	\$75	\$78
Joint Chapter 7, 12, or 13 Case		
Motion to Divide	\$550	\$571
Joint Chapter 11 Case		
19. Filing Specific Motions	\$181	\$188
20. Claims Transfer	\$25	\$26
21. Motion to Redact	\$25	\$26

Court of Federal Claims Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
3. Exemplification	\$22	\$23
4. Attorney Admission Fee	\$181	\$188
Duplicate Certificate of Admission or Certificate of Good Standing	\$19	\$20
5. Receipt of Monthly Listing of Court Orders and Opinions	\$23	\$24
8. Record Search	\$31	\$32
9. Audio Recording	\$31	\$32
10. Filing/Indexing Document Not in Case For Which a Filing Fee Has Been Paid	\$47	\$49
12. Administrative Civil Filing Fee	\$50	\$52

Judicial Panel on Multidistrict Litigation Miscellaneous Fee Schedule

<u>Item</u>	<u>Current Fee</u>	<u>New Fee</u>
1. Record Search	\$31	\$32

Central Violations Bureau Fees. In 2005, Congress authorized the Judicial Conference to prescribe a fee for each violation notice processed through the Central Violations Bureau (Pub. L. No. 108-447). This fee is set forth at Item 15 of the District Court Miscellaneous Fee Schedule as the fee for processing a “petty offense charged on a federal violation notice.” Although officers frequently cite individuals with Class A misdemeanors using these violation notices, Class A misdemeanors are not included in the definition of a petty offense under the federal criminal code. To resolve this discrepancy between the fee schedule and the criminal code in a manner consistent with the intent of the 2005 statute, the Committee recommended, and the Conference approved, amending Item 15 of the District Court Miscellaneous Fee Schedule as follows (new language underlined, deleted language struck through):

Processing fee for an an ~~petty~~ offense charged on a federal violation notice, \$30.

RECORDS MANAGEMENT

The retention and disposition of judiciary records is controlled by records disposition schedules jointly established by the Judicial Conference and the National Archives and Records Administration (NARA) (28 U.S.C. § 457). The Committee recommended amendments to Records Disposition Schedule 2 to update records retention guidance for the Court of International Trade, noting that this guidance was last revised in 1986 and that the amendments would mirror the court’s current records retention needs and operational practices. The Conference approved the Committee’s recommendation and authorized the revised schedule to be transmitted to NARA for its concurrence.

IMPLEMENTATION OF FIX NICS ACT

The Fix NICS Act of 2018, Division S, Title VI of the Consolidations 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. Noting that the District Court for the Eastern District of New York had developed a prototype electronic data feed to

allow criminal judgment forms and certain associated case data to be automatically transmitted to the DOJ, the Committee supported a pilot program to test the data feed tool in eight to ten courts for up to two years to determine its potential for implementation at the national level. On recommendation of the Committee, the Conference approved the proposed pilot for providing criminal case judgment forms to the DOJ to satisfy federal courts' obligations under the Fix NICS Act of 2018, as incorporated into Pub. L. No. 115-141.

COMMITTEE ACTIVITIES

The Court Administration and Case Management Committee reported that it received updates on several of its ongoing initiatives, including preliminary results from its two-year juror utilization pilot, which began in September 2019, as well as its ongoing efforts to place appropriate limits on access to cooperation information in CM/ECF. The Committee was also updated on the ongoing efforts of its Bankruptcy Noticing Center (BNC) cost-containment subcommittee to reduce costs associated with distributing notices in bankruptcy cases, and of its subcommittee on foreign state interference to address foreign actors' attacks on the judiciary and the judicial process. Finally, the Committee affirmed its commitment to increasing involvement in the development of the Next Generation of CM/ECF (NextGen), emphasizing the importance of the pending independent external assessment of NextGen, and agreed to provide a liaison to the procurement phase of the assessment.

COMMITTEE ON CRIMINAL LAW

COMMITTEE ACTIVITIES

The Committee on Criminal Law reported that it continued its discussion of the implementation of the First Step Act of 2018, Pub. L. No. 115-391, including the need for adequate resources for the probation and pretrial services system, and that it continued to collaborate with the Bureau of Prisons and other stakeholders to implement the Act. The Committee also endorsed a proposal to alleviate workload pressures on probation and pretrial services offices by temporarily amending the Post-Conviction Supervision Procedures Manual to allow probation and pretrial officers to supervise more persons under the Manual's "Low Risk Supervision Standards." Finally, the Committee endorsed a series of judicial reference guides prepared by the AO on residential reentry centers, location monitoring, and substance use disorder treatment options. These guides are intended to raise awareness in the

courts about the purposes, methods of implementation, and related policy considerations for these community corrections options, particularly during a time of limited resources.

COMMITTEE ON DEFENDER SERVICES

COMMITTEE ACTIVITIES

The Committee on Defender Services reported that, at the request of the Executive Committee, the Committee asked the Federal Judicial Center to undertake an assessment of how the judiciary has implemented the interim recommendations of the Report of the Ad Hoc Committee to Review the Criminal Justice Act Program (Cardone Report) that were adopted by the Judicial Conference, and the degree to which those actions have addressed the concerns identified in the Cardone Report. In the meantime, the Committee will continue its examination of the extent to which a study of potential alternative organizational models for the independent defender commission recommended by the Cardone Report’s final recommendation would be useful, as well as the possible scope and contours of such a study. Additionally, the Committee recommended that the Judicial Resources Committee approve the establishment of a Federal Defender Diversity Fellowship Program beginning in fiscal year 2022. Finally, the Committee discussed the potential development of a *Model Federal Public Defender Office Employment Dispute Resolution Plan*.

COMMITTEE ON FEDERAL-STATE JURISDICTION

AMENDMENTS TO TITLE 28

At this session, the Judicial Conference approved two recommendations made by the Committee on Federal-State Jurisdiction, as part of its jurisdictional improvements project, to seek amendments to title 28 of the United States Code as set forth below.

Snap Removal. Under the forum defendant rule, 28 U.S.C. § 1441(b), a case cannot be removed based on diversity jurisdiction if any of the defendants “properly joined and served” is a citizen of the state in which the case was filed. The rationale behind the rule is that the presence of an in-state defendant will protect all the defendants from any risk of local bias, eliminating the need for access to a federal forum. Out-of-state defendants have attempted to evade this rule by filing their

removal papers before any in-state defendants have been served, a tactic known as “snap removal.” Assuming that the rationale behind § 1441(b) is valid, the Committee noted that there is no logical reason to permit removal in the period before any in-state defendants can be found and served. The Committee also noted that limiting snap removal in situations where the policy justifications for diversity jurisdiction would not be advanced would further longstanding Judicial Conference policy seeking to reduce the number of cases based on diversity jurisdiction (*see Long Range Plan for the Federal Courts*, Recommendation 7 (JCUS-SEP 95, p. 42). It therefore recommended that the Judicial Conference urge Congress to enact legislation to remedy the problematic practice of “snap removal.” The Conference adopted the Committee’s recommendation.

Removal of Admiralty Claims. In order to make clear the statutory basis for the bar on removing a case to federal court based on admiralty claims alone, which the Committee believed may be susceptible to court misinterpretation, the Committee recommended, and the Judicial Conference agreed, to urge Congress to clarify the basis for the rule that cases cannot be removed from state court to federal court solely on the basis of admiralty jurisdiction, preferably by amending 28 U.S.C. § 1333(a) as follows (new language underlined, deleted language struck through):

- (a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
- (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled; and
 - (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as a prize.
- (b) A civil action may not be removed solely on the basis of the jurisdiction conferred by this Section.

COMMITTEE ACTIVITIES

The Committee on Federal-State Jurisdiction reported that it was briefed on various legislative matters of interest, including proposed legislation on immigration reform and extreme risk protection orders. The Committee also discussed the “Copyright Alternative in Small-Claims Enforcement Act of 2019,” which would create an Article I tribunal within the legislative branch to resolve copyright claims

valued at under \$30,000 in damages, with streamlined proceedings and limited judicial review akin to the Federal Arbitration Act, and determined to continue its discussion at its May 2020 meeting. The Committee also received a report from the Federal Judicial Center (FJC) regarding the use of certified questions of state law, and reviewed a presentation drafted by the FJC designed to facilitate communication and cooperation between bankruptcy judges and state trial court judges on bankruptcy issues.

COMMITTEE ON FINANCIAL DISCLOSURE

COMMITTEE ACTIVITIES

The Committee on Financial Disclosure reported that it was updated on efforts to procure and implement a new electronic financial disclosure reporting system, including efforts to develop an accurate timeline of deliverables following the postponement of a national rollout of the system. The Committee also authorized its chair to work with staff on creating procedures and a timeline for preparing financial disclosure reports for release to the public in Portable Document Format (PDF). As of December 2, 2019, the Committee had received 4,272 financial disclosure reports and certifications for calendar year 2018 (out of a total of 4,321 required to file), including 1,256 annual reports from Supreme Court justices and Article III judges; 334 annual reports from bankruptcy judges; 579 annual reports from magistrate judges; 1,595 annual reports from judicial employees; and 508 reports from nominee, initial, and final filers.

COMMITTEE ON INFORMATION TECHNOLOGY

COMMITTEE ACTIVITIES

The Committee on Information Technology reported that it endorsed revisions to the *Guide to Judiciary Policy* requiring courts to implement nationally supported IT security tools by March 31, 2022, and permitting government purchase of wearable mobile devices for probation and pretrial services officers with significant location monitoring responsibilities. The Committee also received an update and discussed an analysis being conducted, at the request of the Executive Committee, of current policy and practice regarding remote access to the Data Communications Network using personal rather than government-owned devices. In addition, the Committee discussed the uncertain budget outlook and the impact of impending funding reductions on IT initiatives and operations.

COMMITTEE ON INTERCIRCUIT ASSIGNMENTS

COMMITTEE ACTIVITIES

The Committee on Intercircuit Assignments reported that 133 intercircuit assignments were undertaken by 106 Article III judges from July 1, 2019, to December 31, 2019. 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 six of magistrate judges.

COMMITTEE ON INTERNATIONAL JUDICIAL RELATIONS

COMMITTEE ACTIVITIES

The Committee on International Judicial Relations reported on its international rule of law work in Europe and Eurasia, the Near East, East Asia and the Pacific, South and Central Asia, the Western Hemisphere, and Africa. The Committee received oral and written reports on international rule of law efforts 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 Clerks of Court Association, Federal Judicial Center, and Administrative Office. The Committee also discussed the past, present, and future of the United States judiciary's involvement in international rule of law programming, through panel discussions and individual presentations moderated by the Deputy Director of The Kennan Institute of the Woodrow Wilson International Center for Scholars and by Committee members.

COMMITTEE ON THE JUDICIAL BRANCH

CIVICS EDUCATION

Noting the success of the federal judiciary's first national civics conference, and in furtherance of the sentiments expressed by the Chief Justice in his 2019 Year End

Report on the Federal Judiciary about the importance of the judiciary’s efforts to promote public confidence in the judiciary through civic outreach, the Committee on the Judicial Branch recommended that the Judicial Conference affirm that civics education is a core component of judicial service, endorse regularly-held conferences to share and promote best practices of civics education, and encourage circuits to coordinate and promote education programs. The Conference adopted the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on the Judicial Branch reported that it discussed recent legislative items of interest to the judiciary, including a hearing held before the U.S. House of Representatives Committee on the Judiciary in September 2019, entitled “The Federal Judiciary in the 21st Century: Ensuring the Public’s Right of Access to the Courts.” The Committee was briefed on civics education activities across the judiciary. It discussed lessons learned, trends, and common questions resulting from the Justice and Journalism programs that the Committee has participated in for the previous twenty years. In addition, the Committee discussed recent activity related to the creation of judicial health and wellness committees in the circuits.

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 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

CHAMBERS STAFF FOR CHIEF DISTRICT JUDGES

Judicial Conference guidelines authorize chief judges in districts with five or more authorized judgeships to have four chambers staff positions, and chief judges in

districts with less than five authorized judgeships to have three chambers staff positions (JCUS-SEP 79, pp. 75-76; *Guide to Judiciary Policy*, Vol. 12, Ch. 6, § 615.50). In March 2017, the Conference approved a waiver of its chambers staffing allocation policy to allow the chief district judges in the District of Delaware, the Northern District of Florida, and the Western District of New York, who were in courts with four authorized judgeships but that had been recommended for a fifth judgeship by the Conference, to have an additional staff position, with terms to expire at the conclusion of their terms as chief judge (JCUS-MAR 17, p. 18). The term of the current chief judge in the District of Delaware expires in June 2021. Noting that the District of Delaware continues to demonstrate a need for the additional staff position, the Committee on Judicial Resources recommended that the Conference approve a waiver to allow the incoming chief judge to have an additional staff position in chambers upon assuming the position of chief judge. The term of the additional staff position will expire at the conclusion of that judge's term as chief judge. The Conference approved the Committee's recommendation.

CHIEF DEPUTY POSITIONS

The chief deputy (Type II) classification in the Judiciary Salary Plan (JSP) covers second-in-command positions for circuit executives, clerks of court, chief probation officers, and chief pretrial services officers, where the incumbent serves as a full assistant to the executive; exercises full supervisory and management control over all personnel of the office; and serves an office that has a large staff and subordinate supervisory personnel (JCUS-SEP 92, p. 73; *Guide to Judiciary Policy*, Vol. 12, Ch. 6, § 615.40.10(c)(1)). Pursuant to current Judicial Conference policy, the target grade for a chief deputy is one grade below the target grade of the executive to whom the chief deputy reports, with no chief deputy grade to exceed JSP grade 16 (JCUS-SEP 92, p. 73). At this session, the Judicial Conference considered three recommendations of the Committee on Judicial Resources related to chief deputy positions, as set forth below.

Target Grades. Pursuant to the current policy, a two-grade gap exists between executives graded at JSP-18 and their chief deputies who are limited to JSP-16. Noting that closing this gap would make organizational sense from a classification perspective, may result in larger applicant pools for chief deputy positions, and would provide additional classification and salary flexibility for other occupations graded below chief deputy positions, the Committee recommended increasing to JSP-17 the target grade for chief deputy second-in-command positions reporting to circuit executives and court unit executives graded at JSP-18. The Conference approved the Committee's recommendation.

Senior Staff Attorneys' Offices. Chief deputy positions are not currently authorized for senior staff attorneys. Noting that senior staff attorneys have been asked to meet increasingly complicated managerial demands without the assistance of a deputy, the Committee recommended establishing chief deputy second-in-command positions for senior staff attorneys' offices. The Conference approved the Committee's recommendation.

Direct Reporting. Because current policy requires that chief deputies exercise "full supervisory and management control over all personnel of the office," all employees must report to the chief deputy. Noting that this limits the managerial flexibility for each court unit, and that executives have articulated a need for certain positions to report directly to them, the Committee recommended eliminating the requirement that all positions must report directly to the chief deputy second-in-command position. The Conference approved the Committee's recommendation.

DEFENDER SERVICES NATIONAL POSITIONS

NITOAD Branch. The National Information Technology Operations and Applications Development (NITOAD) Branch provides information technology applications and systems support for federal defender organizations. On recommendation of the Committee on Judicial Resources, in consultation with the Committee on Defender Services, the Judicial Conference approved a new staffing formula for the NITOAD Branch, which provides 27.49 full-time equivalent positions based on statistical year 2020 workload data, to be considered for inclusion in the judiciary's fiscal year 2022 budget request. The Committee on Judicial Resources will consider an update to the NITOAD Branch staffing formula when it considers replacement staffing formulas for federal defender organizations in 2022.

Capital Resource Counsel Project. The Capital Resource Counsel (CRC) Project furnishes direct representation and consultation in federal capital prosecution cases and provides training to assist federal defender organizations and Criminal Justice Act panel attorneys appointed to federal capital cases. To address CRC Project staffing needs in light of recent increases in the number of defendants with death-eligible indictments, the number of cases being authorized by the Department of Justice to proceed as death penalty cases, the level of prosecutorial resources being devoted to federal capital prosecution, and the level of complexity in capital case litigation, the Committee on Judicial Resources, at the request of the Committee on Defender Services for six additional full-time positions, recommended that the Judicial Conference approve three additional full-time equivalent positions for the CRC Project, including two resource counsel and one paralegal, to be considered for

inclusion in the judiciary’s fiscal year 2022 budget request. The Conference approved the Committee’s recommendation.

STUDENT LOAN REPAYMENT PROGRAM

Section 5379 of title 5, United States Code, permits covered federal agencies to establish student loan repayment programs in order to recruit and retain highly qualified personnel, but does not include the judicial branch or judiciary agencies among these covered agencies. To assist the judiciary in attracting and retaining well-qualified, high-performing employees, the Committee on Judicial Resources recommended, and the Judicial Conference agreed, to seek amendment of 5 U.S.C. § 5379 to authorize the judiciary to establish a student loan repayment program, subject to an assessment of the political climate.

EMPLOYEE RECOGNITION PROGRAM

Judiciary employees are currently authorized to receive a certificate and lapel pin or tie-tack recognizing government service at five-year intervals, and a framed certificate and/or plaque upon retirement (*Guide to Judiciary Policy*, Vol. 12, Ch. 8, § 830). On recommendation of the Committee on Judicial Resources, the Judicial Conference approved expanding the judiciary’s employee recognition awards policy to allow the use of a greater range of non-monetary awards for length of service and retirement recognition.

COMMITTEE ACTIVITIES

The Committee on Judicial Resources reported that it received an update from its subcommittee on diversity, including with respect to the status of the cooperative program with the Just the Beginning - A Pipeline Organization, the possibility of exploring additional partnerships with other organizations, strategic plans to coordinate diversity initiatives with other Judicial Conference committees, and the subcommittee’s adoption of a new diversity mission statement.

COMMITTEE ON JUDICIAL SECURITY

COMMITTEE ACTIVITIES

The Committee on Judicial Security reported that, at the request of the Committee on Information Technology, the Committee provided its views on the physical security concerns related to the use of wearable mobile devices by judiciary personnel, and agreed to ask the IT Committee to explore whether and how the judiciary's wireless device policy should be amended to reflect the Committee's conclusions. The Committee was also updated on challenges to the General Services Administration's (GSA) ability to implement an enhanced criminal history screening protocol for GSA contract workers in restricted judiciary space. Finally, the Committee had conversations with the Directors of the U.S. Marshals Service and the Federal Protective Service about their respective agencies' strategic priorities as well as current and out-year budgetary needs.

COMMITTEE ON THE ADMINISTRATION OF THE MAGISTRATE JUDGES SYSTEM

OFF-THE-RECORD REFERRALS

Since 1990, the Committee on the Administration of the Magistrate Judges System has advised district courts against making off-the-record referrals to magistrate judges. This advice was subsequently incorporated into the Committee's *Suggestions for the Utilization of Magistrate Judges*, which recommended against (1) assignment of a dispositive matter in a civil or criminal case to a magistrate judge to draft a written order or other document for signature or adoption by a district judge that is not recorded on a case docket; and (2) assignment of parties' objections to a report and recommendation on a dispositive motion to a magistrate judge for initial review and recommendation before the district judge makes a de novo determination on the objections. The Committee has observed that off-the-record referral of dispositive motions bypasses the statutory procedures allowing objections to recommended rulings by magistrate judges on dispositive motions and is demeaning to the office of magistrate judge, and that referral of objections adds an off-the-record layer of review to the statutory procedure that provides for de novo review by the district judge. Expressing concerns that the practice has continued in several courts, and that neither 28 U.S.C. § 636 nor the Federal Rules of Procedure authorize these practices, the Committee recommended that the Judicial Conference express its disapproval of the practice of off-the-record referrals to magistrate judges of (1) dispositive motions and

(2) objections to reports and recommendations for initial review and recommendations. The Conference adopted the Committee’s recommendation.

COMMITTEE ACTIVITIES

The Committee on the Administration of the Magistrate Judges System reported that it considered nine cyclical district-wide magistrate judge utilization reviews and, where appropriate, endorsed suggestions regarding the utilization of magistrate judges in these districts. Pursuant to Judicial Conference policy regarding the review of magistrate judge position vacancies (JCUS-SEP 04, p. 26), for the period between its June 2019 and December 2019 meetings, the Committee, through its chair, approved filling 16 magistrate judge position vacancies in 15 district courts. At its December 2019 meeting, the Committee approved requests from seven courts for the recall, extension of recall, approval of staff, or extension of staff, for ten retired magistrate judges. By mail ballot between its June 2019 and December 2019 meetings, the Committee approved requests from four courts for the recall of four retired magistrate judges. In addition, the Committee unanimously agreed that pursuing a case/workload-weighting study would not significantly enhance the Committee’s ability to evaluate magistrate judge resource needs. The Committee also formed a subcommittee to explore ideas for promoting diversity in the magistrate judges system.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

COMMITTEE ACTIVITIES

The Committee on Rules of Practice and Procedure reported that it retroactively approved changes made by the Advisory Committee on Bankruptcy Rules to Official Forms 122A-1 (Chapter 7 Statement of Your Current Monthly Income), 122B (Chapter 11 Statement of Your Current Monthly Income), and 122C-1 (Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period) to conform to a statutory change in the definition of “current monthly income” under 11 U.S.C. § 101(10A), effected by the Honoring American Veterans in Extreme Need Act of 2019 (HAVEN Act), Pub. L. No. 116-52. The revised forms were posted on the judiciary’s website on October 1, 2019.

COMMITTEE ON SPACE AND FACILITIES

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

Ceilings in jury assembly spaces exceeding ten feet in height are considered an exception to the *U.S. Courts Design Guide (Design Guide)*, requiring Judicial Conference approval. The Eighth Circuit Judicial Council, on behalf of the Southern District of Iowa, requested an exception to the *Design Guide* to permit a 16 foot, 6 inch ceiling height for the jury assembly room in a new courthouse being built in Des Moines, Iowa. The court noted that increasing the ceiling height would enhance the architectural integrity of the jury assembly room and ensure cohesion with the 16 foot ceiling of the adjacent lobby. On recommendation of the Committee on Space and Facilities, the Conference approved an exception to the *Design Guide* to permit a ceiling height of 16 feet, 6 inches, in the jury assembly room in the new courthouse construction project in Des Moines, Iowa.

COMMITTEE ACTIVITIES

The Committee on Space and Facilities reported that it discussed the status of the comprehensive review and revision of the *Design Guide* and endorsed several proposed amendments for incorporation into the revised *Design Guide* that will later be presented to the Judicial Conference for approval. The Committee also approved a request from the Eighth Circuit Judicial Council on behalf of the Southern District of Iowa for replacement non-resident courthouse space in Council Bluffs, Iowa. In addition, the Committee reviewed six funding requests for No Net New projects and approved \$4.1 million of funding for three of the six projects. The Committee agreed to defer consideration of the remaining three requests until its June 2020 meeting, at which time it will re-examine and prioritize them along with any new requests received and in light of available funding.

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